

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

Donald Rosenberg  
15915 Chadbourne Rd.  
Shaker Heights, Ohio 44120

Plaintiff,

vs.

The Musical Arts Association  
Severance Hall  
11001 Euclid Avenue  
Cleveland, Ohio 44106

and

Plain Dealer Publishing Co.  
c/o Robert Long, Statutory Agent  
1801 Superior Avenue  
Cleveland, Ohio 44114

and

Susan Goldberg  
2720 Fairmount Boulevard  
Cleveland Heights, Ohio 44106

and

Gary Hanson  
3137 Fairfax Road  
Cleveland Heights, Ohio 44118

and

Richard J. Bogomolny  
503 Battles Road  
Gates Mills, Ohio 44040

and

Judge: JOHN D SUTULA

CV 08 678705

**COMPLAINT**

**(Interrogatories, Request for  
Production of Documents,  
Request for Admissions and  
Notices of Depositions Annexed)**

**(Trial by Jury Requested)**

GERALD E. FIERSI  
CLERK OF COURTS  
CUYAHOGA COUNTY

2008 DEC 11 A 9:59

FILED

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## **JURISDICTION AND PARTIES**

1. This action is brought pursuant to the common law and public policy recognized in the State of Ohio as well as pursuant to O.R.C. §§ 4112.02 and 4112.99.

2. Plaintiff Donald Rosenberg, age 56, is an employee of Defendant Plain Dealer Publishing Co. who, until approximately September 17/18, 2008, was its music critic. In that capacity, Plaintiff covered and reviewed for over 15 years the concerts of The Cleveland Orchestra performed at Severance Hall, throughout the United States and on international tours. Thereafter, as set forth herein, Plaintiff was removed from his position as the music critic by Defendant Plain Dealer Publishing Co. and Defendant Goldberg, its editor, and became variously an arts and entertainment reporter and dance critic, positions of lesser stature, which precluded Plaintiff from reviewing any Cleveland Orchestra concert and/or covering any aspect of news related to The Cleveland Orchestra. Reviewing and covering The Cleveland Orchestra were the most significant and prestigious aspects of his previous position as the music critic. Plaintiff enjoys a national and international reputation as a highly respected and qualified music critic who recently completed two terms as President of the Music Critics Association of North America. (See, for example, attached Exhibit A); ("admired by colleagues" and "respected by Cleveland musicians", Greg Sandow, "A Sour Note", Wall Street Journal, September 27, 2008); ("knowledgeable and conscientious", quoting a veteran Cleveland Orchestra musician, Daniel L. Wakin, "Music Critic Vs. Maestro:

One Loses His Beat", The New York Times, September 25, 2008); ("musical background as good as it gets" and "evaluations reasoned and sensitive", Tim Smith, "Cleveland Critic Who Dared Criticize is Reassigned", The Baltimore Sun, September 19, 2008). In addition, Plaintiff authored a book, "The Cleveland Orchestra Story: Second to None", the definitive, comprehensive account of the remarkable history of The Cleveland Orchestra.

3. Defendant The Musical Arts Association is an Ohio corporation, with its principal headquarters in Severance Hall, located in the City of Cleveland, County of Cuyahoga, State of Ohio. Defendant The Musical Arts Association operates and manages The Cleveland Orchestra, a symphony orchestra which performs concerts of classical and related music in Ohio, throughout the United States and in various foreign countries, available to persons in the general public who purchase tickets for these concert performances. Defendant Plain Dealer Publishing Co. is an Ohio corporation engaged in the business of preparing, printing, publishing and distributing newspapers in the State of Ohio and throughout the United States for sale to persons in the general public, which newspaper publishes reviews of concerts of and news about The Cleveland Orchestra, which were covered and reviewed by its music critic, Plaintiff Donald Rosenberg. The principal place of business of Defendant Plain Dealer Publishing Co. is located in the City of Cleveland, County of Cuyahoga, State of Ohio.

4. At all times hereinmentioned, Defendant Susan Goldberg is the Editor of The Plain Dealer.

5. At all times hereinmentioned, Defendant Gary Hanson is the Executive Director of The Cleveland Orchestra, Defendant Richard Bogomolny is the Chairman of Defendant The Musical Arts Association and Defendant James Ireland III is the President of Defendant The Musical Arts Association.

6. At all times hereinmentioned, all Defendants engaged in the aforementioned activities of Defendants in the City of Cleveland, County of Cuyahoga, State of Ohio.

7. At all times hereinmentioned, Defendants John Does I through X, inclusive, are sued herein pursuant to Rule 15(D) of the Ohio Rules of Civil Procedure in that their true names and identities are not presently known to nor can they be presently ascertained by Plaintiff. When the true names and identities of Defendants John Does I through X, inclusive, become known to and ascertained by Plaintiff, this Complaint will be amended and/or supplemented to so allege same.

8. At all times hereinmentioned, Defendants John Does I through X, inclusive, are individuals and/or entities who and/or which engaged in various unlawful acts and/or omissions against Plaintiff Donald Rosenberg as alleged herein, giving rise to their liabilities to Plaintiff for damages proximately caused to him.

9. At all times hereinmentioned, Defendants Plain Dealer Publishing Co. and Susan Goldberg are "employers" and Plaintiff is an "employee" within the meaning of O.R.C. § 4112.01.

10. At all times hereinmentioned, all Defendants are the agents, servants and employees of all other Defendants acting within the course and scope of their respective agencies, services and employments. All actions and/or omissions of all Defendants were done and/or omitted by and through their respective agents, servants and employees acting within the course and scope of their respective agencies, services and employments.

11. All actions and/or omissions of all Defendants herein were done maliciously, intentionally, willfully, unlawfully, consciously, in bad faith, against public policy, retaliatorily, discriminatorily, illegally, arbitrarily, capriciously, fraudulently, culpably, wantonly, recklessly, negligently, carelessly, tortiously, defamatorily, in malicious interference with Plaintiff's economic, employment and business relationship, in breach of promise which Defendants were estopped from breaching, and in conscious and reckless disregard for the rights of Plaintiff herein.

12. At all times hereinmentioned, all Defendants acted jointly, severally, individually, in combination, in conspiracy, aiding and abetting, and pursuant to a pattern and practice of tortious misconduct, including against Plaintiff.

13. This action is brought pursuant to the common law and public policy recognized in the State of Ohio as well as the provisions of the Ohio Civil Rights Act, to wit, O.R.C. §§ 4112.02 and 4112.99. The allegations and claims in this action are intended to assert rights and causes of action only and exclusively under and pursuant to the laws of the State of Ohio. No claim or cause of action herein is made to assert any right, question, issue, remedy or relief under any

federal law of the United States. It is the specific intention of Plaintiff herein to litigate his claims and causes of action in the courts of the State of Ohio. Therefore, should the allegations of this Complaint and/or any evidence adduced during discovery in this action imply, suggest or indicate in any way any possibility that Plaintiff herein is asserting or claiming any right or cause of action pursuant to any federal law of the United States, Plaintiff specifically eschews and rejects any such implication, suggestion or indication and hereby announces and asserts, in advance, that he is not pursuing and has never intended to pursue such a claim, right or cause of action for any relief or remedy under any federal law of the United States, thereby precluding any effort by Defendants at any time after the filing of this Complaint to remove this action to any federal court based upon federal question jurisdiction.

### **FACTUAL ALLEGATIONS**

14. On or about August 25, 2004, Plaintiff authored an article which was published under Plaintiff's byline in The Plain Dealer. Said article reported the statements of Franz Welser-Möst, the conductor and music director of The Cleveland Orchestra, which Welser-Möst made in an interview with a Swiss weekly magazine published in Zurich, "Die Weltwoche," during a European tour of The Cleveland Orchestra. Plaintiff's story accurately reported the statements attributed to Welser-Möst in the "Die Weltwoche" publication, which was entitled

"Many Rich Widows". Welser-Möst's statements included the necessity in the United States of finding "rich widows" to obtain private funding for culture. Welser-Möst was reported to have stated that Friday matinee audiences of The Cleveland Orchestra performing in Severance Hall are filled with " 'Blue Hair Ladies' because of the coloring of their hair" and, further, that these "so-called 'Blue Hair Audiences' largely comprise retirees who are too tired to attend performances at night". Welser-Möst also reportedly said that to meet him personally, the ladies must donate and, further, that for \$500, or even \$5,000, "you don't get a handshake from the music director". With a person who donated \$10 million, "of course, you go to dinner". When asked how he liked Cleveland, Welser-Möst described Cleveland as an "island" with a world-class orchestra, further describing Cleveland as "an inflated farmer's village".

15. Plaintiff accurately reported the aforementioned quoted statements of Welser-Möst in a reasonable and good faith effort to report the news as a journalist. The Plain Dealer was so enthusiastic about publishing this story that Plaintiff was urged to place it at the very beginning of the article as the lead item among several others which were also reported in the article. Plaintiff discouraged making the Welser-Möst interview the lead item and, therefore, it did not appear as such.

16. The next day, while in Edinburgh, Scotland, after the aforementioned article appeared in The Plain Dealer, the orchestra's director of public relations informed Plaintiff that Welser-Möst and Defendant Hanson were very upset that



Plaintiff had not advised them in advance that Plaintiff was intending to submit for publication Welser-Möst's statements made in his interview with "Die Weltwoche". The orchestra's public relations director also told Plaintiff that he would suffer "consequences" because of the publication of the article in The Plain Dealer.

17. Welser-Möst later told Plaintiff that, in general, he only "allowed" interviews in Europe to be published after he read them and granted permission for publication. Therefore, Welser-Möst stated to Plaintiff that he objected to the fact that Plaintiff submitted the "Blue Hair Ladies" article to The Plain Dealer for publication without being given advance notice, even though Welser-Möst never questioned the accuracy of the interview statements attributed to him. Such a view, as expressed by Welser-Möst, is contrary to the spirit and customary observance by media in the United States of the Freedom of Speech principle as expressed in the First and Fourteenth Amendments to the United States Constitution and Article I, Section II of the Ohio Constitution, as well as contrary to the Statement of Principles of the American Society of Newspaper Editors and the Code of Ethics of the Society of Professional Journalists. Indeed, Welser-Möst's self-proclaimed prerogative to censor the publication of news about him is contrary to the expressly and openly stated view of Defendant Goldberg, on behalf of The Plain Dealer (a view to which she later failed to adhere with respect to Plaintiff):

"As far as criticism is concerned, please be assured that we want our critics to call them as they see them on theatre, music, art, food, etc. We don't need boosterism; we need robust and fairminded views that can inform and educate readers about the work being offered to them. That always has been our tradition and it will continue to be."

Plaintiff advised Welser-Möst that his desire for prepublication censorship of articles about him was contrary to the fundamental principles of journalism as properly practiced in the United States.

18. After Plaintiff was informed of the upset of Welser-Möst, a punitive and retributive campaign was launched by Defendant Musical Arts Association, including Defendants Hanson, Bogomolny and Ireland, designed to besmirch Plaintiff's reputation as a music critic, tortiously interfere with his business/economic/employment relationship with Defendant Plain Dealer Publishing Co., create obstacles to his ability to function as a music critic and eliminate his ability through his employment with The Plain Dealer to publish negative opinions and/or any opinions as a music critic pertaining to the quality of Welser-Möst as a conductor. The aforementioned retributive and punitive campaign of vilification against Plaintiff by Defendant Musical Arts Association and by Defendants Hanson, Ireland and Bogomolny was wrongfully adopted and implemented by Defendant Plain Dealer Publishing Co. and Defendant Goldberg, in violation of the public policy of the State of Ohio, in violation of Plaintiff's employment rights, and in breach of promissory estoppel, in addition to defamation directed against Plaintiff on the part of all Defendants. The aforementioned retributive and punitive campaign of Defendants against Plaintiff include, but are not necessarily limited to, the following:

- (A) Plaintiff had previously, for several years, been permitted the use of an executive office of the public relations director at Severance Hall immediately after a concert so that he could write his review in time for the publication deadline of The Plain Dealer. (A similar courtesy was extended to the music critic of the Akron Beacon Journal.) Defendant Musical Arts Association thereafter consigned him to the use of an office at Severance Hall not much larger than a broom closet. The concocted and untrue reason relayed to The Plain Dealer by Defendant Musical Arts Association to justify this harsh step was a false and defamatory accusation that Plaintiff covertly and without authorization, "had been going through the public relations director's papers" while alone in her office;
- (B) Plaintiff was prohibited from attending rehearsals of The Cleveland Orchestra as he had previously done for years;
- (C) Plaintiff was prohibited from going backstage as he had previously done for years;
- (D) Plaintiff was prohibited from attending tour parties and meals of Cleveland Orchestra members during foreign tours which he had previously done for years;
- (E) On both foreign and domestic tours, Plaintiff was prohibited from riding on the bus with orchestra players which he had previously done for years;
- (F) Plaintiff was denied access to interviews with the music director;
- (G) Defendant Musical Arts Association told Plaintiff's superiors at The Plain Dealer the defamatory untruth that Plaintiff left orchestra concerts he later reviewed before the conclusion of the concerts;
- (H) Plaintiff was specifically told by Welser-Möst (in the presence of Defendant Hanson) that Plaintiff had "stabbed him in the back" by publishing his statements to the Swiss weekly magazine published in Zurich, "Die Weltwoche" in which Welser-Möst had referred to private contributors as "Blue Hair Ladies" and to Cleveland as an "island" and "an inflated farmer's village";
- (I) During the same time that Defendant Musical Arts Association was beseeching The Plain Dealer to curtail the publication of Plaintiff's views of Welser-Möst's music-making, Defendant Plain Dealer Publishing Co. knowingly allowed the continuation of the appearance

of a manifest conflict of interest in that both the former and current publishers of The Plain Dealer remained (and still remain) members of the Board of Defendant Musical Arts Association;

- (J) Defendant Musical Arts Association's aforementioned campaign to silence Plaintiff's criticisms of Welser-Möst resulted in the former editor of The Plain Dealer refusing to publish Plaintiff's column submitted in June 2006 summarizing The Cleveland Orchestra's 2005-2006 season at Severance Hall because the column was critical of Welser-Möst as the orchestra conductor;
- (K) Defendant Musical Arts Association hired a public relations firm to develop a PowerPoint presentation of Plaintiff's Cleveland Orchestra concert reviews and met privately with the former editor of The Plain Dealer, at which time Defendant Hanson made the prepared presentation in order to demonstrate the increasing overall negativity of Plaintiff's reviews about Welser-Möst, in order to convince The Plain Dealer to bring about a change in Plaintiff's reviews so as to be more positive toward Welser-Möst or, in the alternative, to preclude Plaintiff from writing further reviews of the concerts of The Cleveland Orchestra; in fact, Plaintiff's reviews of Cleveland Orchestra concerts also included positive commentaries on Welser-Möst's conducting;
- (L) Thereafter, Defendant Bogomolny wrote a private letter to the former editor of The Plain Dealer specifically urging the removal of Plaintiff as The Plain Dealer's music critic of Cleveland Orchestra concerts;
- (M) In January 2008, Defendants Hanson and Ireland met with Defendant Susan Goldberg. Defendant Hanson stated to her that Plaintiff's relationship with the orchestra had become "irreparable". In fact, this was a false, misleading and defamatory representation. Plaintiff had no problems relating to the orchestra or its members, having repeatedly and publicly praised their excellence as musicians. Plaintiff also had no relationship problems with Defendant Musical Arts Association. Defendant Hanson specifically complained about the aforementioned "Blue Hair Ladies" article and Plaintiff's column concerning The Cleveland Orchestra Fall 2007 European tour, which included an opinion by Plaintiff that the orchestra sounded better under guest conductors than it did under Welser-Möst. This was the last tour of The Cleveland Orchestra to which Defendant Plain Dealer Publishing Co. and Defendant Goldberg sent Plaintiff to cover;

- (N) As a result of Defendant Musical Arts Association's aforementioned continuing campaign, Defendant Plain Dealer Publishing Co. and Defendant Goldberg met with Plaintiff and Plain Dealer management personnel on February 7, 2008; Defendant Goldberg then told Plaintiff, "We have a problem." One management executive in that meeting relayed to Plaintiff that Defendants Hanson and Ireland had earlier met, as aforementioned, with Defendant Goldberg and other management members of The Plain Dealer, at which time Defendant Hanson stated that Plaintiff's relationship with the orchestra had become "irreparable". Defendant Goldberg pointedly stated to Plaintiff that "the credibility of the newspaper has been compromised" by Plaintiff's coverage in that Plaintiff's reviews of Welser-Möst are "extremely and consistently negative and perceived as predictable". These were false and defamatory statements without any basis in fact made in conscious and reckless disregard of the truth. On or about April 16, 2008, Defendant Goldberg shifted some of Plaintiff's responsibilities for reviewing Cleveland Orchestra concerts to Zachary Lewis, 31 years of age, for whom Plaintiff had been a mentor during Mr. Lewis' internship at The Plain Dealer and who was far less experienced and qualified to review performances of The Cleveland Orchestra as compared to Plaintiff. In fact, at the time, Mr. Lewis was not even a permanent employee of The Plain Dealer. This shift in Plaintiff's responsibilities began about 1 ½ months prior to the extension of Welser-Möst's contract as music director and conductor of The Cleveland Orchestra to the year 2018, which extension was consummated on or about June 6, 2008;
- (O) As the date of the anticipated contract extension approached, Defendant Hanson and the public relations director of The Cleveland Orchestra submitted a request to Defendant Goldberg and Plain Dealer Managing Editor Debra Simmons that Mr. Lewis, and not Plaintiff, be assigned to cover and write the story announcing this significant and newsworthy event. Although Plaintiff subsequently participated with Mr. Lewis in writing the news story (which appeared on the front page of The Plain Dealer), Plaintiff was not permitted to write a separate and typical analytical column about the event. Plaintiff was later advised by the orchestra public relations director that she and Defendant Hanson had attempted to make an end run around Plaintiff because they were afraid of what Plaintiff might write about Welser-Möst's contract extension;
- (P) On or about September 17 and 18, 2008, meetings were held with Plaintiff, Debbie Van Tassel (Plain Dealer Features Editor) and Defendant Goldberg. At those meetings, Defendant Goldberg

removed Plaintiff from all activities as a music critic involving review or coverage of The Cleveland Orchestra. This was a culmination of the aforementioned wrongful and tortious campaign of interference with Plaintiff's business/economic/employment relationship with Defendant Plain Dealer Publishing Co., conducted by Defendants Musical Arts Association, Ireland, Bogomolny and Hanson. At these meetings, Defendant Goldberg told Plaintiff that the situation for The Plain Dealer had become "untenable", that Plaintiff had been reviewing the concerts of The Cleveland Orchestra "for a long time", that Plaintiff's reviews of the orchestra were "unfair" and that Plaintiff was "attacking the orchestra". The statements to Plaintiff that his reviews were "unfair" and that he was "attacking the orchestra" were false and defamatory;

- (Q) Since those meetings, Plaintiff is no longer the music critic for The Plain Dealer, but rather in the demoted position of an arts and entertainment reporter and dance critic. His duties include covering music and dance events other than performances of The Cleveland Orchestra.

### **FIRST CLAIM FOR RELIEF**

#### **(malicious and intentional tortious interference with Plaintiff's economic/business/employment relationship against Defendants The Musical Arts Association, Hanson, Bogomolny and Ireland)**

19. By this reference, Plaintiff Donald Rosenberg incorporates all of the preceding allegations of this Complaint as if all of those allegations were fully set forth and rewritten herein at this point.

20. Defendants The Musical Arts Association, Hanson, Bogomolny and Ireland maliciously, intentionally and tortiously interfered with Plaintiff's economic, business and employment relationship with Defendant Plain Dealer Publishing Co. and The Plain Dealer without privilege or justification to do so.

21. As a direct and proximate result of the aforementioned malicious, intentional and tortious misconduct of Defendants The Musical Arts Association, Hanson, Bogomolny and Ireland, Plaintiff suffered great humiliation, damage to his reputation, distress, upset and economic loss.

## **SECOND CLAIM FOR RELIEF**

### **(intentional and malicious defamation of Plaintiff by Defendants The Musical Arts Association, Hanson, Bogomolny and Ireland)**

22. By this reference, Plaintiff incorporates all of the preceding allegations of this Complaint as if all of those allegations were fully rewritten and set forth herein at this point.

23. Defendants The Musical Arts Association, Hanson, Bogomolny and Ireland, without privilege or justification, variously published malicious, intentional and false defamatory statements about Plaintiff impugning his honesty and integrity as a music critic including his coverage and reviews of the conducting of Cleveland Orchestra concerts by Franz Welser-Möst. These false, defamatory per se statements and publications include, but are not necessarily limited to the following:

- (1) That Plaintiff "had been going through the public relations director's papers" while alone in her office covertly on an unauthorized basis, which necessitated Plaintiff's exclusion from the use of the office of the public relations director of The Cleveland Orchestra;
- (2) That Plaintiff left concerts which he covered and reviewed before their conclusion;

- (3) That for false and defamatory reasons, Plaintiff should be removed as The Plain Dealer's music critic covering and reviewing concerts of The Cleveland Orchestra; and
- (4) That Plaintiff's relationship with The Cleveland Orchestra had become "irreparable".

24. These aforementioned false and defamatory statements were published by Defendants with malice, with the specific intent of injuring Plaintiff and interfering with his economic/employment/business relationship, as aforementioned, and in knowing, conscious, willful and reckless disregard for the truth.

25. As a direct and proximate result of the aforementioned defamation on the part of the aforementioned Defendants, Plaintiff sustained injuries and damages as herein alleged.

### **THIRD CLAIM FOR RELIEF**

**(intentional and malicious defamation of Plaintiff by Defendants Plain Dealer Publishing Co. and Goldberg)**

26. By this reference, Plaintiff incorporates all of the preceding allegations of this Complaint as if all of those allegations were fully rewritten and set forth herein at this point.

27. Defendants Plain Dealer Publishing Co. and Susan Goldberg, without privilege or justification, published malicious, intentional and false defamatory statements about Plaintiff impugning his honesty and integrity as a



music critic, and with respect to his employment with Defendant Plain Dealer Publishing Co. as a music critic, including his reviews of the conducting of Cleveland Orchestra concerts by Franz Welser-Möst. These false, defamatory per se statements include, but are not necessarily limited to, the following:

- (1) That "the credibility of the newspaper had been compromised" by Plaintiff's reviews of Welser-Möst's conducting of The Cleveland Orchestra;
- (2) That Plaintiff was "attacking the orchestra";
- (3) That Plaintiff's reviews of Welser-Möst's conducting of The Cleveland Orchestra were "unfair"; and
- (4) That the situation for The Plain Dealer had become "untenable" because of Plaintiff's reviews of Welser-Möst's conducting of The Cleveland Orchestra.

28. These aforementioned false and defamatory statements were published by Defendants Plain Dealer Publishing Co. and Goldberg with malice, with the specific intent of injuring Plaintiff and in knowing, conscious, willful and reckless disregard for the truth.

29. As a direct and proximate result of the aforementioned intentional and malicious defamatory publications and statements of Defendants Plain Dealer Publishing Co. and Goldberg, Plaintiff sustained injuries and damages as herein alleged.

## FOURTH CLAIM FOR RELIEF

**(age discrimination against Plaintiff by Defendant Plain Dealer Publishing Co. and Defendant Goldberg pursuant to O.R.C. §§ 4112.02 and 4112.99)**

30. By this reference, Plaintiff incorporates all of the preceding allegations of this Complaint as if all of those allegations were fully rewritten and set forth herein at this point.

31. During Plaintiff Donald Rosenberg's employment with Defendants Plain Dealer Publishing Co. and Goldberg, Defendants subjected him to discrimination because of his age, including but not necessarily limited to demoting Plaintiff from the position of the music critic for The Plain Dealer to the reduced position of arts and entertainment reporter and dance critic. The aforementioned Defendants' age discrimination adversely affected Plaintiff with respect to the terms, tenure, conditions and privileges of his employment, in violation of O.R.C. §§ 4112.02 and 4112.99.

32. As a direct and proximate result of the aforementioned Defendants' unlawful age discrimination, Plaintiff sustained injuries and damages as alleged herein.

## **FIFTH CLAIM FOR RELIEF**

### **(breach of promissory estoppel by Defendants Plain Dealer Publishing Co. and Goldberg)**

33. By this reference, Plaintiff incorporates all of the preceding allegations of this Complaint as if all of those allegations were fully rewritten and set forth herein at this point.

34. Defendant Susan Goldberg, as the Editor of The Plain Dealer, is a member, Treasurer-elect and President-elect of the American Society of Newspaper Editors ("ASNE"). Defendant Goldberg, on behalf of The Plain Dealer, has publicly, specifically and repeatedly promised and assured Plain Dealer employees (and employees of Defendant Plain Dealer Publishing Co.) that she supports the principles of The ASNE (attached hereto as Exhibit B) and the Code of Ethics of the Society of Professional Journalists (attached hereto as Exhibit C), as applied to Plain Dealer employees. These principles include the independence of editors and journalists from outside pressures and influences designed to manipulate the truthful and good faith reporting of facts and opinions which are unfavorable and unpopular with those who would desire, for self-interested reasons, more positive coverage. These fundamental principles are reflected in the First and Fourteenth Amendments to the Federal Constitution and in Article I, Section II of the Ohio Constitution.

35. Plaintiff Donald Rosenberg relied to his detriment upon the aforementioned promises and assurances of Defendant Plain Dealer Publishing

Co. and Defendant Goldberg, which promises and assurances these Defendants were estopped from breaching. Nevertheless, by taking the aforementioned adverse employment actions against Plaintiff, Defendants breached these promises and assurances.

36. As a direct and proximate result of the aforementioned breach by these Defendants of their promises and assurances, Plaintiff was injured and damaged as herein alleged.

### **SIXTH CLAIM FOR RELIEF**

**(adverse employment action in violation of public policy by Defendants Plain Dealer Publishing Co. and Goldberg)**

37. By this reference, Plaintiff incorporates all of the preceding allegations of this Complaint as if all of those allegations were fully rewritten and set forth herein at this point.

38. Defendants Plain Dealer Publishing Co. and Goldberg took the aforementioned adverse employment action against Plaintiff in violation of the public policy of the State of Ohio including as evidenced by the aforementioned Federal and Ohio Constitutional principles of Freedom of Speech, including freedom of the press as well as The Code of Ethics of The Society of Professional Journalists and The Statement of Principles of The American Society of Newspaper Editors.

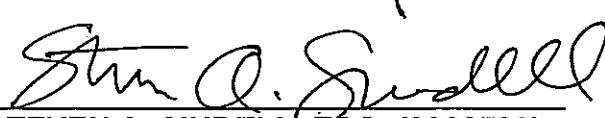
39. As a direct and proximate result of the adverse employment action taken against Plaintiff by these Defendants in violation of the public policy of the State of Ohio, Plaintiff was injured and damaged as herein alleged.

**WHEREFORE**, on all Claims for Relief, Plaintiff Donald Rosenberg variously prays for judgment against Defendant The Musical Arts Association, Defendant Plain Dealer Publishing Co., Defendant Susan Goldberg, Defendant Gary Hanson, Defendant Richard J. Bogomolny, Defendant James D. Ireland III and against all other Defendants, as follows:

1. For compensatory damages in a sum which will fully, fairly and adequately compensate Plaintiff for his injuries and damages alleged herein and in a sum **well in excess of \$25,000.00**;
2. For punitive damages which will fully, fairly and adequately punish Defendants and each of them for their intentional and malicious misconduct as alleged herein, and which will set an example of these Defendants and in a sum **well in excess of \$25,000.00**;
3. For his reasonable attorney fees and litigation expenses incurred in connection with the prosecution of this action;
4. For his costs in this action; and

5. For such other relief, including equitable relief, which this Court deems just and equitable in the premises.

Respectfully Submitted,



**STEVEN A. SINDELL, ESQ. (0002508)**

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*Attorney for Plaintiff*

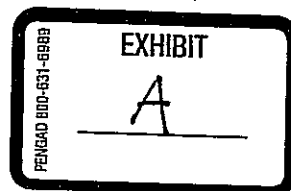
**Trial By Jury Requested**

Plaintiff Donald Rosenberg requests a trial by jury with the maximum number of jurors permitted by law.



**STEVEN A. SINDELL, ESQ. (0002508)**

Letter from MCANA to the Cleveland Plain Dealer -



**Music Critics Association of North America**  
**MCA Educational Activities, Inc.**

722 Dulaney Valley Road Suite 259, Baltimore MD 21204  
musiccritics@aol.com - www.mcana.org

October 21, 2008

Susan Goldberg, editor  
Cleveland Plain Dealer  
Plain Dealer Plaza  
1801 Superior Avenue East  
Cleveland, Ohio 44114-21989

Dear Ms. Goldberg,

The decision to reassign our colleague, Don Rosenberg, and remove him from the duty of reviewing the Cleveland Orchestra has shocked the journalistic and music worlds. We wish to add our voices to what has become an international chorus of protest and concern. (Neither Mr. Rosenberg nor Zachary Lewis was consulted or involved in the preparation of this letter.)

Mindful of your authority as editor of the Cleveland Plain Dealer and your description of Mr. Rosenberg's case as an internal personnel matter, we nonetheless must urge you to rescind your action. The silencing of a critic not only challenges the foundation of our particular profession, but weakens the foundation of journalism itself. It is not at all hyperbolic to see this case as a threat to a free and independent press.

We ask you to consider this theoretical scenario: A newspaper hires a commentator to give opinions about the local mayor and city council on a regular basis; the writer's work draws fire from the politicians and their supporters; the newspaper relieves the writer of his post. No self-respecting publication would ever do such a thing, but your treatment of Mr. Rosenberg has unavoidably put the Plain Dealer in this unflattering light.

There has been much speculation about pressure, overt or subtle, being exerted on you by forces outside the newsroom. We do not wish to add to that speculation, but many of us are certainly aware of what can happen in any community when some people find fault with a music critic. Whatever prompted your move, it has led to consequences that we cannot imagine you would have ever wanted.

In our view, a highly respected and qualified writer (who served for two terms as president of the Music Critics Association of North America) has been subjected to an unwarranted and unreasonable reassignment; a newspaper with a long history of service to its community has had its integrity and honesty questioned; and the free and unfettered public discussion that music criticism tries to foster has been unduly hampered.

We ask you to restore Mr. Rosenberg's critical voice and the credibility of the Plain Dealer.

The following names include the board of directors of the Music Critics Association of North America and many of our members, as well as other music journalists from around the country who wished to join us in support of Don Rosenberg.

- Dorothy Andries, classical music critic, Pioneer Press (Glenview, IL)
- Michael Anthony, Opera Canada; Opera magazine; former music critic, Minneapolis Star Tribune
- Margaret M. Barela, American Record Guide
- James Bash, Opera magazine, The Columbian
- Janet E. Bedell, program annotator (Baltimore Symphony Orchestra)
- \*Martin Bernheimer, Financial Times; Opera magazine; music critic, Los Angeles Times (1965-1996)
- Susan Brodie, American Record Guide
- Clarke Bustard, Letter V: the Virginia Classical Music Blog
- Scott Cantrell, music critic, Dallas Morning News
- Sedgwick Clark, editor, Musical America International Directory of the Performing Arts
- Robert Commanday, music critic (retired) San Francisco Chronicle; Editor (retired) San Francisco Classical Voice; former president, Music Critics Association of North America
- Robert Croan, senior editor and former classical music critic, Pittsburgh Post-Gazette
- Wynne Delacoma, freelance; classical music critic, Chicago Sun-Times (1991-2006)
- Roy C. Dicks, contracted freelance classical music critic, Raleigh (NC) News & Observer
- Andrew Druckenbrod, music critic, Pittsburgh Post Gazette
- Jeremy Eichler, music critic, Boston Globe
- Susan Elliott, editor, MusicalAmerica.com
- Mary Ann Feldman, Minnesota Orchestra Showcase Magazine, Grand Teton Music Festival
- Robert Finn, music critic, Cleveland Plain Dealer (1964-1992)
- John Fleming, performing arts critic, St Petersburg Times
- Richard Freed, program annotator (National Symphony Orchestra)
- Gil French, concert editor, American Record Guide
- Janos Gereben, www.sfcv.org, San Francisco
- Richard S. Ginell, Los Angeles Times; American Record Guide
- Peter Goodman, assistant professor, Department of Journalism, Media Studies and Public Relations, Hofstra University; former critic, Newsday, New York Newsday



- Paul Hertelendy, coordinator and critic of [www.artssf.com](http://www.artssf.com); former music critic, San Jose Mercury News
- Paul Horsley, former music critic, Kansas City Star
- Michael Huebner, Birmingham News
- Barbara Jepson, contributor, The Wall Street Journal "Leisure & Arts"
- Leslie Kandell, freelance
- Mark Kanny, classical music critic, Pittsburgh Tribune-Review
- Laura Kennelly, arts columnist, Morning Journal (Lorain)
- Joshua Kosman, music critic, San Francisco Chronicle
- John W. Lambert, Classical Voice of North Carolina, Inc.
- Marty Lash, Door County Advocate
- Jens F. Laurson, Classical Critic-at-Large, WETA-FM, Washington D.C.
- George Loomis, Financial Times; International Herald Tribune
- Robert Markow, Opera Magazine, Opera News, American Record Guide, program annotator (Montreal Symphony)
- Martin Mayer, retired critic, Esquire Magazine (1951-1975); Opera Magazine (1984-2002)
- Anne Midgette, classical music critic, The Washington Post
- Sarah Bryan Miller, music critic, St. Louis Post-Dispatch
- Frank J. Oteri, editor, New Music Box
- \*Tim Page, University of Southern California; former classical music critic, Washington Post
- Andrew Patner, Classical Music Critic, Chicago *Sun-Times*, Critic-at-Large, 98.7WFMT Radio Chicago and wfmt.com
- James L Paulk, contributor, Das Opernglas
- Alvin H. Reiss, editor, Arts Management
- Louise Austin Remmey, former contributor to Washington Post, Baltimore Sun
- Alex Ross, music critic, The New Yorker
- Georgia Rowe, former music critic, Contra Costa Times; Opera News, San Jose Mercury News, San Francisco Examiner
- Jason Victor Serinus, Opera News, American Record Guide, Stereophile
- Tim Smith, music critic, Baltimore Sun
- David Stabler, classical music critic, The Oregonian
- Elaine Strauss, US 1 Newspaper (Princeton); Chamber Music; Clavier
- Perry Tannenbaum, American Record Guide; Creative Loafing (Charlotte, NC)
- Richard Todd, Ottawa Citizen
- Anthony Tommasini, chief classical music critic, The New York Times
- Herman Trotter, music critic emeritus, The Buffalo News; American Record Guide
- J. J. Van Vlasselaer, music critic, Le Droit (Ottawa)
- John von Rhein, music critic, Chicago Tribune
- S. James Wegg, managing editor, JWR (Canada)
- David Wright, freelance; former program annotator (New York Philharmonic)

\* Recipient of the Pulitzer Prize in Criticism

#### MCANA OFFICERS

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Ex-Officio

**Donald Rosenberg**

*Cleveland Plain Dealer*



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## ASNE Statement of Principles

Published: August 20, 1996  
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[Printer-friendly version](#)

### ASNE Statement of Principles

ASNE's Statement of Principles was originally adopted in 1922 as the "Canons of Journalism." The document was revised and renamed "Statement of Principles" in 1975.

**PREAMBLE.** The First Amendment, protecting freedom of expression from abridgment by any law, guarantees to the people through their press a constitutional right, and thereby places on newspaper people a particular responsibility. Thus journalism demands of its practitioners not only industry and knowledge but also the pursuit of a standard of integrity proportionate to the journalist's singular obligation. To this end the American Society of Newspaper Editors sets forth this Statement of Principles as a standard encouraging the highest ethical and professional performance.

**ARTICLE I - Responsibility.** The primary purpose of gathering and distributing news and opinion is to serve the general welfare by informing the people and enabling them to make judgments on the issues of the time. Newspapermen and women who abuse the power of their professional role for selfish motives or unworthy purposes are faithless to that public trust. The American press was made free not just to inform or just to serve as a forum for debate but also to bring an independent scrutiny to bear on the forces of power in the society, including the conduct of official power at all levels of government.

**ARTICLE II - Freedom of the Press.** Freedom of the press belongs to the people. It must be defended against encroachment or assault from any quarter, public or private. Journalists must be constantly alert to see that the public's business is conducted in public. They must be vigilant against all who would exploit the press for selfish purposes.

**ARTICLE III - Independence.** Journalists must avoid impropriety and the appearance of impropriety as well as any conflict of interest or the appearance of conflict. They should neither accept anything nor pursue any activity that might compromise or seem to compromise their integrity.

**ARTICLE IV - Truth and Accuracy.** Good faith with the reader is the foundation of good journalism. Every effort must be made to assure that the news content is accurate, free from bias and in context, and that all sides are presented fairly. Editorials, analytical articles and commentary should be held to the same standards of accuracy with respect to facts as news reports. Significant errors of fact, as well as errors of omission, should be corrected promptly and prominently.

**ARTICLE V - Impartiality.** To be impartial does not require the press to be unquestioning or to refrain from editorial expression. Sound practice, however, demands a clear distinction for the reader between news reports and opinion. Articles that contain opinion or personal interpretation should be clearly identified.

**ARTICLE VI - Fair Play.** Journalists should respect the rights of people involved in the news, observe the common standards of decency and stand accountable to the public for the fairness and accuracy of their news reports. Persons publicly accused should be given the earliest opportunity to respond. Pledges of confidentiality to news sources must be honored at all costs, and therefore should not be given lightly. Unless there is clear and pressing need to maintain confidences, sources of information should be identified.

These principles are intended to preserve, protect and strengthen the bond of trust and respect between American journalists and the American people, a bond that is essential to sustain the grant of freedom entrusted to both by the nation's founders.

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 11690B Sunrise Valley Drive | Reston, VA 20191-1409 | Phone 703-453-1122

# Code of Ethics

## Preamble

Members of the Society of Professional Journalists believe that public enlightenment is the forerunner of justice and the foundation of democracy. The duty of the journalist is to further those ends by seeking truth and providing a fair and comprehensive account of events and issues. Conscientious journalists from all media and specialties strive to serve the public with thoroughness and honesty. Professional integrity is the cornerstone of a journalist's credibility.

Members of the Society share a dedication to ethical behavior and adopt this code to declare the Society's principles and standards of practice.

## Seek Truth and Report It

**Journalists should be honest, fair and courageous in gathering, reporting and interpreting information.**

**Journalists should:**

- ▶ Test the accuracy of information from all sources and exercise care to avoid inadvertent error. Deliberate distortion is never permissible.
- ▶ Diligently seek out subjects of news stories to give them the opportunity to respond to allegations of wrongdoing.
- ▶ Identify sources whenever feasible. The public is entitled to as much information as possible on sources' reliability.
- ▶ Always question sources' motives before promising anonymity. Clarify conditions attached to any promise made in exchange for information. Keep promises.
- ▶ Make certain that headlines, news teases and promotional material, photos, video, audio, graphics, sound bites and quotations do not misrepresent. They should not oversimplify or highlight incidents out of context.
- ▶ Never distort the content of news photos or video. Image enhancement for technical clarity is always permissible. Label montages and photo illustrations.
- ▶ Avoid misleading re-enactments or staged news events. If re-enactment is necessary to tell a story, label it.
- ▶ Avoid undercover or other surreptitious methods of gathering information except when traditional open methods will not yield information vital to the public. Use of such methods should be explained as part of the story.
- ▶ Never plagiarize.
- ▶ Tell the story of the diversity and magnitude of the human experience boldly, even when it is unpopular to do so.
- ▶ Examine their own cultural values and avoid imposing those values on others.
- ▶ Avoid stereotyping by race, gender, age, religion, ethnicity, geography, sexual orientation, disability, physical appearance or social status.
- ▶ Support the open exchange of views, even views they find repugnant.
- ▶ Give voice to the voiceless; official and unofficial sources of information can be equally valid.
- ▶ Distinguish between advocacy and news reporting. Analysis and commentary should be labeled and not misrepresent fact or context.
- ▶ Distinguish news from advertising and shun hybrids that blur the lines between the two.
- ▶ Recognize a special obligation to ensure that the public's business is conducted in the open and that government records are open to inspection.

## Minimize Harm

**Ethical journalists treat sources, subjects and colleagues as human beings deserving of respect.**

**Journalists should:**

- ▶ Show compassion for those who may be affected adversely by news coverage. Use special sensitivity when dealing with children and inexperienced sources or subjects.
- ▶ Be sensitive when seeking or using interviews or photographs of those affected by tragedy or grief.
- ▶ Recognize that gathering and reporting information may cause harm or discomfort. Pursuit of the news is not a license for arrogance.
- ▶ Recognize that private people have a greater right to control information about themselves than do public officials and others who seek power, influence or attention. Only an overriding public need can justify intrusion into anyone's privacy.
- ▶ Show good taste. Avoid pandering to lurid curiosity.
- ▶ Be cautious about identifying juvenile suspects or victims of sex crimes.
- ▶ Be judicious about naming criminal suspects before the formal filing of charges.
- ▶ Balance a criminal suspect's fair trial rights with the public's right to be informed.

## Act Independently

**Journalists should be free of obligation to any interest other than the public's right to know.**

**Journalists should:**

- ▶ Avoid conflicts of interest, real or perceived.
- ▶ Remain free of associations and activities that may compromise integrity or damage credibility.
- ▶ Refuse gifts, favors, fees, free travel and special treatment, and shun secondary employment, political involvement, public office and service in community organizations if they compromise journalistic integrity.
- ▶ Disclose unavoidable conflicts.
- ▶ Be vigilant and courageous about holding those with power accountable.
- ▶ Deny favored treatment to advertisers and special interests and resist their pressure to influence news coverage.
- ▶ Be wary of sources offering information for favors or money; avoid bidding for news.

## Be Accountable

**Journalists are accountable to their readers, listeners, viewers and each other.**

**Journalists should:**

- ▶ Clarify and explain news coverage and invite dialogue with the public over journalistic conduct.
- ▶ Encourage the public to voice grievances against the news media.
- ▶ Admit mistakes and correct them promptly.
- ▶ Expose unethical practices of journalists and the news media.
- ▶ Abide by the same high standards to which they hold others.

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

Donald Rosenberg	)	Case No.
	)	
Plaintiff,	)	Judge:
	)	
vs.	)	
	)	
The Musical Arts Association, et al.,	)	<b>Plaintiff's Interrogatories</b>
	)	<b>Separately Directed to</b>
	)	<b>Each Defendant:</b>
Defendants.	)	<b>The Musical Arts Association,</b>
	)	<b>Plain Dealer Publishing Co.,</b>
	)	<b>Susan Goldberg,</b>
	)	<b>Gary Hanson,</b>
	)	<b>Richard J. Bogomolny and</b>
	)	<b>James D. Ireland III</b>
	)	
	)	

Plaintiff submits the following Interrogatories to be separately answered by each Defendant (The Musical Arts Association, Plain Dealer Publishing Co., Susan Goldberg, Gary Hanson, Richard J. Bogomolny and James D. Ireland III) under oath pursuant to the Ohio Rules of Civil Procedure, Rule 33, within twenty-eight days: **(These Interrogatories seek information which is included in retained computer memory or in any other digital or analog medium, including but not limited to optical and magnetic data storage media, and capable of being printed, displayed, or otherwise accessed):**

(Please note that whenever "you" appears in these Interrogatories, the Interrogatory is addressed not only to Defendants, but also to their attorneys, and the agents, servants, and employees of their attorneys).

**Sindell and Sindell, LLP**  
Attorneys and Counselors at Law  
Chagrin Plaza West  
23611 Chagrin Boulevard, Suite 227  
Cleveland, Ohio 44122  
Telephone: (216) 292-3393  
Facsimile: (216) 292-3577  
E-Mail: info@sindellattorneys.com

(Please further note that the Interrogatories are intended to be continuing in nature. Therefore, if at any time after the submission of your answers to these Interrogatories any additional or supplemental information (or reports, documents, records, photographs, diagrams, notes, papers, films, motion pictures, or other tangible items of any kind) become known to Defendants or their attorneys, or to their agents, servants, or employees, then Plaintiff hereby requests that the answers to these Interrogatories be amended and/or supplemented and submitted as amended and/or supplemented to Plaintiff so as to supply such additional different and/or supplemental information as becomes known as aforesaid, and Plaintiff requests that such amendment and/or supplementation be submitted to Plaintiff within a reasonable time after such information becomes known and, in any event, no later than 20 days prior to the date of the actual commencement of the trial of this action).

**In answering these Interrogatories, please apply the following definitions:**

**Application Software:** Also known as an end-user program, this software comprises a set of electronic instructions, also known as a program, that instructs a computer to perform a specific set of processes. Application software includes, but is not limited to, word processing programs, spreadsheet programs, database programs, and other programs enabling an end user to perform specific functions.

**Archive:** A copy of data on a computer drive, or on a portion of a drive.

**Backup:** A snapshot of a data store taken at a specific point in time, typically stored on a second medium such as tape or a disk, and typically made to have another copy of data in case the original copy is unreadable, but includes any copy of data on any medium in any format.

**Computer:** Any programmable machine, including, but not limited to, network servers, desktops, laptops, notebook computers, employees' home computers, mainframes, the PDA's (personal digital assistants, such as Palm Pilot, Cassiopeia, HP Jordada, Black-Berry and other such handheld computing devices) of Defendants and it's employees, digital cell phones, and pagers.

**Data:** Distinct pieces of information formatted in a special way for reading, storage or access on a computer.

**Digital Camera:** A camera that stores still or moving pictures in a digital format (TIFF, GIF, JPEG, etc.).

**Document:** Includes, but is not limited to, any electronically stored data or paper documents. This includes, but is not limited to: electronically stored data on magnetic or optical storage media as an "active" file or files (readily readable by one or more computer applications or forensics software); any electronic files saved as backup; any "deleted" but recoverable electronic files saved on said media; any electronic file fragments (files that have been deleted and partially overwritten with new data); and slack (data fragments stored randomly from random access memory (RAM) on a hard drive during the normal operation of a computer [file slack and/or RAM slack] or residual data left on the hard drive after new data have overwritten some but not all of the previously stored data).

**Hard Drive:** The primary hardware that a computer uses to store information, typically magnetized media on rotating disks.

**Help Features/Documentation:** Instructions that assist a user on how to set up an use a product, including, but not limited to, software, manuals and instruction files.

**Imaged Copy:** A "mirror image" copy of a hard drive (i.e., a complete replication of the contents of the physical drive). Images can be created using forensic or non-forensic methods.

**Input Device:** Any object that allows a user to communicate with a computer by entering information or issuing commands (e.g., keyboard, mouse or joystick).

**Magnetic Storage Media:** Include, but are not limited to, hard drives (also known as "hard disks"), backup tapes, Jaz and Zip drives, and floppy disks.

**Network:** A group of one or more computer systems connected to enable people to share information and equipment (e.g., local area network (LAN), wide area network (WAN), home area network (HAN), metropolitan area network (MAN), etc).

**Operating System:** Software that directs the overall activity of a computer (e.g., MS-DOS, Windows, Linux). The software platform on which all other software operates.

**Optical Storage Media:** Include, but are not limited to, CD-ROMs and DVD-ROMS.

**Network Operative System:** A software system that includes special functions for connecting computers and devices to a network.

**Software:** A set of instructions stored on a computer-readable media that tells a computer what to do. Software includes, but is not limited to, operating systems, applications, Web-based and other applications.

**Storage Devices:** Any device that a computer uses to store information, which includes, but is not limited to, hard drives, CD-ROM or CD-RW drives, USB "flash" or "jump" drives, DVD drives, tape drives, external hard drives, USB hard drives, Zip drives, and other similar products.

**Storage Media:** Any removable object on which data can be stored, such as a magnetic tape, DVD, or CD.

**The answers to these Interrogatories not only seek items presently in a tangible form but also seek all information existing in retained computer memory or in any other digital or analog medium, including but not limited to optical and magnetic data storage media, and capable of being printed, displayed, or otherwise accessed. These answers should include all data, documents, backup, pictures, graphs, illustrations, images and words found accessible or retrievable in any application software, archive, digital camera, program, hard drive, imaged copy, operating system, network operating system, storage media, storage devices, optical storage media, magnetic storage media, and/or network.**

### Interrogatories

#### **Interrogatory No. 1**

With respect to the position of music critic covering performances and news related to The Cleveland Orchestra, state the names and addresses of all persons who either participated in, made recommendations with respect to and/or made the determination to hire or place Zachary Lewis in that position, indicating the role(s) played by each identified person, and further indicating the time period when the decisionmaking process took place, the date when the final decision was made, and the reasons Zachary Lewis received the position.

**ANSWER:**



**Interrogatory No. 2**

State each and every reason and fact, known to Defendants, why Defendants reassigned Plaintiff Donald Rosenberg with respect to eliminating his duties to cover and review performances of and to report news related to The Cleveland Orchestra.

**ANSWER:**

**Interrogatory No. 3**

Please identify each and every document, record, paper, writing, statement, note, written communication or other tangible item of any kind (including in retained computer memory or in any other digital or analog medium, including but not limited to optical and magnetic data storage media, and capable of being printed, displayed, or otherwise accessed) in any way evidencing, indicating, supporting, elucidating, revealing or representing the reasons or facts set forth in your answer to preceding Interrogatory Number 2.

**ANSWER:**

**Interrogatory No. 4**

Please indicate whether Plaintiff Donald Rosenberg's work performance during his employment with Defendants has been deficient or unsatisfactory in any aspect.

**ANSWER:**

## **Interrogatory No. 5**

If your answer to preceding Interrogatory Number 4 is in the affirmative, for each such deficient or unsatisfactory aspect of Plaintiff Donald Rosenberg's work performance, state:

- (a) The specific nature, circumstances, facts and reasons identifying and comprising the aspect of Plaintiff Donald Rosenberg's work performance which was deficient and/or unsatisfactory;
- (b) When, where, and in what way or manner the deficiency or unsatisfactory work performance aspect manifested itself;
- (c) The names and addresses of all persons whom Defendants claim may have knowledge of the deficient or unsatisfactory aspect of Plaintiff Donald Rosenberg's work performance;
- (d) The identity and nature of each and every document, memorandum, e-mail, note, report, audio or videotape recording, information in retained computer memory or in any other digital or analog medium, including but not limited to optical and magnetic data storage media, and capable of being printed, displayed, or otherwise accessed, and/or other tangible item which supports, evidences, manifests, reveals, explains and/or demonstrates the deficient or unsatisfactory aspect of Plaintiff Donald Rosenberg's work performance;
- (e) The name and address of the custodian of each such document, in retained computer memory or in any other digital or analog medium, including but not limited to optical and magnetic data storage media, and capable of being printed, displayed, or otherwise accessed, and/or tangible item identified in your preceding response to subpart (d) of this Interrogatory.

**ANSWERS:**

**Interrogatory No. 6**

Please state the name, address, title and/or position of each person who either made, and/or participated in, and/or recommended, and/or approved, and/or provided information with respect to the decision to reassign Plaintiff Donald Rosenberg to a position which did not include coverage and review of performances of and reporting news concerning The Cleveland Orchestra, indicating the nature of the role(s) played by each person in the demotion decision process.

**ANSWER:**

**Interrogatory No. 7**

Please state the date and time when the decision referred to in preceding Interrogatory No.6 was made.

**ANSWER:**

**Interrogatory No. 8**

State the title, position and duties for each title and position held by Plaintiff Donald Rosenberg during his employment with Defendants, indicating where he performed his duties and the dates when he held each title and position during his employment with Defendants, including base annual salary and bonuses and/or incentives and awards or emoluments of any kind during the time of his employment.

**ANSWER:**

## Interrogatory No. 9

From June 2007 to and including the present time, with respect to all communications and/or meetings of any kind (written, and/or oral, and/or in person, and/or electronic) which included between any person in a management capacity of The Plain Dealer and any person in a management, staff and/or trustee capacity of The Musical Arts Association, in any way related to The Plain Dealer's music coverage, reviews and/or news reports directly or indirectly concerning The Cleveland Orchestra and/or Plaintiff Donald Rosenberg, please state the following:

- (a) The names, positions, titles and addresses of all persons present, receiving, making, sending and/or copied in the communication or meeting;
- (b) The date, time and place of the communication or meeting;
- (c) The manner or mode of the communication or meeting;
- (d) The nature and substance of the communication or meeting;
- (e) The length of the communication or meeting;
- (f) The identity of the nature of any document, papers, information retained in computer memory capable of being printed out, recording, correspondence, e-mail, summary, record, note, report, videotape, audiotape, audio and video CD and/or DVD, memorandum, writing or other tangible item in any way referring to the communication or meeting; (This includes the PowerPoint material and presentation referred to in the Complaint filed in this action, including the name and address of the person(s) and/or entity(ies), including any public relations, graphics or advertising entity, who or which were hired, retained or requested to assist, make and/or provide graphs or materials which were part of and/or prepared for the PowerPoint presentation);
- (g) The name(s) and address(es) of the custodian(s) of any of the items identified in preceding subpart (f).

**ANSWERS:**

**Interrogatory No. 10**

State the date of birth of Zachary Lewis.

**ANSWER:**

**Interrogatory No. 11**

Do you claim or contend that (in addition to the specifically named Defendants in Plaintiff's Complaint), Plaintiff's Complaint has failed to name specifically as a party Defendant any necessary or indispensable party(ies) to this lawsuit?

**ANSWER:**

**Interrogatory No. 12**

If your answer to preceding Interrogatory Number 11 is other than in the negative, please state the name(s) and address(es) of each necessary or indispensable party which or whom Plaintiff's Complaint fails to name, indicating the reasons why you claim or contend such party is necessary or indispensable to this lawsuit.

**ANSWER:**

**Interrogatory No. 13**

Has the name and address of each specific Defendant been correctly stated and set forth in the caption of Plaintiff's Complaint filed in this action? (If not, please indicate the correct and accurate name and address for each Defendant with respect to whom (or which) the name and/or address is incorrectly set forth).

**ANSWER:**



**Interrogatory No. 14**

Do you claim or contend that there has been any defect in or failure of service of process upon any of the named Defendants set forth in the Complaint filed in this action? (If so, please indicate which Defendant(s) and your reasons why you so claim or contend).

**ANSWER:**

### **Interrogatory No. 15**

Within the past 5 years, have there been any complaints to The Plain Dealer and/or to Defendant Plain Dealer Publishing Co. of age discrimination and/or retaliation, tortious interference with economic/business/employment relationships, defamation and/or breach of promissory estoppel made by any person employed by The Plain Dealer and/or Defendant Plain Dealer Publishing Co. and, if so, state for each complaint:

- (a) The name and address of the employee;
- (b) The nature of the complaint;
- (c) The date of the complaint;
- (d) If filed with a federal or state governmental agency or commission, and/or in a court of law, the name and address of the agency, commission or court, and any identifying charge and/or case number;
- (e) If the employee was represented by counsel, his or her name, firm and business address;
- (f) A description of each step which was taken to obtain the information for the response to this Interrogatory No. 15, including its subparts (a) – (d).

**ANSWERS:**

## **Interrogatory No. 16**

Are there in existence any documents, papers, writings, memoranda, correspondence, reports, materials, notations, ledgers, agreements, diagrams, records, computer retained memory (or in any other digital or analog media, including but not limited to optical and magnetic data storage memory capable of being printed, displayed or otherwise accessed), disks, videotapes, tape recordings, photographs and/or any other tangible items of any kind in any way related to the allegations of the Complaint filed in this action and, if so, with respect to each tangible item, state the following:

- (a) The name and address of the present custodian of each such item;
- (b) The identity of each such item;
- (c) Whether or not Defendants claim any privilege upon which Defendants base a refusal to produce any such item or to redact portions of any such item and, if so, please state an identification of each such tangible item in the form of a privilege log sufficiently identifying the nature of the item and the specific location of any redaction of part of an item and indicating the basis for any claimed privilege as a ground for refusing production or making the redaction.

**ANSWERS:**

## Interrogatory No. 17

Are Defendants aware of any oral or written statements of any witnesses or persons having knowledge of any facts in any way related to the allegations in the Complaint filed in this action and, if so, for each statement please indicate the following:

- (a) The name and address of the individual giving such statement(s);
- (b) The name and address of the person(s) to whom such statement was made (and, if that person worked for an entity, the name and address of that entity);
- (c) The date(s) on which the statement(s) was made;
- (d) Whether or not the statement(s) is in a tangible form (i.e. notes, recordings, signed statement, videotape, summary, et cetera), and if so, indicate the form;
- (e) Per preceding subpart (d), if in a tangible form, the name and address of the present custodian of same;
- (f) The general subject matter of the statement. ***(Note: This subpart (f) of this Interrogatory No. 17 is not intended to invade the attorney-client or the attorney-work product privileges. Plaintiff does not seek at this time either the production of the statement or the revelation of its specific contents).***

**ANSWERS:**

**Interrogatory No. 18**

State whether there is any liability insurance available to Defendants which may cover any damages claimed by Plaintiff, pursuant to the allegations of the Complaint filed in this action and, if so, state the following:

- (a) The name and address of the insurance company;
- (b) The applicable liability limits and policy number(s);
- (c) Whether or not this action is being defended pursuant to the provisions of the said aforementioned insurance policy(ies);
- (d) The name and address of each named insured for each applicable and identified aforementioned insurance policy;
- (e) The amount of any deductible or retention.

**ANSWERS:**

**Interrogatory No. 19**

State the name, address and field of expertise of each and every expert witness whose identity has become or becomes known to Defendants at any time during the proceedings in this action and, for each such expert, state the following:

- (a) Each and every opinion and/or conclusion held by each such expert and/or to which such expert will testify or submit an affidavit;
- (b) If the expert has submitted a written report, the name(s) and address(es) of the custodian(s) of same.

**ANSWERS:**

**Interrogatory No. 20**

State the name and address of each and every person known to Defendants having knowledge of any facts in any way related to the allegations set forth in the Complaint filed in this action, including the specific nature of the knowledge possessed by each such person.

**ANSWER:**

**Interrogatory No. 21**

State the name and address of each and every person who contributed to and/or participated in the preparation and answers with respect to these Interrogatories.

**ANSWER:**

**Interrogatory No. 22**

State the name and address of each and every person who participated in (including searched for and/or reproduced) the documents or items requested in Plaintiff's Requests for Production of Documents annexed to the Complaint filed herein.

**ANSWER:**

Respectfully submitted,



**STEVEN A. SINDELL, ESQ. (0002508)**

Sindell and Sindell, LLP

23611 Chagrin Boulevard, Suite 227

Cleveland, Ohio 44122

Telephone (216) 292-3393

Facsimile (216) 292-3577

*Attorney for Plaintiff*

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

Donald Rosenberg )

Plaintiff, )

vs. )

The Musical Arts Association, et al., )

Defendants. )

Case No.

Judge:

**Plaintiff's Requests for  
Production of Documents  
Separately Directed to Each  
Defendant:  
The Musical Arts Association,  
Plain Dealer Publishing Co.,  
Susan Goldberg,  
Gary Hanson,  
Richard J. Bogomolny and  
James D. Ireland III**

Pursuant to Rule 34 of the Ohio Rules of Civil Procedure, Plaintiff requests that each Defendant, The Musical Arts Association, Plain Dealer Publishing Co., Susan Goldberg, Gary Hanson, Richard J. Bogomolny and James D. Ireland III, separately produce the following documents and/or items in **their original form (or true and readable copies of the originals)** within twenty-eight (28) days at the offices of Sindell and Sindell, LLP, 23611 Chagrin Boulevard, Suite 227, Cleveland, Ohio 44122. These Requests are not only for written responses, but for the actual production of the requested items at the same time as timely written responses are submitted.

**In responding to and in making productions with respect to these requests, please apply the following definitions:**

*Sindell and Sindell, LLP*  
Attorneys and Counselors at Law  
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**Application Software:** Also known as an end-user program, this software comprises a set of electronic instructions, also known as a program, that instructs a computer to perform a specific set of processes. Application software includes, but is not limited to, word processing programs, spreadsheet programs, database programs, and other programs enabling an end user to perform specific functions.

**Archive:** A copy of data on a computer drive, or on a portion of a drive.

**Backup:** A snapshot of a data store taken at a specific point in time, typically stored on a second medium such as tape or a disk, and typically made to have another copy of data in case the original copy is unreadable, but includes any copy of data on any medium in any format.

**Computer:** Any programmable machine, including, but not limited to, network servers, desktops, laptops, notebook computers, employees' home computers, mainframes, the PDA's (personal digital assistants, such as Palm Pilot, Cassiopeia, HP Jornada, Black-Berry and other such handheld computing devices) of Defendants and its employees, digital cell phones, and pagers.

**Data:** Distinct pieces of information formatted in a special way for reading, storage or access on a computer.

**Digital Camera:** A camera that stores still or moving pictures in a digital format (TIFF, GIF, JPEG, etc.).

**Document:** Includes, but is not limited to, any electronically stored data or paper documents. This includes, but is not limited to: electronically stored data on magnetic or optical storage media as an "active" file or files (readily readable by one or more computer applications or forensics software); any electronic files saved as backup; any "deleted" but recoverable electronic files saved on said media; any electronic file fragments (files that have been deleted and partially overwritten with new data); and slack (data fragments stored randomly from random access memory (RAM) on a hard drive during the normal operation of a computer [file slack and/or RAM slack] or residual data left on the hard drive after new data have overwritten some but not all of the previously stored data).

**Hard Drive:** The primary hardware that a computer uses to store information, typically magnetized media on rotating disks.

**Help Features/Documentation:** Instructions that assist a user on how to set up an use a product, including, but not limited to, software, manuals and instruction files.

**Imaged Copy:** A "mirror image" copy of a hard drive (i.e., a complete replication of the contents of the physical drive). Images can be created using forensic or non-forensic methods.

**Input Device:** Any object that allows a user to communicate with a computer by entering information or issuing commands (e.g., keyboard, mouse or joystick).

**Magnetic Storage Media:** Include, but are not limited to, hard drives (also known as "hard disks"), backup tapes, Jaz and Zip drives, and floppy disks.

**Network:** A group of one or more computer systems connected to enable people to share information and equipment (e.g., local area network (LAN), wide area network (WAN), home area network (HAN), metropolitan area network (MAN), etc).

**Operating System:** Software that directs the overall activity of a computer (e.g., MS-DOS, Windows, Linux). The software platform on which all other software operates.

**Optical Storage Media:** Include, but are not limited to, CD-ROMs and DVD-ROMS.

**Network Operating System:** A software system that includes special functions for connecting computers and devices to a network.

**Software:** A set of instructions stored on a computer-readable media that tells a computer what to do. Software includes, but is not limited to, operating systems, applications, Web-based and other applications.

**Storage Devices:** Any device that a computer uses to store information, which includes, but is not limited to, hard drives, CD-ROM or CD-RW drives, USB "flash" or "jump" drives, DVD drives, tape drives, external hard drives, USB hard drives, Zip drives, and other similar products.

**Storage Media:** Any removable object on which data can be stored, such as a magnetic tape, DVD, or CD.

**These requests not only seek items presently in a tangible form but also seek all requested information existing in retained computer memory or in any other digital or analog medium, including but not limited to optical and magnetic data storage media, and capable of being printed, displayed, or otherwise accessed. These requests include requests for all data, documents, backup, pictures, graphs, illustrations, images and words found accessible or retrievable in any application software, archive, digital camera, program, hard drive, imaged copy, operating**

**system, network operating system, storage media, storage devices optical storage media, magnetic storage media and/or network.**

**Requests for Production of Documents**

1. Please identify and produce all available information concerning the identity and location of the computer, software, programs, operating systems and/or input devices from which any electronic and/or computer device was the source of any productions or information related to those productions made herein, including all instructions and usage manual information related thereto.

**RESPONSE:**

2. A copy of all documents, writings, papers, reports, materials, records, memoranda, correspondence, audiotapes, videotapes, and/or other tangible items of any kind in any way supporting or evidencing any of the answers of Defendants to Plaintiff's Interrogatories directed to Defendants annexed to the Complaint filed in this action.

**RESPONSE:**

3. A copy of all documents evidencing Defendants' responses to Plaintiff's Interrogatories annexed to the Complaint filed in this action, to wit, Interrogatory Numbers 1, 3, 5, 8, 9, 15, 16, 17, 18 and 19.

**RESPONSE:**

4. A copy of the report of each and every expert (along with a copy of that expert's résumé and/or curriculum vitae) whom Defendants intend to call for testimony in the trial of this action.

**RESPONSE:**

5. A copy of the entire personnel and payroll files and all records and documents connected therewith for Plaintiff Donald Rosenberg, including but not limited to e-mails, letters and memos from Plain Dealer editors and others pertaining to Plaintiff Donald Rosenberg.

**RESPONSE:**

6. A copy of all positions and job descriptions for Plaintiff in this action for each title/position/job he held at any time during his employment with Defendants.

**RESPONSE:**

7. A copy of all employee handbooks, rules, regulations, policies, procedures and/or guidelines, in any way applicable to Plaintiff in this action, while an employee of Defendants.

**RESPONSE:**

8. A copy of all documents, records, reports, materials, diagrams, photographs, tape recordings, videotapes, (including in retained computer memory or in any other digital or analog medium, including but not limited to optical and magnetic data storage media, and capable of being printed, displayed, or otherwise accessed) which Defendants intend to either mention in open court, mark for identification and/or request admission in evidence in the trial of this action.

**RESPONSE:**

9. A copy of each and every document, paper, writing, report, record, statement, memo, computer disk, CD ROM or other tangible item of any kind (including e-mail and/or in retained computer memory or in any other digital or analog medium, including but not limited to optical and magnetic data storage media, and capable of being printed, displayed, or otherwise accessed) which Defendants will produce at any time during Defendants' oral deposition examination of Plaintiff.

**RESPONSE:**

10. For each of the following individuals, please produce copies of the *entire* contents of their entire personnel files and payroll files, including the following information existing in retained computer memory or in any other digital or analog medium, including but not limited to optical and magnetic data storage media, and capable of being printed, displayed, or otherwise accessed ***and whether or not considered by Defendants to be part of a "personnel" or "payroll" file***, including their employment applications, dates of employment, salaries, bonuses, fringe benefits, 401-K, profit sharing, pension and/or retirement plans, awards, positions and/or titles held, employment contracts, performance reviews, reprimand and disciplinary documents, commendations, whether paid a salary or an hourly rate, whether exempt or non-exempt, whether serving in a management or supervisory position (indicating the dates of such service), pay raises or decreases, promotion or demotion documents, job descriptions, position descriptions, dates of assignment changes, applicable salary and/or pay grades and pay ranges, hourly rate, whether full time or part time, pay levels and ranges, last known addresses, last known home telephone numbers and, if applicable, exit interviews:

- (a) Plaintiff Donald Rosenberg
- (b) Defendant Susan Rosenberg
- (c) Zachary Lewis
- (d) Defendant Gary Hanson
- (e) All reporters employed by The Plain Dealer who were terminated or who resigned in lieu of termination in the years 2004, 2005, 2006, 2007, and 2008 (including those persons offered a buyout in lieu of layoff in October/November 2008.)

**RESPONSE:**

11. For each of the individuals set forth in preceding Request for Production Number 10 listed (a) through (e), please produce all position and job descriptions, all performance evaluations and/or appraisals during each of their employments with Defendants.

**RESPONSE:**

12. Where applicable, for each of the individuals listed in parts (a) through (e) in preceding Request for Production Number 10, please produce the notes of any and all exit interviews, including recordings and/or transcripts.

**RESPONSE:**

13. Please produce copies of any and all documents, notes, memoranda, reports, tape recordings, summaries, correspondence, e-mails, electronic communications, et cetera, in any way evidencing any investigation and/or concerns related to the work performance of Plaintiff Donald Rosenberg during his employment with Defendants.

**RESPONSE:**

14. A copy of all documents indicating performance deficiencies of Plaintiff Donald Rosenberg.

**RESPONSE:**

15. For the years 2002, 2003, 2004, 2005, 2006, 2007 and 2008 to and including the present time, copies of all of the following:

- (a) Annual listing or reports of assets and liabilities;
- (b) Company and/or Corporate tax returns;
- (c) Annual financial statements;
- (d) Annual revenues and expenses;
- (e) Annual balance sheets;
- (f) Annual budgets.

**RESPONSE:**



16. For the years 2004, 2005, 2006, 2007 and 2008 to and including the present time, copies of all of the following:

- (a) Board meeting minutes, and Executive Committee meeting minutes of the Musical Arts Association;
- (b) The PowerPoint presentation shown by The Musical Arts Association to Plain Dealer Editor Doug Clifton tracking Plaintiff Donald Rosenberg's reviews, referred to in the Complaint filed in this action.

**RESPONSE:**

Respectfully submitted,



**STEVEN A. SINDELL, ESQ. (0002508)**

Sindell and Sindell, LLP  
23611 Chagrin Boulevard, Suite 227  
Cleveland, Ohio 44122  
Telephone (216) 292-3393  
Facsimile (216) 292-3577  
*Attorney for Plaintiff*

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

Donald Rosenberg	)	Case No.
	)	
Plaintiff,	)	Judge:
	)	
vs.	)	<b>Plaintiff's Requests for</b>
	)	<b>Admissions Separately</b>
	)	<b>Directed to Each Defendant:</b>
The Musical Arts Association, et al.,	)	<b>The Musical Arts Association,</b>
	)	<b>Plain Dealer Publishing Co.,</b>
Defendants.	)	<b>Susan Goldberg,</b>
	)	<b>Gary Hanson,</b>
	)	<b>Richard J. Bogomolny and</b>
	)	<b>James D. Ireland III</b>
	)	

Plaintiff hereby requests that all Defendants (The Musical Arts Association, Plain Dealer Publishing Co., Susan Goldberg, Gary Hanson, Richard J. Bogomolny and James D. Ireland III) each separately admit or deny the following Request for Admissions within twenty-eight (28) days from receipt by Defendants of those Requests for Admissions.

Particular attention is directed to Rule 37(c) providing for assessment of reasonable attorney fees for the proof of matters which are denied without good reason to do so.

**Please note that unless a matter is admitted, denied or objected to within twenty-eight (28) days after service, that matter is admitted pursuant to Ohio Rules of Civil Procedure Rule 36(A).**

*Sindell and Sindell, LLP*  
Attorneys and Counselors at Law  
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**Request for Admission No. 1**

Do you admit that all documents or other tangible items of any kind which Defendants have produced (or hereafter produce) to Plaintiff during discovery are true and authentic copies kept in the ordinary, regular and usual course of the business of Defendants? (If any documents or tangible items are not admitted to be true and authentic and kept in the ordinary, regular and usual course of Defendants' business, please identify each such document(s) or tangible item(s) and indicate why Defendants are unable to admit the authenticity of such document or tangible item or why Defendants are unable to admit that such document(s) or tangible item(s) was kept in the ordinary, regular and usual course of Defendants' business).

**Note: This Request for Admission is automatically updated at any time during this action when Defendants produce to Plaintiff any documents or other tangible items.**

**ANSWER:**

**Request for Admission No. 2**

Do you admit that Exhibit A, attached to the Complaint, is a true copy of a letter dated October 21, 2008 from Music Critics Association of North America to Susan Goldberg, Editor of The Plain Dealer?

**ANSWER:**

**Request for Admission No. 3**

Do you admit that Exhibit B, attached to the Complaint, is a true copy of The Statement of Principles of The American Society of Newspaper Editors?

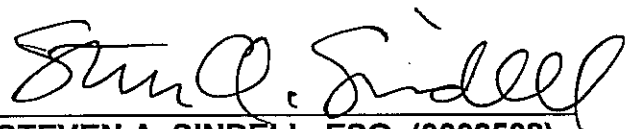
**ANSWER:**

**Request for Admission No. 4**

Do you admit that Exhibit C, attached to the Complaint, is a true copy of The Code of Ethics of The Society of Professional Journalists?

**ANSWER:**

Respectfully Submitted,



**STEVEN A. SINDELL, ESQ. (0002508)**

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 E-Mail: info@sindellattorneys.com

**IN THE COURT OF COMMON PLEAS  
 CUYAHOGA COUNTY, OHIO**

Donald Rosenberg	)	Case No.
	)	
Plaintiff,	)	Judge:
	)	
vs.	)	
	)	<b>Plaintiff's Notice of Depositions</b>
The Musical Arts Association, et al.,	)	
	)	
Defendants.	)	
	)	

Defendants and their attorneys of record will hereby take notice that on the following date and at the following time, Plaintiff will take the depositions upon cross-examination of the following:

**Wednesday, March 18, 2009**

Franz Welser-Möst .....9:30 a.m.

**Thursday, March 19, 2009**

Defendant Gary Hanson .....9:30 a.m.

**Friday, March 20, 2009**

Defendant Richard J. Bogomolny .....9:30 a.m.

**Monday, March 23, 2009**

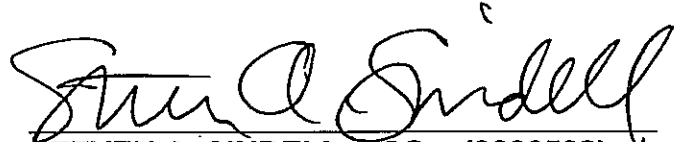
Defendant James D. Ireland III ..... 9:30 a.m.

**Tuesday, March 24, 2009**

Defendant Susan Goldberg ..... 9:30 a.m.

Said depositions will be held in the offices of Sindell and Sindell, LLP, 23611 Chagrin Boulevard, Suite 227, Cleveland, Ohio 44122. Said depositions will continue from day-to-day until completion. Said depositions will be taken by stenographic record and/or by videotape.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven A. Sindell". The signature is written in a cursive style with a horizontal line underneath the name.

**STEVEN A. SINDELL, ESQ. (0002508)**

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Cleveland, Ohio 44122

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*Attorney for Plaintiff*