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11 *Attorneys for Plaintiff*

12 IN THE UNITED STATES DISTRICT COURT
 13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 14 SAN FRANCISCO/OAKLAND DIVISION

15 DAVID R. REED,)	
)	
16 Plaintiff,)	Case No. 3:16-cv-4471
)	
17 vs.)	COMPLAINT (ERISA)
)	
18 KRON/IBEW LOCAL 45 PENSION PLAN,)	
19 PENSION COMMITTEE OF THE)	
20 KRON/IBEW LOCAL 45 PENSION PLAN,)	
and YOUNG BROADCASTING OF SAN)	
21 FRANCISCO, INC.,)	
)	
22 Defendants.)	

23 **JURISDICTION**

24 1. Plaintiff brings this action for monetary and equitable relief pursuant to §§
 25 502(a)(1) and 502(a)(3) of the Employee Retirement Income Security Act of 1974 (“ERISA”),
 26 29 U.S.C. §§ 1132(a)(1) and 1132(a)(3). This Court has subject matter jurisdiction over
 27 Plaintiff’s claims pursuant to ERISA §§ 502(e) and (f), 29 U.S.C. §§ 1132(e) and (f), and 28
 28 U.S.C. § 1331.

1 **VENUE**

2 2. Venue lies in the Northern District of California pursuant to ERISA § 502(e)(2),
3 29 U.S.C. § 1132(e)(2), because the Defendant KRON/IBEW Local 45 Pension Plan (“KRON
4 Plan”) is administered in this District, the breaches alleged took place in this District, and
5 Defendants may be found in this District.

6 **INTRADISTRICT ASSIGNMENT**

7 3. Pursuant to Civil Local Rule 3-2(c), this action should be assigned to the San
8 Francisco or Oakland Division because a substantial part of the events or omissions which give
9 rise to the claims occurred in San Francisco.

10 **PARTIES**

11 4. At all relevant times, Plaintiff David R. Reed has been a beneficiary of the
12 KRON Plan, as defined by ERISA § 3(8), 29 U.S.C. § 1002(8). Mr. Reed is the surviving
13 spouse of Donald Lee Gardner, a KRON Plan participant. Mr. Reed resides in Quincy,
14 Massachusetts.

15 5. Defendant KRON Plan is an employee pension benefit plan as defined by the
16 Employee Retirement Income Security Act of 1974 (“ERISA”) § 3(2)(A), 29 U.S.C. §
17 1002(2)(A), sponsored by Young Broadcasting of San Francisco, Inc. At all relevant times, the
18 KRON Plan provided pension benefits to certain employees of KRON-TV who were members
19 of IBEW Local 45, including Mr. Gardner.

20 6. Defendant Pension Committee of the KRON/IBEW Local 45 Pension Plan
21 (“Pension Committee”) is the Plan Administrator of the KRON Plan within the meaning of
22 ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A).

23 7. Defendant Young Broadcasting of San Francisco, Inc. (“KRON-TV”), is a
24 Delaware Corporation that does business as KRON-TV, a San Francisco television news station.
25 KRON-TV is a fiduciary of the KRON Plan within the meaning of ERISA § 3(21), 29 U.S.C. §
26 1002(21), in that it exercises authority or control respecting management or disposition of the
27 Plan’s assets, it exercises discretionary authority or discretionary control respecting management
28 of the Plan, and/or it has discretionary authority or discretionary responsibility in the

1 administration of the Plan.

2 **FACTS**

3 8. Mr. Reed and Mr. Gardner became a couple in 1998.

4 9. In April 2004, Mr. Reed and Mr. Gardner registered as domestic partners with
5 the California Secretary of State.

6 10. Mr. Gardner was employed at KRON-TV and a member of IBEW Local 45 for
7 more than 30 years.

8 11. Mr. Gardner's relationship with Mr. Reed was well known at KRON-TV,
9 including by the Human Resources department and Mr. Gardner's supervisor.

10 12. During Mr. Gardner's employment, Mr. Reed was covered under the IBEW
11 Local 45 medical benefit plan as Mr. Gardner's beneficiary.

12 13. In March 2009, Mr. Gardner retired from KRON-TV. He and Mr. Reed attended
13 meetings with KRON-TV's Human Resources department to discuss Mr. Gardner's pension
14 benefit options. Although KRON-TV personnel knew that Mr. Reed and Mr. Gardner were
15 registered domestic partners, they did not mention the availability of a joint-and-survivor form
16 of benefit.

17 14. Section 2.03(a) of the KRON Plan provides that the KRON Plan "shall be
18 administered and its provisions interpreted in accordance with the laws of the State of California
19 and in a manner consistent with the requirements of the Code and ERISA, as the same may be
20 amended from time to time."

21 15. Section 7.06 of the KRON Plan mandates that a participant who is married at
22 retirement or benefit commencement must be paid his monthly pension benefit in the form of a
23 50 percent joint-and-survivor annuity unless he elects otherwise after written notice of his right
24 to the joint-and-survivor annuity and with the witnessed or notarized written consent of his
25 spouse.

26 16. Nothing in the KRON Plan limits the term "spouse" or "married" to opposite-sex
27 spouses.

28 17. California law mandates that "[r]egistered domestic partners shall have the same

1 rights, protections, and benefits . . . whether they derive from statutes, administrative
2 regulations, court rules, government policies, common law, or any other provisions or sources of
3 law, as are granted to and imposed upon spouses.” Cal. Fam. Code § 297.5(a). California law
4 also mandates that domestic partners, “following the death of the other partner, shall have the
5 same rights, protections, and benefits . . . as are granted to and imposed upon a widow or a
6 widower.” *Id.* at § 297.5(c).

7 18. KRON-TV provided Mr. Gardner with a pension election form that stated that a
8 joint-and-survivor annuity was available only “If Married.”

9 19. Mr. Gardner elected a single-life annuity, which was listed on the form as
10 available to participants “If Not Married.”

11 20. Mr. Reed did not sign a spousal consent to Mr. Gardner’s election.

12 21. In May 2014, Mr. Gardner and Mr. Reed married in San Francisco.

13 22. In June 2014, Mr. Gardner died at age 64.

14 23. The KRON Plan ceased paying Mr. Gardner’s pension at his death.

15 24. Mr. Gardner designated Mr. Reed as the beneficiary of his retirement accounts
16 and life insurance.

17 25. In October 2014, counsel for Mr. Reed began communicating by email with
18 KRON-TV’s Director of Finance and Administration, requesting information regarding Mr.
19 Gardner’s pension. At the Director’s request, counsel submitted the Reed-Gardner domestic
20 partnership certificate and marriage certificate.

21 26. On November 10, 2014, the Director sent Mr. Reed’s counsel an email attaching
22 Mr. Gardner’s benefit election form and sections of the KRON Plan document, and arguing that
23 Mr. Reed was not entitled to a survivor benefit under the KRON Plan.

24 27. On November 19, 2014, counsel for Mr. Reed requested the KRON Plan
25 governing instruments pursuant to ERISA § 104(b)(4), 29 U.S.C. § 1024(b)(4).

26 28. On January 6, 2015, KRON-TV provided the governing instruments under cover
27 of an email reiterating that it did not concede that Mr. Reed had any rights as a beneficiary under
28 the KRON Plan.

1 29. By letter delivered on March 30, 2016, counsel for Mr. Reed submitted a claim
2 for a survivor benefit to the Pension Committee pursuant to the Plan’s claims procedure.

3 30. Section 3.10(b) of the KRON Plan provides that if a claim is fully or partially
4 denied by the Pension Committee, the Committee’s decision to deny the claim will be furnished
5 to the Claimant not later than 90 days after the date on which the Committee receives the claim.

6 31. To date, Mr. Reed and his counsel have received no response to his claim.

7 32. Pursuant to 29 C.F.R. § 2560.503-1(*I*), Mr. Reed is deemed to have exhausted his
8 administrative remedies.

9 **FIRST CLAIM FOR RELIEF**

10 **[Claim for Benefits Pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B)**
11 **Against Defendants KRON Plan and Pension Committee]**

12 33. Plaintiff incorporates Paragraphs 1 through 32 as though fully set forth herein.

13 34. ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), permits a plan beneficiary to
14 bring a civil action to recover benefits due to him under the terms of a plan, to enforce his rights
15 under the terms of a plan, and/or to clarify his rights to future benefits under the terms of a plan.

16 35. California registered domestic partners occupy the status of married persons
17 under California law.

18 36. Because Mr. Gardner was not provided with a written explanation of his right to
19 a joint-and-survivor annuity and Mr. Reed did not consent to his election of a single-life
20 annuity, Mr. Gardner’s election of a single-life annuity is invalid.

21 37. As Mr. Gardner’s surviving spouse, Mr. Reed is entitled to a survivor annuity
22 benefit under the terms of the KRON Plan.

23 **SECOND CLAIM FOR RELIEF**

24 **[Claim for Penalty Pursuant to ERISA § 502(a)(1)(A), 29 U.S.C. § 1132(a)(1)(A)**
25 **Against Defendants Pension Committee and KRON-TV]**

26 38. Plaintiff incorporates Paragraphs 1 through 32 as though fully set forth herein.

27 39. ERISA § 502(a)(1)(A), 29 U.S.C. § 1132(a)(1)(A), authorizes a claim by a plan
28 beneficiary for the relief provided under ERISA § 502(c), 29 U.S.C. § 1132(c).

1 40. ERISA § 502(c), 29 U.S.C. § 1132(c), provides that an administrator who fails or
2 refuses to comply with a request for information which such administrator is required by ERISA
3 Title I to furnish to a participant or beneficiary by mailing the material requested to the
4 participant or beneficiary within 30 days after such request may in the Court's discretion be
5 personally liable to such participant or beneficiary in the amount of up to \$100 per day from the
6 date of such failure or refusal. Pursuant to 29 C.F.R. § 2575.502c-1, the maximum penalty
7 amount was increased to \$110 per day.

8 41. ERISA § 104(b)(4), 29 U.S.C. § 1024(b)(4), requires that a plan administrator
9 furnish to a beneficiary upon request the instruments pursuant to which the plan is established or
10 maintained.

11 42. Defendants failed or refused to provide materials requested on behalf of Mr.
12 Reed from December 19, 2014, through January 5, 2015, a total of 17 days.

13 **THIRD CLAIM FOR RELIEF**

14 **[Claim for Violation of ERISA Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3)**
15 **Against Defendant KRON-TV]**

16 43. Plaintiff incorporates Paragraphs 1 through 32 as though fully set forth herein.

17 44. ERISA § 404(a), 29 U.S.C. § 1104(a), requires that a fiduciary discharge his or
18 her duties with respect to a plan solely in the interest of the participants and beneficiaries and for
19 the exclusive purpose of providing benefits to participants and their beneficiaries and defraying
20 reasonable expenses of administering the Plan. These duties include the duty not to mislead a
21 plan participant and to affirmatively advise the plan participant when the fiduciary has
22 information that the plan participant does not have and the fiduciary knows that silence may be
23 harmful to the plan participant.

24 45. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a plan participant or
25 beneficiary to file suit to obtain injunctive and other appropriate equitable relief from a violation
26 of ERISA, including the fiduciary duty provisions.

27 46. KRON-TV breached its fiduciary duties to Mr. Reed, including (a) by failing to
28 investigate whether Mr. Gardner was entitled to elect a joint-and-survivor annuity under the

1 KRON Plan, (b) by failing to advise Mr. Gardner regarding his right to elect a joint-and-survivor
2 annuity, and (c) by related acts and omissions.

3 47. As a result of KRON-TV's breaches, Mr. Reed has suffered and will continue to
4 suffer economic harm.

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, Plaintiff prays that the Court grant the following relief:

7 As to the First Claim for Relief:

- 8 A. Declare that Defendants have violated the terms of the KRON Plan by failing to
9 pay Mr. Reed a survivor benefit under the KRON Plan;
- 10 B. Order that the KRON Plan pay Mr. Reed a survivor benefit for the period July
11 2014 through the date of judgment herein, plus prejudgment interest thereon;
- 12 C. Declare Mr. Reed's entitlement to future survivor annuity benefits;
- 13 D. Declare that Mr. Gardner's election of a single-life annuity was invalid;
- 14 E. Declare that the KRON Plan is not entitled to recoup any overpayment
15 occasioned by its payment of a single-life annuity benefit during Mr. Gardner's
16 life;
- 17 F. Award Mr. Reed reasonable attorneys' fees and costs of suit incurred herein
18 pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g);
- 19 E. Provide such other relief as the Court deems equitable and just.

20 As to the Second Claim for Relief:

- 21 A. Order that Defendants pay to Mr. Reed a penalty of \$110 per day for the 17 days
22 of their failure or refusal to respond to Mr. Reed's request for documents;
- 23 B. Award Plaintiff reasonable attorneys' fees and costs of suit incurred herein
24 pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g);
- 25 C. Provide such other relief as the Court deems equitable and just.

26 As to the Third Claim for Relief:

- 27 A. Declare that Defendants are estopped from denying Mr. Reed a survivor benefit
28 under the KRON Plan;

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- B. Declare that Defendants are estopped from reducing Mr. Reed’s survivor benefit by any overpayment occasioned by the payment of a single-life annuity during Mr. Gardner’s life;
- C. Declare that the KRON Plan is reformed to provide that the provisions applicable to married participants apply to participants in registered domestic partnerships;
- D. Surcharge Defendants in the amount necessary to place Mr. Reed in the position he would have occupied but for the breach, including in the amount of the survivor benefit and any claimed overpayment;
- E. Award Plaintiff reasonable attorneys’ fees and costs of suit incurred herein pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g);
- F. Provide such other relief as the Court deems equitable and just.

Respectfully submitted,

Dated: August 8, 2016

RENAKER HASSELMAN LLP

By: /s/ Teresa S. Renaker
Teresa S. Renaker

Attorneys for Plaintiff