IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA, a municipal corporation, 400 6th Street, N.W Washington, D.C. 20001, Plaintiff, **v.** **THE PUBLIC MEDIA LAB** 5508 Surrey Street Chevy Chase, MD 20815, and **MANIFOLD PRODUCTIONS, INC.** 5508 Surrey Street Chevy Chase, MD 20815 Defendants.	Civil Action No.: _______________

<u>COMPLAINT FOR VIOLATIONS OF THE NONPROFIT CORPORATION ACT AND COMMON LAW</u>

Plaintiff District of Columbia ("District"), through its Attorney General, brings this action against The Public Media Lab ("PML") and Manifold Productions, Inc. ("Manifold"), (collectively, "Defendants"), pursuant to the District of Columbia's Nonprofit Corporation Act (NCA), D.C. Code § 29.412.20, and common law seeking to obtain equitable and injunctive relief to remedy PML's failure to comply with District law, its corporate requirements, and its nonprofit purposes by directing its funds to the private benefit of Manifold, director Michael Pack's for-profit company, and by lacking effective corporate governance. The District also brings this action to obtain a constructive trust over nonprofit funds PML improperly transferred to Manifold in violation of the NCA and common law. In support of this Complaint, the District alleges as follows:

INTRODUCTION

1. The Public Media Lab is a nonprofit corporation incorporated in the District of Columbia and organized exclusively for and bound by a public purpose: "To receive and award grants to develop, promote, and support educational documentary films and film makers, and to conduct related public education and information activities in the United States and abroad." As a 501(c)(3) organization under federal tax law, donors can make tax-deductible contributions to PML.

2. Since its formation in 2007 through at least 2018, the same individuals have comprised PML's board of directors: Michael Pack, Robert Coonrod, Alan P. Dye, James Denton, and Herbert I. London. Until at least June 2020, Michael Pack served as PML's President and Chief Executive Officer. During the same time period, Pack was the President, Chief Executive Officer, and sole owner of Manifold Productions, Inc., a for-profit media production company.

3. PML provided information to the Internal Revenue Service (IRS) to receive 501(c)(3) status; however, it never functioned in the manner it represented to the IRS nor as outlined and required by its own governing documents. PML did not (1) develop a competitive grant process; (2) support the next generation of filmmakers; (3) adhere to disclosure and accounting requirements on grant recipients; or (4) appoint directors and officers whom properly executed their duties.

4. A nonprofit abandons its public purpose when it allows any portion of its funds to be spent in ways that are designed to benefit private persons or companies. This well-established nonprofit principle, the prohibition on private inurement, was specifically included in PML's articles of incorporation.

5. Through a long-running series of grants, PML allowed its funds to inure to the private benefit of one of its director's, Michael Pack's, for-profit company, Manifold. From 2008-2018, PML spent its available funds on awarding grants to Manifold almost exclusively, providing Pack and Manifold with a consistent and guaranteed stream of tax-exempt funding.

6. Additionally, for years, PML has violated nonprofit laws and its own policies relating to governance requirements. PML failed to appoint directors or officers who actively and properly executed their duties, failed to meet as a governing body, and failed to keep required records. PML has focused its corporate activity on funneling money to Pack and Manifold, engaging in no other activity in furtherance of nonprofit purposes or compliance with its obligations as a District nonprofit corporation.

7. Through this enforcement action, the District seeks equitable and injunctive relief, including the dissolution and wind-down of PML's operations, an equitable accounting of funds provided to Manifold and PML's financial operations, and the imposition of a constructive trust over nonprofit funds improperly provided by PML to Manifold.

PARTIES

8. Plaintiff District of Columbia, a municipal corporation empowered to sue and be sued, is the local government for the territory constituting the permanent seat of the government of the United States. The District is represented by and through its chief legal officer, the Attorney General for the District of Columbia. The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District and is responsible for upholding the public interest. D.C. Code § 1-301.81(a)(1). The Attorney General is responsible for ensuring that nonprofits operating in the District or under its laws operate for a public purpose and is expressly authorized to enforce the provision of the District's Nonprofit Corporation Act (NCA) as stated in D.C. Code § 29-412.20(a).

9. The Public Media Lab is a nonprofit organization incorporated under the laws of the District of Columbia and with the business address of 5508 Surrey Street, Chevy Chase, MD 20815. PML is a nonprofit charitable corporation exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 and required to operate exclusively for one or more public charitable purposes as defined in the NCA in D.C. Code § 29-401.02(3)-(4)(A).

10. Manifold Productions, Inc. is a for-profit company incorporated under the law of Maryland with a business address of 5508 Surrey Street, Chevy Chase, MD 20815, the same address as PML.

JURISDICTION

11. The Court has jurisdiction over the subject matter of this case pursuant to D.C. Code §§ 11-921, 29-412.20(a)(1) and D.C. Code § 1-301.81.

12. This Court has personal jurisdiction over the Defendants pursuant to D.C. Code § 13-422 and § 13-423.

THE LEGAL FRAMEWORK GOVERNING PML AND NONPROFIT CORPORATIONS

13. At their most basic level, nonprofit organizations are set up to benefit the public. Their funds are a form of public trust. Attorneys General, including the District's Attorney General, are by common law and statute charged with policing the nonprofit activities in their jurisdiction to ensure that nonprofits operate and spend their funds consistent with the public purpose for which the nonprofits were created.

14. Nonprofits generally are governed by the laws of their respective jurisdiction of incorporation and if federally tax-exempt, by the Internal Revenue Code and corresponding rules and regulations. A nonprofit is also bound by its articles of incorporation, which set out the specific

public purpose that the nonprofit was formed to pursue and provides governance requirements for the nonprofit.

15. Nonprofit funds shall not be spent to benefit a private individual or company. A nonprofit cannot generate profits for a director nor engage in transactions that enrich private individuals, especially where those individuals or entities have some control or sway over the nonprofit. Because the sole beneficiary of a nonprofit organization must be the public, the prohibition on private inurement is violated whenever a single dollar is misappropriated to a private purpose. This prohibition is so important that it is recorded in almost every nonprofit's articles of incorporation, including in PML's.

16. Nonprofit organizations must also be truthful and transparent in the intended use of funds they solicit from the public and donors. A nonprofit must expend its funds in a manner that promotes its nonprofit purpose and avoids waste. Additionally, nonprofits must provide proper oversight over funds they grant to for-profit entities to ensure the grant funds are utilized in the agreed-upon manner and in compliance with nonprofit law and restrictions.

17. Nonprofit organizations must comply with the NCA and their own corporate governance requirements. Compliance with these requirements ensures that the organization is appropriately managed, conflicts of interest are appropriately identified and resolved, and the organization is acting in furtherance of its nonprofit purposes and within the law.

PML'S VIOLATIONS OF DISTRICT LAW

18. On June 6, 2007, PML was organized under the laws of the District of Columbia as a nonprofit corporation. PML was "organized and operated exclusively to receive, administer, and expend funds for . . . charitable and educational purposes, within the meaning of Section 501(c)(3)

of the Internal Revenue Code of 1986," and as further provided in its articles of incorporation, including:

1. To receive and award grants to develop, promote, and support educational documentary films and film makers, and to conduct related public education and information activities in the United States and abroad;
2. To engage in other charitable and educational activity as determined by the Executive Committee of the Board of Directors; [and]
3. To assist and support other charitable and educational organizations in the conduct of similar activities[.]

PML Articles of Incorporation, Art. III(1)-(3).

19. As a District nonprofit, PML must operate in accordance with the requirements of the District's NCA, PML's corporate requirements, and in furtherance of its nonprofit purposes by maintaining appropriate corporate governance. D.C. Code § 29-403.01(a).

A. <u>PML Violates the Prohibition against Private Inurement by Funneling its Nonprofit Funds to Manifold.</u>

20. A District nonprofit cannot "pay dividends or make distributions of any part of its assets, income, or profits to its members, directors, delegates, members of a designated body, or officers." D.C. Code § 29-404.40(a). PML's articles of incorporation further provide that "[n]o part of the net income of the corporation shall inure to the benefit of or be distributable to its directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services actually rendered and to make payments and distributions in furtherance of the purposes set forth [in its Articles]." Art. V.

21. PML has its own Conflict of Interest Policy which supplements the requirements mandated by law. The Conflict of Interest Policy requires its governing body to determine after due diligence, whether PML can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict, and, if a more

advantageous arrangement is not reasonably possible, to put to a vote whether entering into the transaction is in PML's best interest, for its own benefit, and fair and reasonable.

22. Michael Pack, PML's President, Chief Executive Officer, and director, also owned and controlled Manifold until at least June 2020, when he apparently turned ownership of the for-profit company over to his wife.

23. Since PML's inception in 2007, all but one grant has gone to Manifold. Manifold received 99.3% of all PML grant-funding issued between 2008-2018.[1]

24. Manifold received $4,111,418 in total grant-funding from PML between 2008-2019. This amount constitutes 94.8% of PML's revenues during that time period.

25. Between 2008 and 2019, about 60% of Manifold's revenues came from the grants it received from PML. For example, 99.1% of Manifold's 2019 income came directly from PML grant funding; 96.9% in 2018; and 89.4% in 2015. In 2008, Manifold's income from PML was only 5.2% and that number has steadily increased to comprise over 99% of its income by 2019.

26. The federal annual filings for tax-exempt organizations, called IRS Form 990s, contain disclosure requirements to provide for transparency into the organization's financials and how the organization is spending its funds, and if they are functioning in a manner that furthers their tax-exempt status.

27. Schedule L of IRS Form 990 is used by an organization to provide information on certain financial transactions or arrangements between the organization and disqualified persons under 26 U.S.C. § 4958 or other interested persons, including current officers, directors, trustees, and key employees, such as Pack. Disclosures of transactions on Schedule L provide transparency of nonprofit expenditures and put the public, donors, and government agencies on notice as to the

[1] PML's 2019 IRS Form 990 has not been made publicly available.

existence and terms of transactions between a nonprofit and its officers, directors, trustees, and key employees.

28. From 2008 through 2016, PML did not file a Schedule L to its annual IRS Form 990 and, when required, it either left blank or checked the box for "No" to the question of whether the organization was a party to a business transaction with a current or former officer, director, trustee or key employee of the organization.

29. By consistently failing to disclose the related party transactions between PML and Manifold and the relationship between Pack, PML, and Manifold, Pack and the PML Board obscured the fact that PML was functioning in a manner that directly benefitted Pack, and no-one else.

30. In addition to making material omissions and false statements on its Form 990s regarding the existence of these related party transactions, PML's Board of Directors did not take any action to authorize related party transactions between PML, Pack and Manifold as required by the NCA.

31. PML's Board also did not follow its own Conflict of Interest Policy regarding these related party transactions between PML and Manifold. PML's Conflict of Interest Policy imposes procedures when "it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Organization or might result in possible excess benefit transaction." The policy requires disclosures from the officer or director and further requires the governing body to determine whether PML can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict and if a more advantageous one is not reasonably possible, to put to a vote whether entering into the transaction is in PML's best interest, for its own benefit, and fair and reasonable. Conflict

of Interest Policy, Art. III, §3(c)-4(d). Officers and directors are also required to submit annual statements affirming they reviewed the policy, understand it, agreed to comply by its requirements, and understood PML was a tax-exempt charity. PML made no such determination, assessment, or vote when entering into transactions with Pack and Manifold. Additionally, PML's officers and directors did not submit the required annual statements or disclosures affirming their review of the policy and agreement to comply by its requirements.

32. PML has not maintained any documentation of Manifold's use of nonprofit funds.

33. PML did not meet the requirements of the NCA and its Conflict of Interest Policy to appropriately authorize the related party transactions between PML and Manifold. Year after year, Manifold was guaranteed funding, exclusively comprised of nonprofit, tax-exempt dollars, without the need to go through any competitive process, answer public scrutiny of these transactions, or provide any accounting on its use of PML funds.

B. PML Has No Effective Corporate Governance and Engages in No Activity Apart from Transfers of Funds to Manifold.

34. PML's existence as a vehicle for moving nonprofit, tax-exempt funds to its founder and director's for-profit company has been made possible by PML's failure to comply with the NCA and its own representations to the IRS in terms of corporate governance and structure. The PML Board has been unwilling or unable to properly execute their duties and provide oversight on the management of PML's only apparent function, grant-funding.

35. As a District nonprofit, PML must have a Board of Directors and "all corporate powers shall be exercised by or under the authority of the board of directors of the nonprofit corporation, and the activities and affairs of the corporation shall be managed by or under the direction, and subject to the oversight, of its board of directors." D.C. Code § 29-406.01. PML's by-laws provide that the property and affairs of the corporation are to be "controlled and managed

by the board of directors." Articles of Incorporation, Art. II, § 1. PML's by-laws further limit the power and authority of the Board to that authorized by District law and prohibits transactions prohibited to a "tax exempt corporation" under both federal law and "the law of any State in which the organization may operate." Art. II, § 3.

36. From 2008-2017, the board of directors of PML consisted of Michael Pack, Robert Coonrod, Alan P. Dye, James Denton, and Herbert I. London. In 2018, the board of directors of PML consisted of Michael Pack, Robert Coonrod, and Alan P. Dye. In 2020, PML stated that Paula Dobriansky and Juliana Geron Pilon joined Dye, Pack, and Coonrod on the board, although their names have not been identified on IRS Form 990s or other official filings.

37. PML's bylaws require annual meetings of the governing board and written notice to the board of the upcoming meetings. However, PML's Board of Directors has not held any official board meetings or annual meetings since 2008. To the extent such meetings may have been held, PML did not maintain meeting minutes documenting or memorializing corporate actions as required by law and by PML's own corporate requirement.

38. The NCA requires nonprofit corporations to keep as permanent records minutes of all member and board of director meetings, as well as all actions taken without a meeting. The NCA further requires nonprofits to assign one of its officers with the responsibility of preparing or supervising the preparation of minutes and maintaining and authenticating the records of the corporation that are required to be maintained. Despite this requirement, PML did not keep the required records of any meetings held, or records of actions taken by its governing board.

39. Under District law, PML must also have at a minimum of two (2) separate officers, one responsible for managing the corporation and the other responsible for its financials affairs. D.C. Code § 29-406.40(a). PML's own governing documents require it to elect at each annual

meeting, from among the board of directors "a Chairman, one or more Vice-Chairman, a Secretary, a Treasurer, a President and an Executive Director."

40. Between 2008-2018, PML either had one or no "officers." In the 2008-2011 and 2015-2018 time periods, its annual IRS Form 990 filings identified only Pack as a PML "Officer." Between 2012-2014, PML identified no officers. Since 2008, PML has not had the minimum of two officers in violation of D.C. Code § 29-406.40(a) and the five required by PML's own by-laws.

41. PML's annual IRS Form 990 disclosures reflect that between 2008 and 2018, 4 of the 5 directors were essentially inactive and had little to no role within the nonprofit. Between 2008 and 2018, Pack was the only director and officer providing any hours of weekly work to the organization.

42. PML also failed to adhere to its own grant program disclosures that it relied upon in seeking tax-exempt status from the IRS. In November 2007, while seeking recognition of exemption under § 501(c)(3), PML's Form 1023 application represented that it was "particularly interested in supporting the next generation of filmmakers creating educational materials for the public [and f]unds may be provided to 501(c)(3) organizations, but most grants will be made to individuals that are producing the educational materials." PML further disclosed that although it was not "targeting any specific organization or area to operate" its aim was to "provide grants to organizations and filmmakers throughout the world." PML projected it would issue grants, averaging between $100,000 and $200,000 per grant, with about "six or seven small grants" its first year, and gradual increases in grants amounts over the years to 20-25 grants per year.

43. In its narrative responses related to its Form 1023 application, PML described to the IRS that it anticipated expenses relating to fundraising, professional fees, salaries, and compensation.

44. PML also stated that it would have a comprehensive and competitive grant application and selection process, as well as disclosure and accounting requirements on grant recipients, including:

a. Awarding grants on a competitive basis to filmmakers and organizations that will undergo a rigorous review by experts who will make recommendations to the directors;

b. Providing “grants to organizations and filmmakers throughout the world” and “not currently targeting any specific organization or area to operate[;]”

c. Developing a grant program with an open solicitation basis and formal review process by professionals, including measuring proposals against relevant guidelines and criteria as well as the merits and capacities of the competing proposals and applicants;

d. Issuing request for proposals stating the aims of the grant initiative as well as the guidelines and criteria, requiring an application and grant proposal;

e. Issuing award letters and monitoring by PML staff of the fulfillment of the grant terms and conditions by grant recipient;

f. Requiring recipients to provide PML with accountings for the uses of such grants;

g. Making pre-grant inquiries about the recipient organizations and individuals, including inquiries about financial and tax-exempt status and ability to accomplish the purpose for which the grant was provided;

h. Maintaining “complete records of each payment, and the use made of the grant funds by the recipients consistent with standard record keeping and accounting practices and procedures[;]” and

i. Limiting all distributions of funds by PML to “use for educational or charitable purposes, in conjunction with PML’s exempt purpose.”

45. After being granted 501(c)(3) status, PML did none of the above. PML did not provide competitively-bid grants to 501(c)(3) organizations and filmmakers throughout the world, but rather focused solely on Manifold, the for-profit media company owned and operated by Pack.

46. Because PML only awarded grants to Manifold, PML did not incur expenses relating to professional services, fundraising, salaries, and compensation. The only expenses PML has disclosed since its inception are the grants to Manifold and infrequent nominal banking, legal, and accounting fees. For all intents and purposes, PML raises charitable donations to fund Manifold.

47. Because PML only awarded grants to Manifold, PML did not develop a grant program, let alone one based on a competitive process. PML did not issue request for proposals. It did not develop any guidelines and criteria on the merits and capacities to compare proposals of competing applicants because there was no open and competitive grant process. Every year since its inception in 2007, PML's grant awards were issued to Manifold. Manifold did not undergo a formal and rigorous review by experts or professionals, because PML did not develop or require one.

48. PML did not follow the accounting, disclosure, and reporting requirements from its Form 1023. PML did not require Manifold to provide an accounting of its use of grant funds, nor did PML staff monitor whether Manifold adhered to the grant terms and conditions, including that funds were used only for education or charitable purposes in furtherance of PML's exempt purpose.

49. PML's inactive and ineffective Board, and the lack of a required designated officer for either management or finances, has resulted in the inability to provide proper oversight as required by the NCA and PML's articles of incorporation and by-laws. This lack of proper

oversight is evidenced by PML's consistent submissions of Form 990 annual filings to the IRS containing misstatements and lacking required disclosures, including a failure to disclose related party transactions and potential conflict of interest relationships between Pack, Manifold, and PML, and its failure to implement any program or process regarding its fundraising and grant-making, the only corporate activities that PML has undertaken. The result of this lack of corporate governance is that PML has functioned, and continues to function, only as a funding mechanism for Manifold and Pack, not for a nonprofit purpose.

50. Pack was the only active member on PML's governing board and the only officer, based on PML's own disclosures. By ceding control over PML's management and finances to Pack, PML's directors failed to ensure that PML was acting consistently with its legal authority or its nonprofit purpose, and that PML's transfers of funds to Manifold were appropriately authorized, disclosed, and documented.

COUNT I

(Against Defendants PML and Manifold for Continuing to Act Contrary to Nonprofit Purposes or Exceeding or Abusing the Authority Conferred by Law (D.C. Code § 29-412.20(a)(1)(B)-(C))

44. The allegations of paragraph 1 through 50 are re-alleged as is fully set forth herein.

45. The District's Nonprofit Corporations Act broadly empowers the Attorney General to police nonprofits incorporated under District law. This includes the ability to secure broad injunctive and equitable relief whenever a District nonprofit "has exceeded or abused and is continuing to exceed or abuse the authority conferred on it by law" or "has continued to act contrary to its nonprofit purposes." D.C. Code § 29-412.20(a)(1)(B)-(C).

44. Through a series of grant awards PML subverted its own charitable nonprofit purposes and interest to those of Pack and his for-profit entity, Manifold. PML acted as a conduit to raise tax-exempt funds for the sole and primary benefit of Manifold, while at the same time

obscuring the ownership interest and role that its own President, CEO, and Director has in Manifold. PML has diverted nonprofit funds to the private benefit of Manifold and Pack through private inurement transactions with Manifold, violated the NCA's and its governing documents' corporate governance requirements and failed to maintain Board minutes, corporate resolutions, or other books and records, and failed to engage in substantive activity or oversight apart from directing nonprofit funds to Manifold. PML has, since its inception, functioned in this manner and serves no purpose other than to illegally pass along tax-exempt funds to Manifold, a for-profit entity.

45. Manifold came into possession or control of PML's charitable nonprofit funds through PML's improper grant-funding conduct. In equity, Manifold should not have received those funds and a constructive trust should be imposed over those funds pursuant to the NCA to restore those funds to the benefit of PML's stated charitable purposes.

46. The grant funding inured to the benefit of Pack and Manifold.

47. PML has exceeded or abused, and continues to exceed or abuse, the authority conferred upon it by law, in violation of the District's Nonprofit Corporation Act.

48. PML has acted, and continues to act, contrary to its nonprofit purposes, in violation of the District's Nonprofit Corporation Act.

COUNT II

(Against Defendants PML and Manifold Pursuant to the Common Law)

49. The allegations contained in paragraphs 1 through 50 are realleged as though fully restated herein.

50. The Attorney General has broad common law authority to ensure that the governance and funds of a District charitable corporation are exercised and used in ways that benefit the public and that charitable funds are not wasted, used for private inurement, or otherwise

used in a manner incompatible with a nonprofit purpose or the directors' fiduciary duties.

51. PML has diverted nonprofit funds to the private benefit of Manifold and Pack through private inurement transactions with Manifold, failed to maintain Board minutes, corporate resolutions, or other books and records, and failed to engage in substantive activity or oversight apart from directing nonprofit funds to Manifold. PML has, since its inception, functioned in this manner and serves no purpose other than to pass along tax-exempt funds to Manifold, a for profit-entity.

52. PML has failed to safeguard nonprofit assets and observe basic governance and accountability standards.

53. PML has failed to meet its fiduciary duties in ensuring that nonprofit funds are spent in ways that benefit the public, avoid waste and are in accordance with PML's charitable purposes. These failures violated the responsibilities of a charitable corporation under the common law. PML's violations entitle the District to appropriate equitable relief, including a constructive trust over all funds PML paid to Manifold in derogation of the common law.

PRAYER FOR RELIEF

WHEREFORE, the District requests that this Court:

a. Impose a constructive trust, for the benefit of a nonprofit organization furthering nonprofit purposes similar to those stated in PML's articles of incorporation, over PML funds improperly diverted to Manifold in violation of District law and PML's nonprofit purpose;

b. Order an accounting of Manifold's use of PML funds;

c. Order the dissolution and wind-down of PML; and

d. Order such other relief as the Court determines to be just and proper.

Date: January 5, 2021

Respectfully submitted,

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