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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

EDWARD ASNER, *et al.*,

Plaintiffs,

vs.

THE SAG-AFTRA HEALTH FUND,
et al.,

Defendants.

Case No. 2:20-cv-10914-CAS-JEM

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: September 11, 2023

Time: 10:00 a.m.

Courtroom: 8D

Judge: Hon. Christina A. Snyder

Action Filed: December 1, 2020

1 This Action¹ arises under the Employee Retirement Income Security Act of 1974,
2 29 U.S.C. § 1001, *et seq.* (“ERISA”), and involves claims for alleged breaches of
3 fiduciary duty by trustees of the Screen Actors Guild-Producers Health Plan and the
4 SAG-AFTRA Health Plan. Now before the Court is Plaintiffs’ unopposed Motion for
5 Final Approval of Class Action Settlement (the “Motion”) (ECF No. 140). The terms
6 and conditions of the Settlement are set forth in the Class Action Settlement Agreement,
7 executed in April 2023 and, and the exhibits thereto (ECF No. 128-1).

8 On May 3, 2023, this Court entered a Preliminary Approval Order that, among
9 other things: (i) preliminarily certified the Settlement Class defined in the Settlement
10 Agreement; (ii) preliminarily approved the terms of the Settlement; (iii) approved and
11 directed distribution of the Settlement Notice to Class Members; and (iv) preliminarily
12 enjoined parallel proceedings (ECF No. 134).

13 A Fairness Hearing was held by the Court on September 11, 2023 to consider (i)
14 any objections from Class Members to the Settlement that were timely and properly
15 served in accordance with the Preliminary Approval Order; (ii) whether to finally
16 approve the Settlement as fair, reasonable, and adequate; (iii) whether to finally certify
17 the Settlement Class; (iv) the amount of any Attorneys’ Fees and Costs to be awarded to
18 Class Counsel; and (v) the amount of any Service Awards to be awarded to the Class
19 Representatives.

20 In determining whether to grant final approval of the Settlement, the Court has
21 considered, among other things: (i) the unopposed Motion and all supporting documents;
22 (ii) the Settlement Agreement itself; (iii) the form and manner of the Settlement Notice;
23 (iv) the absence of any objection by any Class Member [TBD]; (v) the absence of any
24 objection by any state or federal officials after they were all provided with the notices
25 required by the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. §1715 [TBD];
26

27 ¹ All capitalized terms not otherwise defined in this Final Approval Order shall
28 have the same meaning as ascribed to them in the Settlement Agreement.

1 (vi) the Independent Settlement Evaluation Fiduciary’s approval of the Settlement on
2 behalf of the Plan in accordance with Prohibited Transaction Exemption 2003-39 [TBD];
3 and (vii) the oral argument at the Fairness Hearing.

4 Based upon the foregoing considerations, and good cause appearing therefore, the
5 Court hereby GRANTS the Motion and ORDERS AS FOLLOWS:

6 1. This Final Approval Order hereby incorporates and makes a part hereof: (i)
7 the Settlement Agreement (including the exhibits thereto); and (ii) the findings and
8 conclusions contained in the Court’s Preliminary Approval Order.

9 2. This Court has jurisdiction over the subject matter of this Action and over
10 the Settling Parties as well as all members of the Settlement Class.

11 **FINAL CERTIFICATION OF SETTLEMENT CLASS**

12 3. For the sole purpose of settling and resolving the Action, the Court hereby
13 certifies the following Settlement Class pursuant to Rules 23(a) and 23(b)(1) of the
14 Federal Rules of Civil Procedure:

15 All individuals who (i) were enrolled in coverage under the Plan at any time
16 during the Class Period, (ii) were notified that they qualified for coverage
17 under the Plan for any time during the Class Period, and/or (iii) qualified or
18 had qualified as a Senior Performer as of the beginning of or during the Class
19 Period, but excluding the Trustee Defendants.

20 The Class Period runs from January 1, 2017 through May 3, 2023, the date of the
21 Preliminary Approval Order.

22 4. For the sole purpose of settling and resolving the Action, the Court finds that
23 the prerequisites for a class action under Rule 23(a) are satisfied. Specifically, the Court
24 finds:

25 a. **Numerosity**. The Settlement Class is ascertainable from records kept
26 by the Plan and is so numerous that joinder of all Class Members in the Action is
27 impracticable.

1 Representatives have no conflicts of interest with Class Members insofar as they all
2 qualified for coverage under the Plan and/or qualified as Senior Performers under the
3 Plan and were thus impacted by the Amendments. Further, Class Counsel and the Class
4 Representatives have vigorously prosecuted the Action on behalf of the Settlement Class,
5 including with respect to defending against Defendants' motion to dismiss the First
6 Amended Complaint, obtaining an initial set of documents from Defendants, and issuing
7 subpoenas to third parties.

8 b. **Arm's Length Negotiations**. The Settlement resulted from arm's
9 length negotiations, with no signs of collusion or bad faith. Class Counsel and Defense
10 Counsel are experienced in similar class action litigation and engaged in extensive
11 negotiations that were facilitated by an experienced professional mediator (Robert
12 Meyer, Esq., of JAMS).

13 c. **Adequate Relief**. The Settlement provides adequate relief for the
14 Settlement Class while avoiding the costs, risks, and delay of continued litigation. In
15 addition to a Gross Settlement Amount with a value of \$15,000,000, to be allocated to
16 certain Class Members who are Senior Performers (after Administrative Expenses and
17 Attorneys' Fees and Costs are subtracted therefrom), the Settlement also provides other
18 valuable benefits to the Settlement Class. Class Members who are Qualifying Senior
19 Performers will receive additional allocations to their HRA Accounts (which could total
20 up to \$5,600,000) and the Plan will institute various changes for a period of four years
21 (including to disclose financial information about the Plan to the negotiators of collective
22 bargaining agreements).

23 i. *Costs, Risks, and Delay*. If Plaintiffs were to proceed with this
24 Action, they would face various risks at each stage of the litigation that could preclude
25 any relief, such as losing on a motion for class certification, on a motion for summary
26 judgment, at trial, or on appeal. Plaintiffs also face the risk that, even if they prevail on
27

1 the merits of their claims, their desired relief (*e.g.*, amendments to the Plan) may be
2 unavailable as a matter of law.

3 ii. *Distribution Method.* The Settlement provides for an effective
4 method of distributing the relief to Class Members. Class Members entitled to monetary
5 relief will not be required to file claims; rather, those with HRA Accounts will receive
6 their Settlement Allocations in those accounts, and those without HRA Accounts will
7 receive a check from a Settlement Administrator.

8 iii. *Proposed Award of Attorneys' Fees.* As discussed further
9 below, the Attorneys' Fees and Costs requested by Class Counsel are fair and reasonable
10 and in line with Ninth Circuit authority.

11 iv. *Side Agreements.* Apart from the Settlement Agreement, there
12 are no agreements made in connection with the Settlement to consider under Rule
13 23(e)(2)(C)(iv).

14 d. **Equitable Relief.** The Settlement treats Class Members equitably
15 relative to each other insofar as it provides for a Settlement Administrator who has the
16 final authority to determine the amount of each Class Member's Settlement Allocation,
17 in accordance with a Plan of Allocation agreed upon by the Settling Parties.

18 **ATTORNEYS' FEES AND COSTS AND SERVICE AWARDS**

19 13. On July 12, 2023, Class Counsel filed a Motion for Attorneys' Fees and
20 Costs and Service Awards (ECF No. XXX). Having considered any opposition to and/or
21 objections to Class Counsel's request [TBD], the Court hereby awards Class Counsel: (i)
22 attorneys' fees in the amount of ([INSERT]% of the Maximum Gross Monetary
23 Settlement Amount), and (ii) costs in the amount [INSERT], to be deducted from the
24 Gross Settlement Amount. The foregoing amounts of Attorneys' Fees and Costs are fair
25 and reasonable in light of the substantial risks taken by Class Counsel to prosecute this
26 Action on a contingency basis, Class Counsel's skill and experience in class action
27 litigation of this type, and fee awards in comparable cases in this circuit.

1 14. The Court also hereby awards Service Awards to the Class Representatives
2 in the amount of [INSERT] each, to be deducted from Class Counsel’s Attorneys’ Fees
3 and Costs and not from the Gross Settlement Amount.

4 **MISCELLANEOUS**

5 15. **Implementation of Settlement.** The Settling Parties are hereby directed to
6 consummate the Settlement in accordance with the Settlement Agreement and to comply
7 with all of its terms and conditions.

8 16. **Binding Effect.** Upon entry of this Final Approval Order, Defendants
9 (including the Plan) and the Class Members (including the Class Representatives) are
10 hereby bound by this Order and by the Settlement Agreement, and may enforce the terms
11 thereof.

12 17. **Enforcement of Settlement.** Nothing in this Final Approval Order shall
13 preclude any action to enforce or interpret the terms of the Settlement. Any action to
14 enforce or interpret the terms of the Settlement shall be brought solely in this Court.

15 18. **No Admission of Liability.** The Settlement shall not be deemed to
16 constitute an admission or finding of liability or wrongdoing on the part of Defendants
17 (including the Plan) or the Class Members (including the Class Representatives).

18 19. **Retention of Jurisdiction.** The Court expressly retains continuing
19 jurisdiction as to all matters relating to the Settlement, and this Final Approval Order,
20 and for any other necessary and appropriate purpose.

21 20. **Dismissal of Action with Prejudice.** All claims against Defendants in this
22 Action are hereby dismissed on the merits and with prejudice, without an award of costs
23 to any party, except as provided for in this Final Approval Order. For those individual
24 defendants who were dismissed without prejudice during the pendency of the litigation—
25 namely Ann Calfas, Eryn Doherty, Gary Elliot, Mandy Fabian, Leigh French, Nicole
26 Gustafson, Marla Johnson, Bob Kaliban (deceased), Shelley Landgraf, D.W. Moffett,
27 Alan Raphael, John Rhone, David Silberman, John Sucke, and Kim Sykes (*see* ECF No.
28

43 ¶¶ 161, 169, 179, 187; ECF No. 71 at 5)—all claims in the Action are hereby dismissed with prejudice as to them as well.

RELEASES

21. **Released Claims.** Each Class Member (including each of the Class Representatives) is hereby deemed to have fully, finally, and forever settled, released, relinquished, waived, and discharged all Released Claims against the Released Parties, as set forth in the Settlement Agreement.

22. **Permanent Injunction.** Each Class Member (including each of the Class Representatives) is hereby permanently barred and enjoined from asserting, commencing, prosecuting, or continuing any of the Released Claims against the Released Parties, as set forth in the Settlement Agreement and consistent with Paragraph 21 above.

23. **Other Releases.** All other releases and covenants not to sue set forth in the Settlement Agreement, including but not limited to those in Section 12, are expressly incorporated herein in all respects.

IT IS SO ORDERED.

DATED: _____

The Honorable Christina A. Snyder
United States District Judge