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8	UNITED STATES DISTRICT COURT	
9	CENTRAL DISTRICT OF CALIFORNIA	
10	WESTERN DIVISION	
11	EDWARD ASNER, et al.,	Case No. 2:20-cv-10914-CAS-JEM
12	Plaintiffs,	[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS
13	VS.	ACTION SETTLEMENT
14	THE SAG-AFTRA HEALTH FUND <i>et al.</i> ,	, Date: September 11, 2023 Time: 10:00 a.m.
15	Defendants.	Courtroom: 8D Judge: Hon. Christina A. Snyder
16		Action Filed: December 1, 2020
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	[PROPOSED] ORDER GRANTING FINAL APPROVAL	
	OF CLASS ACTION SETTLEMENT (2:20-cv-10914-CAS-JEM)	

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

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

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

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

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

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

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

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

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

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FINAL CERTIFICATION OF SETTLEMENT CLASS

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

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

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

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

a. <u>Numerosity</u>. The Settlement Class is ascertainable from records kept by the Plan and is so numerous that joinder of all Class Members in the Action is impracticable.

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b. <u>Commonality</u>. There are questions of law and/or fact common to all Class Members.

c. <u>**Typicality**</u>. The Class Representatives' claims are typical of the claims of the Class Members they seek to represent.

d. <u>Adequacy</u>. The Class Representatives and Class Counsel have fairly and adequately represented the interests of the Settlement Class and will continue to do so.

5. For the sole purpose of settling and resolving the Action, the Court finds that the prerequisites for a class action under Rule 23(b)(1) are satisfied. Specifically, the Court finds that prosecuting separate actions by individual Class Members would create a risk of inconsistent or varying adjudications that could establish incompatible standards of conduct for the Trustees Defendants with respect to the fiduciary duties that apply to them.

6. For the sole purpose of settling and resolving the Action, the Court appoints Chimicles Schwartz Kriner and Donaldson-Smith LLP as Lead Class Counsel for the Settlement Class, and Johnson & Johnson LLP and Law Offices of Edward Siedle as additional Class Counsel. In accordance with Rule 23(g), the Court finds that Class Counsel are capable of fairly and adequately representing the interests of the Settlement Class, and that Class Counsel: (i) have done appropriate work identifying and investigating potential claims in the Action; (ii) are experienced in handling class actions, other complex litigation, and the types of ERISA claims asserted in the Action; (iii) are knowledgeable of the applicable law; and (iv) have committed the necessary resources to represent the Settlement Class.

7. For the sole purpose of settling and resolving the Action, the Court appoints Plaintiffs Michael Bell, Raymond Harry Johnson, David Jolliffe, Robert Clotworthy, Thomas Cook, Audrey Loggia, Deborah White, and Donna Lynn Leavy as the Class Representatives of the Settlement Class.

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FINAL APPROVAL OF SETTLEMENT NOTICE

8. On July 12, 2023 a declaration was filed with this Court by Eric Nordskog of A.B. Data Ltd. stating that the approved Settlement Notice was disseminated as set forth in Section 3.2 of the Settlement Agreement (ECF No. 128-1). The Settlement Notice was sent directly to each Class Member for whom the Plan has either an email or postal address on record and it was also posted on the Settlement Website, a link to which was posted on the Plan Website.

9. The Court hereby finds and concludes that Class Members have been provided with appropriate notice of the Settlement and that such notice fully satisfied all notice requirements under the law, including Federal Rule of Civil Procedure 23(c)(2)(A) and all due process rights under the U.S. Constitution. The Court finally approves the Settlement Notice in all respects.

10. On July 11, 2023, a declaration was filed with this Court stating that the approved CAFA notices were timely mailed to the appropriate state and federal officials in accordance with 28 U.S.C. § 1715, and that no objections to the Settlement were received. (ECF No. 140). The Court finds that Defendants have fully satisfied all requirements under CAFA, and that the absence of any objection from state or federal officials further supports final approval of the Settlement.

FINAL APPROVAL OF THE TERMS OF THE SETTLEMENT

11. Despite having received appropriate notice, no Class Members filed objections to the Settlement nor appeared at the Fairness Hearing [TBD].

12. The Court hereby fully and finally approves the Settlement set forth in the Settlement Agreement, finding it fair, reasonable, and adequate in all respects, and finding that the requirements for settlement approval under Federal Rule of Civil Procedure 23(e)(2) are satisfied. Specifically, the Court finds:

a.Adequate Representation.Class Counsel and the ClassRepresentativeshave adequately represented the Settlement Class.Class

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

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

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

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

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

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

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

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

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

ATTORNEYS' FEES AND COSTS AND SERVICE AWARDS

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

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

MISCELLANEOUS

15. <u>Implementation of Settlement</u>. The Settling Parties are hereby directed to consummate the Settlement in accordance with the Settlement Agreement and to comply with all of its terms and conditions.

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

17. <u>Enforcement of Settlement</u>. Nothing in this Final Approval Order shall preclude any action to enforce or interpret the terms of the Settlement. Any action to enforce or interpret the terms of the Settlement shall be brought solely in this Court.

18. <u>No Admission of Liability</u>. The Settlement shall not be deemed to constitute an admission or finding of liability or wrongdoing on the part of Defendants (including the Plan) or the Class Members (including the Class Representatives).

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

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

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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. <u>**Released Claims**</u>. 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. <u>**Permanent Injunction**</u>. 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. <u>Other Releases</u>. 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

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