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28 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)

**PLAINTIFFS' RESPONSE TO
LETTERS FROM CLASS MEMBERS
JAN HOAG AND JIMMY HAWKINS
REGARDING CLASS ACTION
SETTLEMENT**

Date: September 11, 2023
Time: 10:00 a.m.
Courtroom: 8D
Judge: Christina A. Snyder

Action Filed: December 1, 2020

Plaintiffs respectfully submit this Response to the letter sent to the Court from Settlement Class Member Jan Hoag ("Hoag Letter") and the letter sent by Settlement Class

1 Member Jimmy Hawkins (“Hawkins Letter”). Copies of the two letters are attached as
2 Exhibits 1 & 2 to the Second Supplemental Declaration of Steven A. Schwartz (“SSD”)
3 filed concurrently herewith.

4 Class Counsel received the August 6, 2023 Hoag Letter from the Court, on August
5 28, 2023. SSD ¶ 2. Class Counsel promptly contacted Ms. Hoag and answered all of her
6 questions. *Id.* ¶ 3. In connection with her communications with Class Counsel, Ms. Hoag
7 authorized Class Counsel to report to the Court that: (1) she plans to participate and speak
8 at the Final Approval Hearing and would like to discuss the issues she raised in her Letter,
9 (2) that she stands by all of her statements and views expressed in her Letter, but (3) it was
10 not her intent and she does not intend to ask the Court to reject the Settlement. *Id.* ¶ 4. Thus,
11 Ms. Hoag has not objected to the proposed Settlement, Service Awards or fee and expense
12 reimbursement requests.

13 Class Counsel received the Hawkins Letter on September 6, 2023. Mr. Hawkins
14 appears to make a limited objection to the Settlement with respect to a discrete group of
15 Settlement Class Members - those who he believes waived their pre-1961 residuals. Mr.
16 Hawkins’ Letter does not make any objection to the fee request or Service Awards

17 Therefore, no Settlement Class Member has raised any objection to the fee request
18 or joined in Defendants’ objection to the fee request.

19 **A. Ms. Hoag Will Receive HRA Allocations Over \$6,000 From The**
20 **Settlement**

21 Class Counsel requested and received from defense counsel information regarding
22 Ms. Hoag’s sessional and residual earnings as reflected in the Plan’s records to confirm the
23 amounts Ms. Hoag will receive if the Settlement is approved and clarify any perceived
24 discrepancies between the Plan’s records and Ms. Hoag’s calculations regarding her
25 eligibility for HRA allocations under the Settlement. SSD ¶ 5. According to the Plan’s
26 counsel, the difference in Ms. Hoag’s calculations and the Plan’s calculations is due to (1)
27 the Plan not using a calendar year, but using the base earnings period (October 1 –
28

1 September 30)¹ to calculate annual sessional and residual earnings, (2) the different dates
2 when Ms. Hoag's earnings were reported to the Plan (as opposed to the dates she was paid),
3 and (3) the fact that if earnings on a project exceed the cap established in the CBAs, the
4 earnings a performer receives are sometimes higher than the earnings that count for the
5 amount of contributions provided to the Plan. *Id.* Class Counsel provided that information
6 to Ms. Hoag. *Id.*

7 Based on the information provided by defense counsel, Ms. Hoag will receive an
8 HRA allocation of at least \$2,200 for 2021/2022 damages, because during those years she
9 did not lose her Plan coverage due to the elimination of the Dollar Sessional Rule; she lost
10 Plan coverage due to elimination of the Age & Service Rule. *Id.* ¶ 6. In addition, while,
11 due to the timing of her residual payments, she does not qualify for an HRA allocation
12 payment for 2023 (because she would not have met the standards for coverage under the
13 Dollar Sessional Rule), she already qualifies for an HRA allocation for 2024, and given
14 her high residual earnings, her HRA allocation will be at the high end of the \$438 - \$4,375
15 range previously reported to the Court. *Id.* Given what appears to be a healthy residual
16 stream and expressed intent to continue performing, there is a good chance the Settlement
17 will provide Ms. Hoag additional HRA allocations from 2025-2030.

18 **B. Ms. Hoag's Letter Confirms that the Settlement Addresses Serious**
19 **Concerns Raised in the Amended Complaint and Provides**
20 **Exceptional Monetary Compensation**

21 Plaintiffs agree with Ms. Hoag's sentiment, notwithstanding Defendants' self-
22 serving, unsupported assertions in the Objection, that the Trustee Defendants mismanaged
23 the Plan and foisted their misguided age-based benefits funding solution on the participants
24 without warning in the midst of the pandemic. Hoag Letter at 2. Plaintiffs also agree with
25 Ms. Hoag's sentiment that the Trustees' misconduct injured the Plan and the participants
26 and added insult to the injury by leaving participants in the dark for two years to make

27 ¹ The October cut-off is significant, since Ms. Hoag received a large residual payment in
28 December of 2022. Hoag Letter at 5.

1 blind decisions such as whether to take a pension or to get sessional gigs during the
2 pandemic so as to qualify for Plan coverage under the coming new rules. Hoag Letter at 2.
3 Moreover, Ms. Hoag states what Plaintiffs believe to be an ineluctable truth: The Health
4 Plan Trustees should have “come up with better solutions to better the health
5 of...well...our SAG Health Plan then what occurred.” Hoag Letter at 6-7.

6 Ms. Hoag’s Letter echoes many allegations in the Amended Complaint (“AC”), ECF
7 43, and the claims Plaintiffs have litigated zealously to achieve the Settlement:

- 8 • Senior Performers believed that they were promised lifetime Plan coverage if
9 they had vested for 20 years and the promise would be kept. Hoag Letter at 2;
10 AC ¶¶ 44, 80, 87.²
- 11 • The 2020 Amendments imprudently punished Senior Performers who are still
12 working – and generating contributions to the Health Plan – simply because
13 they took a pension (as permitted) at age 55 while not similarly treating Senior
14 Performers who did not elect to take their pension early. Hoag Letter at 2; AC
15 ¶¶ 86, 134.
- 16 • The 2020 Amendments do not count residuals of Senior Performers for
17 purposes of eligibility for Plan health coverage even though the residuals fund
18 the Plan and Senior Performers pay dues to the SAG-AFTRA Union based on
19 those residuals. Hoag Letter at 2; AC ¶¶ 85, 119, 123.
- 20 • The Trustees’ failure to disclose the growing benefit funding shortfall before
21 and after the Merger cost the Plan money in the 2019/2020 CBA negotiations.
22 Hoag Letter at 2; AC ¶¶ 94-108.

23
24 ² The Trustees would contend, correctly, that the Plan Documents included disclaimers that
25 the coverage could be eliminated at any time. Even so, secretly planning to eliminate
26 lifetime coverage for a performer age 65+ and the performer’s dependents with plenty of
27 time to warn but instead keeping it secret for a pandemic surprise, is disloyal and
28 inequitable by any fiduciary standard. The legal disclaimer in the Plan Documents does not
contradict the reasonable belief and expectations, based on decades of messaging, of
lifetime Plan coverage by Plan participants who generated contributions over several
decades many of whom sacrificed their contested claim pre-1961 residuals to create a
Union health benefit. AC ¶¶ 3, 44, 49, 80, 87.

- 1 • The Trustees’ hiding for at least two years their secret plan to cut Senior
2 Performers’ coverage undoubtedly led some participants to make decisions
3 they might not have made (*e.g.*, taking an early pension) had they known
4 doing so might cost them their Plan coverage. Hoag Letter at 2; AC ¶¶ 89,
5 122, 134.
- 6 • The Trustees “retiree” moniker for performers age 65+ taking a pension is a
7 square peg in a round hole to try to fit under Medicare rules permitting primary
8 coverage differences for “retirees,” as most of these performers are not retired
9 and are receiving pay for work under CBAs that funds the Plan. Hoag Letter
10 at 2; AC ¶ 134.

11 **C. Ms. Hoag’ Letter Confirms the Value of the Non-Monetary Provisions**

12 The Hoag Letter also confirms the value of the prospective non-monetary benefits
13 of the Settlement:

- 14 • Defendants denigrated the provisions at Sections 11.4 and 11.5 of the
15 Settlement Agreement requiring the Plan to count sessional earnings in a
16 timely manner (*i.e.*, when paid to the Performer) for purposes of a
17 participant’s eligibility for Plan coverage and to provide reminders and two
18 opportunities to have late-reported earnings count in the year they were
19 earned. The Hoag Letter at page 5 notes exactly why those provisions are
20 important and valuable, and how the SAG-AFTRA Union was able timely to
21 track earnings in contrast to the Health Plan under the Defendant Trustees’
22 management; how the failure to timely count earnings negatively impacted
23 Ms. Hoag and other Senior Performers; and how the right to have late-
24 reported earnings count in the year they were earned benefits Senior
25 Performers like Ms. Hoag.
- 26 • Defendants also denigrated the disclosures required by Section 11.2 of the
27 Settlement Agreement, which are designed to arm the Union and participants
28 with timely information regarding Plan funding for purposes of collective

1 bargaining and timely information regarding potential benefit changes under
2 consideration. Ms. Hoag explains how if the Trustees would have complied
3 with their duty of candor and provided advance warning of the funding
4 shortfall and resulting need to make some painful choices ahead of 2020 and
5 the pandemic, the Trustees and participants could have engaged in a dialogue
6 to minimize poorly thought out choices such as those made by the Trustees,
7 and come to a fairer allocation of Plan resources. *See* Hoag Letter at 2, 6-7.³

- 8 • Defendants also denigrated the requirement of Section 11.4 for the Plan to
9 retain a Cost Consultant. Ms. Hoag’s observation about the “lack of business
10 acumen” of the defendant Trustees highlights the need for a Cost Consultant.
11 Hoag Letter at 6.

12 **D. Ms. Hoag Confirms that Settlement Provides Exceptional Monetary**
13 **Relief**

14 Likewise, the Hoag Letter confirms that the monetary recoveries provided by the
15 Settlement achieve an outstanding result for participants who were suddenly saddled with
16 unexpected additional costs to obtain comparable health coverage in the midst of the
17 pandemic. As Ms. Hoag’s personal circumstances reflect, *the Settlement, provides*
18 *substantial if not full compensation to Senior Performers who lost Plan coverage in 2021*
19 *and 2022* due to the 2020 Amendments:

- 20 • Ms. Hoag calculated (Hoag Letter at pp. 3-4) that the Plan’s \$1,140 in HRA
21 annual contributions covered over six months of her monthly Medicare
22 premiums (including her supplemental coverage); the additional \$2,200 HRA
23 allocation she will receive from the Settlement for 2021-2022 lost coverage

24
25 ³ In order to maximize the benefit of the disclosures required by Section 11.2 of the
26 Settlement Agreement, in connection with their agreement to dismiss their Ninth Circuit
27 appeal, the SAG-AFTRA Union agreed “to expressly undertake to monitor, facilitate, and
28 use reasonable efforts to ensure compliance by the SAG-AFTRA Health Plan and its Board
of Trustees with the rights and entitlements of the Union under the Governance Provisions
set forth in Section 11 of the Class Action Settlement Agreement (“SA”) in the *Asner* case
and as approved by the Court in connection with final approval proceedings.” SSD ¶ 7.

1 means that the \$4,480 HRA total HRA allocations she will have received for
2 2022 and 2023 will be *slightly more than 100%* of the cost of her annual
3 Medicare premiums!⁴ That recovery is excellent by any measure, and Senior
4 Performers who qualify for the \$4,400 HRA allocation payment will do even
5 better.

- 6 • Due to her combined sessional and residual earnings in Plan year 2023, in
7 2024, the Settlement will provide Ms. Hoag with an additional HRA
8 allocation that likely exceeds \$4,000. SSD ¶ 8. That HRA allocation from the
9 Settlement, in conjunction with the \$1,140 HRA annual allocations she will
10 receive from the Plan for 2023 and 2024, should be sufficient to cover most if
11 not all of her increased costs for medical coverage in 2023 and 2024 due to
12 the 2020 Amendments.
- 13 • Given Ms. Hoag’s large stream of residuals due to her exceptional body of
14 work, and the fact she intends to keep working and earning sessionals, she
15 will likely receive additional HRA allocations from the Settlement for some
16 if not all of the years from 2025-2030. Thus, the Settlement will likely provide
17 her full compensation for losing her Plan health coverage from 2021-2030,
18 and directly addresses Ms. Hoag’s point that Senior Performers whose
19 residuals continue to fund the Plan should get benefit from the Plan based on
20 those residuals.

21 **E. The Hoag Letter Further Supports Approval of the Settlement,**
22 **Service Awards and Fee Request**

23 Plaintiffs and Class Counsel very much appreciate Ms. Hoag’s expression of
24 gratitude to Plaintiff David Joliffe, and Class Member Frances Fisher (who, like Mr. Joliffe,
25 provided substantial assistance to Class Counsel in this case) for fighting the 2020
26 Amendments and working to identify and hire Class Counsel willing to initiate and

27 ⁴ Because Ms. Hoag is a relatively high earner, her Medicare costs are likely more than the
28 average Settlement Class Member.

1 prosecute this lawsuit despite the substantial litigation risks. Hoag Letter at 3. Mr. Jolliffe
2 has earned his proposed Service Award, and as reflected in the Notice, plans to donate that
3 award to the SAG Foundation to help less-fortunate performers.

4 As reflected in the prior filings and supporting evidence submitted by Plaintiffs and
5 Class Counsel, and contrary to Defendants' Objection, the Settlement provides a
6 substantial, if not full, recovery of the increased costs to Senior Performers to replace their
7 Plan coverage with comparable coverage from Medicare/Medigap/Advantage, and
8 provides all Settlement Class Members with substantial and valuable non-monetary relief
9 that is designed to head off the type of misconduct and malfeasance which led to this action
10 and that also addresses specific, material harms to Senior Performers from the 2020
11 Amendments. Despite tremendous litigation risks, Class Counsel successfully defeated
12 Defendants' zealous efforts to scuttle Class Members' claims and delivered this excellent
13 result in a timely manner.

14 **F. The Court Should Overrule Mr. Hawkins' Limited Objection**

15 Plaintiffs and Class Counsel appreciate Mr. Hawkins' sentiment about the sacrifices
16 of Settlement Class Members who, despite the absence of any pre-1961 contract regarding
17 residuals, believed they had an entitlement to residuals for their pre-1961 sessional work;
18 and who agreed, in connection with resolution of the 1960 SAG strike, to waive their
19 contested claim to pre-1961 residuals. Plaintiffs and Class Counsel also appreciate Mr.
20 Hawkins' sentiment and reasonable expectation that he had an entitlement to lifetime Plan
21 coverage. But this class action did not allege breach of contract claims, it alleged breach of
22 fiduciary duty claims, and as explained above and in more detail in prior briefing, the Plan
23 Documents always included disclaimers that the Plan Trustees could modify or eliminate
24 the requirements to qualify for Plan health coverage at any time. Mr. Hawkins' Plan
25 coverage appears to have mutated over time. Prior to implementation of the 2020
26 Amendments, Mr. Hawkins no longer had active (primary) Plan coverage; at that time his
27
28

1 primary medical coverage was from Medicare, and he only received secondary coverage
2 from the Plan.⁵ SSD ¶ 9.

3 **G. Conclusion**

4 For all the foregoing reasons, Plaintiffs and Class Counsel respectfully request that
5 the Court approve the proposed Settlement, Service Awards, and one-third fee request.

6 Dated: September 7, 2023

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27 ⁵ Medicare was not enacted until 1965, several years *after* resolution of the 1960 SAG
28 strike.

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CERTIFICATE OF SERVICE

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Pursuant to Local Rule 5-3.2, I certify that on September 7, 2023 a copy of the foregoing document, along with all concurrently filed documents, were served via ECF upon all ECF registrants in this action

Dated: September 7, 2023

/s/ Steven A. Schwartz
Steven A. Schwartz