

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
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-JEMx

**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Judge: Hon. Christina A. Snyder

Action Filed: December 1, 2020

The Court finds that the motion is appropriate for decision without oral argument. See Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15. Accordingly, the matter is hereby taken under submission.

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 Preliminary Approval of Class Action Settlement (the “Motion”) (ECF Nos. 127-130). The terms and conditions of the Settlement are set forth in the Class Action Settlement Agreement, executed on April 10, 2023, and the exhibits thereto (ECF No. 128-1).

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

1 Having considered the Settlement Agreement, the briefing submitted in support
2 of the unopposed Motion, and the arguments of counsel, and good cause appearing
3 therefore, the Court hereby GRANTS the Motion and ORDERS AS FOLLOWS:

4 **PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS**

5 1. For settlement purposes only, and conditioned upon the Settlement
6 receiving final approval following the Fairness Hearing, the Court hereby preliminarily
7 certifies the following Settlement Class pursuant to Rules 23(a) and 23(b)(1) of the
8 Federal Rules of Civil Procedure:

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

15 The Class Period runs from January 1, 2017 through the date of this Preliminary
16 Approval Order.

17 2. For settlement purposes only, and conditioned upon the Settlement
18 receiving final approval following the Fairness Hearing, the Court preliminarily finds
19 that the prerequisites for a class action under Rule 23(a) are satisfied. Specifically, the
20 Court finds:

21 a. **Numerosity**. The Settlement Class has approximately 136,847
22 members and is so numerous that joinder of all Class Members in the Action is
23 impracticable.

24 b. **Commonality**. There are questions of law and/or fact common to all
25 Class Members.

26 c. **Typicality**. The Class Representatives' claims are typical of the
27 claims of the Class Members they seek to represent.

1 d. **Adequacy**. The Class Representatives and Class Counsel have fairly
2 and adequately represented the interests of the Settlement Class and will continue to do
3 so.

4 3. For settlement purposes only, and conditioned upon the Settlement
5 receiving final approval following the Fairness Hearing, the Court preliminarily finds
6 that the prerequisites for a class action under Rule 23(b)(1) are satisfied. Specifically,
7 the Court finds that prosecuting separate actions by individual Class Members would
8 create a risk of inconsistent or varying adjudications that could establish incompatible
9 standards of conduct for the Trustees Defendants with respect to the fiduciary duties
10 that apply to them.

11 4. For settlement purposes only, and conditioned upon the Settlement
12 receiving final approval following the Fairness Hearing, the Court preliminarily
13 appoints Chimicles Schwartz Kriner and Donaldson-Smith LLP as Lead Class Counsel
14 for the Settlement Class, and Johnson & Johnson LLP and Law Offices of Edward
15 Siedle as additional Class Counsel. In accordance with Rule 23(g), the Court finds that
16 Class Counsel are capable of fairly and adequately representing the interests of the
17 Settlement Class, and that Class Counsel: (i) have done appropriate work identifying
18 and investigating potential claims in the Action; (ii) are experienced in handling class
19 actions, other complex litigation, and the types of ERISA claims asserted in the Action;
20 (iii) are knowledgeable of the applicable law; and (iv) have committed the necessary
21 resources to represent the Settlement Class.

22 5. For settlement purposes only, and conditioned upon the Settlement
23 receiving final approval following the Fairness Hearing, the Court preliminarily
24 appoints Plaintiffs Michael Bell, Raymond Harry Johnson, David Jolliffe, Robert
25 Clotworthy, Thomas Cook, Audrey Loggia, Deborah White, and Donna Lynn Leavy as
26 the Class Representatives of the Settlement Class.

27 ///

1 **PRELIMINARY APPROVAL OF THE TERMS OF THE SETTLEMENT**

2 6. The Court hereby preliminarily approves the Settlement, finding it
3 sufficiently fair, reasonable, and adequate to authorize dissemination of notice thereof
4 to the Settlement Class and to conduct a final Fairness Hearing thereon. The Court
5 preliminarily finds that the requirements for settlement approval under Federal Rule of
6 Civil Procedure 23(e)(2) are satisfied. Specifically, the Court finds:

7 a. **Adequate Representation.** Class Counsel and the Class
8 Representatives have adequately represented the Settlement Class. Class
9 Representatives have no conflicts of interest with Class Members insofar as they all
10 qualified for coverage under the Plan and/or qualified as Senior Performers under the
11 Plan and were thus impacted by the Amendments. Further, Class Counsel and the
12 Class Representatives have vigorously prosecuted the Action on behalf of the
13 Settlement Class, including with respect to defending against Defendants’ motion to
14 dismiss the First Amended Complaint, obtaining an initial set of documents from
15 Defendants, and issuing subpoenas to third parties.

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

21 c. **Adequate Relief.** The Settlement provides adequate relief for the
22 Settlement Class while avoiding the costs, risks, and delay of continued litigation. In
23 addition to a Gross Settlement Amount with a value of \$15,000,000, to be allocated to
24 certain Class Members who are Senior Performers (after Administrative Expenses and
25 Attorneys’ Fees and Costs are subtracted therefrom), the Settlement also provides other
26 valuable benefits to the Settlement Class. Class Members who are Qualifying Senior
27 Performers will receive additional allocations to their HRA Accounts (which could
28

1 total up to \$5,600,000) and the Plan will institute various changes for a period of four
2 years (including to disclose financial information about the Plan to the negotiators of
3 collective bargaining agreements).

4 i. *Costs, Risks, and Delay.* If Plaintiffs were to proceed with this
5 Action, they would face various risks at each stage of the litigation that could preclude
6 any relief, such as losing on a motion for class certification, on a motion for summary
7 judgment, at trial, or on appeal. Plaintiffs also face the risk that, even if they prevail on
8 the merits of their claims, their desired relief (e.g., amendments to the Plan) may be
9 unavailable as a matter of law.

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

15 iii. *Proposed Award of Attorneys' Fees.* The Settlement
16 Agreement caps any potential request for Attorneys' Fees and Costs at \$6,866,667,
17 which is one-third of the Maximum Gross Monetary Settlement Amount.

18 iv. *Side Agreements.* Apart from the Settlement Agreement, there
19 are no agreements made in connection with the Settlement to consider under Rule
20 23(e)(2)(C)(iv).

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

25 **APPROVAL OF THE NOTICE PLAN**

26 7. The Court hereby approves the form of the proposed Settlement Notice
27 attached as Exhibit 2 to the Settlement Agreement. The Court finds that the Settlement
28

1 Notice fairly, accurately, and reasonably informs Class Members of appropriate
2 information about: (1) the nature of this Action and the essential terms of the
3 Settlement Agreement; (2) how to obtain additional information regarding this Action
4 and the Settlement, in particular, by visiting the Settlement Website and/or contacting
5 Lead Class Counsel; and (3) how to object to the Settlement if they wish to do so. The
6 Settlement Notice also fairly and adequately informs Class Members that if they do not
7 comply with the specified procedures and the deadline for objections, they will lose any
8 opportunity to have any objection considered at the Fairness Hearing or to otherwise
9 contest approval of the Settlement or appeal from any order or judgment entered by the
10 Court in connection with the Settlement.

11 8. The Court hereby approves of the plan for dissemination of the Settlement
12 Notice as set forth in Section 3.2 of the Settlement Agreement. Pursuant to Section 3.2,
13 the Settlement Administrator will send the Settlement Notice to each Class Member for
14 whom the Plan has either an email or postal address on record within 30 days of the
15 date of this Preliminary Approval Order. In addition, in recognition that the Plan does
16 not possess either an email or postal address for all Class Members, the Plan Website
17 will include a link to the Settlement Website and certain documents (including the
18 Settlement Notice) will be posted to the Settlement Website as soon as practicable
19 following the date of this Preliminary Approval Order. The Court finds that such
20 dissemination of the Settlement Notice is appropriate and reasonably calculated to
21 apprise Class Members of the proposed Settlement and their right to object thereto.

22 9. The Court hereby appoints A.B. Data, Ltd. as the Settlement Administrator
23 and directs the Settlement Administrator and the Settling Parties to disseminate the
24 Settlement Notice as set forth in Section 3.2 of the Settlement Agreement. Proof that
25 the Settlement Notice has been disseminated shall be filed before the Settlement is
26 finally approved.

27 ///

1 will be permitted to raise matters at the Fairness Hearing that the Class Member could
2 have raised in such a written objection, but failed to do so, and all objections to the
3 Settlement that are not set forth in such a written objection are deemed waived. Any
4 Class Member who fails to comply with the preceding provisions, and as otherwise
5 ordered by the Court, will be barred from appearing at the Fairness Hearing.

6 14. Any Settling Party may file a response to an objection by a Class Member
7 at least 14 days before the Fairness Hearing.

8 **FAIRNESS HEARING**

9 15. The Court hereby schedules the Fairness Hearing at 10:00 A.M. on
10 September 11, 2023, which date is more than 110 days after the date of this Preliminary
11 Approval Order, to consider (i) any objections from Class Members to the Settlement
12 that are timely and properly served in accordance with this Preliminary Approval
13 Order, (ii) whether to finally approve the Settlement as fair, reasonable, and adequate,
14 (iii) whether to finally certify the Settlement Class, (iv) the amount of any Attorneys'
15 Fees and Costs to be awarded to Class Counsel, and (v) the amount of any Service
16 Awards to be awarded to the Class Representatives.

17 16. The Fairness Hearing may, without further direct notice to the Class
18 Members, other than by notice to Class Counsel, be adjourned or continued by order of
19 the Court. Notice of such continuance shall be posted on the Settlement Website.

20 17. Plaintiffs' Motion for Final Approval of the Settlement and Motion for
21 Attorneys' Fees and Costs and Service Awards shall be filed no later than 60 days
22 before the Fairness Hearing. Defendants' opposition to the Motion for Attorneys' Fees
23 and Costs and Service Awards (if any) shall be filed no later than 21 days before the
24 Fairness Hearing, and Class Counsel's reply thereto (if any) shall be filed no later than
25 14 days before the Fairness Hearing.

26 ///

27 ///

1 that the Settling Parties jointly agree are reasonable or necessary, and which do not
2 limit the rights of the Class Members under the Settlement Agreement.

3 **SCHEDULE OF SETTLEMENT PROCEEDINGS**

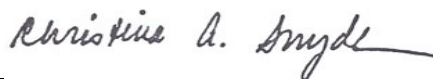
4 22. The Court shall maintain continuing jurisdiction over these Settlement
5 proceedings to assure the effectuation thereof for the benefit of the Settlement Class.

6 23. The Court hereby approves the following schedule for Settlement-related
7 events:

<u>DATE</u>	<u>EVENT</u>
May 3, 2023	Entry of Preliminary Approval Order
June 2, 2023	Last day for Settlement Administrator to send Settlement Notice to Class Members (30 days after Preliminary Approval Order)
July 13, 2023	Last day for Plaintiffs' Motion for Final Approval of the Settlement and Motion for Attorneys' Fees and Costs and Service Awards (60 days before Fairness Hearing)
August 14, 2023	Last day for Class Members to object to Settlement (28 days before Fairness Hearing)
August 21, 2023	Last day for Defendants' opposition to Motion for Attorneys' Fees and Costs and Service Awards (if any) (21 days before Fairness Hearing)
August 28, 2023	Last day for Settling Parties to respond to objections to Settlement (14 days before Fairness Hearing)
August 28, 2023	Last day for Plaintiffs' reply to Motion for Attorneys' Fees and Costs and Service Awards (if any) (14 days before Fairness Hearing)
September 11, 2023	Fairness Hearing

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24 IT IS SO ORDERED.

25 DATED: May 3, 2023



26 _____
27 The Honorable Christina A. Snyder
28 United States District Judge