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)

JOINT DECLARATION OF STEVEN A. SCHWARTZ ADN ROBERT J. KRINER, JR. IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

Judge: Christina A. Snyder
Action Filed: December 1, 2020

Steven A. Schwartz and Robert J. Kriner, Jr., hereby declare as follows:

1. We are partners in Chimicles Schwartz Kriner & Donaldson-Smith LLP and have served as Lead Plaintiffs' Counsel in this case, and submit this declaration based on personal knowledge, and if called to do so, could testify to the matters contained herein.

2. After Defendants suddenly announced, in August 2020, amendments to the SAG-AFTRA Health Plan that substantially changed the benefit structure ("2020 Amendments"), we were approached by participants in the Plan to evaluate potential legal challenges to the 2020 Amendments.

3. Our firm, working intimately with several Class Representatives and other leaders of the opposition to the 2020 Amendments, spent almost four months conducting an extensive investigation of the facts and evaluation of the legal issues. Other law firms, including prominent class action firms, were approached by Plan participants but either declined to take the case on a contingent basis due to its risks or requested to be paid

hundreds of thousands of dollars on a non-contingent hourly basis to evaluate potential claims.

4. Notwithstanding the risks, based on our success in connection with another ERISA case with respect to a Taft Hartley plan in the entertainment field (the American Federation of Musicians Pension Plan), which also presented complex and risky ERISA claims (and which many other prominent law firms also declined as too risky), we agreed to take the case on a fully-contingent basis.

5. We knew that attacking the 2020 Amendments faced, among other risks and potential defenses. The circumstances posed a likely defense that the Defendant Trustees acted in the "Settlor" function and not as ERISA fiduciaries in enacting the 2020 Amendments and changing benefits, and in any event, engaged in a prudent process in deciding to do so. Accordingly, we carefully crafted the Complaint to navigate the vicissitudes of ERISA and around the expected defenses and expected insurance coverage defenses by the Plan's fiduciary liability insurers. We identified and alleged conduct by the Trustees in the management and administration Plan that caused the alleged injuries and led to the sudden surprise announcement of the 2020 Amendments in the midst of a pandemic, including pre-Merger mismanagement that depleted the reserve assets maintained to fund future senior benefits, misrepresentations that the Merger would strengthen the plan and ensure comprehensive benefits for all participants and post-Merger Plan administration to hide the Plan funding crisis while secretly plotting to balance the books by eliminating the cost of covering seniors with age-based eligibility rules.

6. In the wake of our victories defeating Defendants' motion to dismiss the Amended Complaint and application for leave to take an interlocutory appeal, the parties agreed to initially focus their efforts on an early mediation process under the auspices of Robert A. Meyer of JAMS, one of the country's leading mediators in complex Class and ERISA cases. Mr. Meyer mediated the *Snitzer v. AFM* case, which involved the same

counsel and many of the same insurers involved in this case. The parties focused their initial discovery efforts on information to facilitate and informed mediation. This included exchanging initial disclosures, drafting confidentiality and ESI protocol agreements, serving and responding to document requests, and early exchange relevant documents, including board minutes, various reports provided to the Defendant Trustees, various Plan documents, documents such as attorneys' notes of meetings and various communications and analyses by the Plan's attorneys produced pursuant to ERISA's "fiduciary exception" for attorney-client documents, and insurance policies.

7. Based on that focused discovery, the parties prepared two rounds of detailed mediation briefs and engaged in a full-day mediation on March 4, 2022 with Mr. Meyer. The mediation proved unsuccessful. The parties had divergent views of the merits of Plaintiffs' claims. Moreover, as expected, Defendants' fiduciary liability insurers contested coverage based on their position that Plaintiffs' claims were "benefits denial" claims and thus not covered under fiduciary liability insurance policies. Accordingly, while the parties and Mediator Meyer continued to engage in discussions, the parties shifted gears and proceeded to full-fledged litigation.

8. The parties had widely divergent views on regarding the scope of discovery and a schedule for motion practice. *See* ECF Nos. 77, 81, 88,117. After largely winning that dispute, we aggressively pursued discovery against the Defendant Trustees, and the Defendants did the same with respect to the named representative Plaintiffs.

9. Simultaneously with these battles over discovery and class certification, the parties, with the extensive involvement of Mediator Meyer, continued to engage in settlement discussions. Complicating those discussions was the reality that the Plan's fiduciary liability insurance policies were "wasting" policies, meaning that every dollar spent on the defense of the action was one less dollar available to contribute to a settlement. Other complications included the fact that there were four layers of fiduciary liability insurance (one primary policy and 3 access policies), and the insurers' continued

insistence that they had a strong basis to contest coverage. Despite these realities, we were unwilling to take remove the pressure of the litigation and discovery until there was substantial progress in the negotiations.

10. Eventually, due to the tireless efforts of Mediator Meyer and hard work by the parties and their counsel, sufficient progress was made in negotiations to justify a pause of the most expensive portions of formal discovery, to focus on discovery targeted toward settlement. Because of the complicated nature of the issues and complicated structure of the settlement, substantial negotiations were required to create an outline of the terms and structure of a settlement, refine those terms and structure, and fund that structure with sufficient money to be satisfactory to Plaintiffs. The parties also needed to engage in extensive negotiations to complement the monetary components of the settlement with important non-monetary prospective relief. Thereafter, the parties engaged in an extensive process to draft a detailed set of settlement documents.

11. Based on our extensive experience and work on this case, we believe that the proposed settlement provides an excellent result for the Settlement Class and provides a better result than the most-likely best result that could have been achieved after a successful trial and successful disposition of expected appeals, without the risks and delays of continued litigation.

12. The net monetary payments available in the Settlement, in conjunction with the pre-existing $95/month HRA contributions provided by the 2020 Amendments, represents a substantial share of the cost to purchase Medicare GAP coverage for 2020-2022 and the projected costs from 2023-2030.

13. The non-monetary provisions of the Settlement address critical claims and misconduct alleged in the Amended Complaint and provide substantial value to all Plan participants. In particular, the Plan will be required to make timely disclosures to the SAG-AFTRA National Board or SAG-AFTRA Executive Committee about projections, reports and plans related to proposed changes to participant premiums, eligibility

thresholds, or benefits and detailed financial disclosures about and the Plan's financial condition prior to the commencement of collective bargaining negotiations relating to the Commercials CBA, Netflix CBA, or TV/Theatrical CBA. Settlement Agreement § 11.2.4. Plaintiffs alleged that Defendants failed to disclose Plan funding information in connection with the 2019/2020 collective bargaining processes, while secretly planning to eliminate seniors from Plan coverage, and, as a result, the Union was disarmed from obtaining substantial additional Plan funding in the 2019 and 2020 negotiations. After this Court denied the motion to dismiss, in connection with the negotiation of the 2022 Commercials Contract, the Plan provided detailed information to the Union negotiators (including Plaintiff Jolliffe) concerning Plan funding and the amount of funding required to sustain the benefit structure, which led to negotiations which secured a substantial increase in the contribution rate to fund the Plan. The other non-monetary terms similarly address issues relevant to the claims asserted in the Amended Complaint.

14. The Class representatives were actively engaged prior to and after the commencement of this action and throughout the litigation and mediation and settlement processes. They actively participated in counsel's pre-suit investigation of the claims and have continued to consult with and be responsive to counsel and the discovery process. Plaintiff David Jolliffe—a Union member for 55 years, Union negotiator for 25 years and current National Board Member and Los Angeles Vice-President—rendered invaluable assistance and knowledge to counsel and the litigation and the mediation and settlement process, zealously advocating the interests of the Class members. We believe each of the Class Representatives deserve a service award here. None were promised, nor conditioned their representation or approval of the Settlement on the expectation of a service award. They have spent many hours over the years developing the case, conferring with counsel, answering discovery requests, searching for and producing documents, and evaluating the proposed settlement.

15. We vigorously prosecuted this action, the mediation, and the settlement negotiations. Negotiations were difficult, protracted, and often spirited. The parties' negotiations were aided by Mr. Meyer's tireless attention, including extensive "shuttle diplomacy." He played a crucial role in supervising the negotiations and helping the parties bridge their differences and evaluate the strengths and weaknesses of their respective positions.

16. Despite the strong equities underlying their claims, Plaintiffs faced substantial risks. While we defeated Defendants' motion to dismiss, Plaintiffs still faced a substantial risk that some or all of the claims would be dismissed at summary judgement, trial or on appeal based on a finding that Defendants' conduct was in the "Settlor" function.

17. In addition, as stated in the Plan's Summary Plan Document, the terms and benefits of the Plan expressly were subject to reduction, modification or elimination by the Trustees at any time, which posed another substantial risk. More fundamentally, while we believe that the Defendants did not engage in a prudent process in connection with the Merger, the 2019/2020 Contracts, or the implementation of the 2020 Amendments, it is undisputed that Defendants conducted many meetings, and received advice and numerous reports from various financial and legal advisors, which may have insulated them from liability, even if the Court ultimately concluded, as a matter of fact, that the decisions Defendants made were bad, unfair or inequitable.

18. Class Counsel and Defendants did not discuss attorneys' fees at all during negotiations until after they negotiated the material terms and amount of the Settlement. Indeed, the first reference to fees occurred in connection with the inclusion in the drafts of the formal Settlement Agreement which, as reflected at Section 9.2 of the Settlement Agreement, provides for there is no "clear sailing" agreement and further provided that Defendants reserve all rights to oppose any fee request.

19. The Plan has represented that its records reflect that there approximately 93,500 class members and over 10,000 Senior performers (or their spouses) will be entitled to payment from the Net Settlement Fund.

20. As reflected in our firm website attorney biographies at https://chimicles.com/steven-a-schwartz/ and https://chimicles.com/robert-j-kriner-jr/, we have decades-long experience of obtaining substantial and in many instances ground-breaking recoveries (including many full recovery settlements and judgments) for the classes we have represented. We also had the assistance of local counsel with vast experience in entertainment-industry cases (*see* https://www.jjllplaw.com/neville-l-johnson) and co-counsel who is recognized as one of, if not the, leading economic forensic analyst of ERISA plans with extraordinary. *See* https://siedlelawoffices.com/.

21. Attached s Exhibit 1 is a copy of the Settlement Agreement and its exhibits.

We declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 9th day of April, 2023, in Haverford Pennsylvania and Wilmington Delaware.

Steven A. Schwartz
STEVEN A. SCHWARTZ

Robert J. Kriner, Jr.
ROBERT J. KRINER, JR.