

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)

**DECLARATION OF MEDIATOR  
ROBERT A. MEYER**

Judge: Christina A. Snyder

I, Robert A. Meyer, hereby declare as follows:

1. I submit this Declaration in my capacity as the mediator in connection with the proposed settlement of the claims asserted in this class action. While the mediation process is confidential, the parties have authorized me to inform the Court of the procedural and substantive matters set forth herein in support of Plaintiffs' motion for preliminary approval of the proposed class action settlement. I make this Declaration based on personal knowledge of the facts and am competent to so testify.

2. I work as a mediator, arbitrator, referee/special master and am affiliated with JAMS, the largest provider of alternative dispute resolution services worldwide. I have served as a mediator for more than fifteen years and specialize in complex business litigation pending throughout the United States. I have extensive experience mediating class actions, including mediating dozens of ERISA cases (which often involve related issues involving insurance). I have been ranked on Chambers USA's "National Mediators" list since 2019. Before becoming a neutral, I worked for over 40 years as a practicing attorney, specializing in complex business litigation, professional liability and class actions.

3. I was retained by the parties in this matter to serve as a private mediator

1 for potential settlement discussions. Without waiving the mediation privilege, and as  
2 discussed in more detail below, I believe, based on my extensive discussions with the  
3 parties and the information made available to me both before, during, and after the  
4 mediation that this settlement is a fair, reasonable, and adequate resolution given the  
5 risks to all parties involved, and resulted from arm's length negotiations between  
6 engaged, experienced, and knowledgeable counsel.

7 4. After the Court denied Defendants' motion to dismiss and request to file an  
8 interlocutory appeal, the parties agreed to retain me as mediator and focus their initial  
9 discovery efforts on information necessary for settlement purposes. *See* ECF No. 71. I  
10 had previously successfully mediated the *Snitzer v. Board of Trustees of the American*  
11 *Federation of Musicians, et al.*, No. 1:17- cv-5361 (S.D.N.Y.), another ERISA class  
12 action, which involved the same counsel and some of the same insurers involved in this  
13 case.

14 5. The parties and I participated in a full-day mediation session via Zoom on  
15 March 4, 2022. Before the mediation, I had several discussions with the parties to  
16 familiarize myself with the case and understand their respective positions. Based on the  
17 focused discovery discussed above, the parties also prepared two rounds of detailed  
18 mediation briefs, which I reviewed prior to that mediation session. The various  
19 documents addressed key factual issues and the important legal issues related to both  
20 liability, damages and insurance coverage. I found these mediation statements and  
21 related discussions to be extremely valuable in helping me understand the relative merits  
22 of each party's positions, and to identify the issues that were likely to serve as the  
23 primary drivers and obstacles to achieving a settlement. Because the parties to the  
24 mediation submitted their mediation statements and arguments in the context of a  
25 confidential mediation process pursuant to Federal Rule of Civil Procedure 408, I cannot  
26 reveal their content. However, I can say that the arguments and positions asserted by the  
27 parties were the product of hard work that was highly adversarial and complex.

1           6.    The May 4, 2022 mediation was attended by multiple counsel for each party  
2 and the relevant insurers, and lasted all day. Based on the mediation session, it was my  
3 impression that both sides possessed strong arguments. The mediation proved  
4 unsuccessful. The parties had divergent views of the merits of Plaintiffs' claims,  
5 Defendants' defenses, damages, and insurance coverage issues (including that  
6 Defendants' fiduciary liability insurers contested coverage). While some progress was  
7 made regarding non-monetary aspects of a potential settlement, the parties were far apart  
8 on monetary terms.

9           7.    After the unsuccessful May 4 mediation, I remained in touch with the parties  
10 regarding the progress of the litigation and the potential for resumed mediation.

11           8.    In the Summer of 2022, after the Court entered a scheduling order, I  
12 intensified my "shuttle diplomacy" efforts. As a result of these efforts, the parties began  
13 to make progress regarding the broad outlines of a potential settlement, although wide  
14 gaps remained. The parties, with my assistance, continued to exchange information  
15 geared towards settlement (and protected by Rule 408) and over the next several months  
16 continued to work on the outlines of potential structures for monetary terms along with  
17 continuing work on non-monetary terms. Finally, in the Fall of 2022, the parties and the  
18 insurers engaged in negotiations over monetary terms. Those negotiations, which were  
19 arm's-length and hard fought, continued through the Fall of 2022 and the Winter of 2023,  
20 and at various points seemed at a dead end. Complicating those discussions was the  
21 reality that the Plan's fiduciary liability insurance policies were "wasting" policies,  
22 meaning that every dollar spent on the defense of the action was one less dollar available  
23 to contribute to settlement. For that reason, at a point when I felt the parties were making  
24 progress toward a potential resolution, I suggested that the parties agree to a short  
25 standstill in litigation discovery to preserve insurance resources and to focus their efforts  
26 on reaching agreement.

27           9.    After extensive additional shuttle diplomacy by me and negotiations between  
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1 the parties and the fiduciary liability insurers, the parties reached agreement on the broad  
2 outlines of a settlement and began the process of drafting a complicated set of settlement  
3 papers. Given the complicated nature of the issues, negotiations over the monetary and  
4 non-monetary terms continued throughout the drafting process. Where necessary, I  
5 assisted the parties in these negotiations.

6 10. There was no collusion whatsoever in reaching the terms of the settlement  
7 - the negotiations were entirely at arms-length. I believe the settlement agreement now  
8 before the Court is in the best interest of all parties and the Class.

9 11. Throughout this process, I met with each side individually to candidly  
10 discuss their positions. At all times I found counsel to be engaged, motivated, and  
11 knowledgeable about the case. Counsel zealously and professionally advocated for their  
12 clients' positions while at the same time recognizing the strengths and weaknesses of  
13 their litigation positions, including the risks associated with proceeding to trial, and the  
14 benefits of settlement.

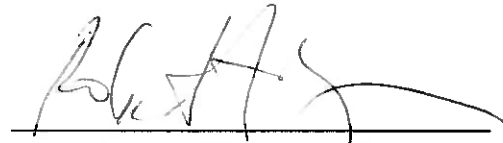
15 12. From a mediator's perspective, this settlement resulted from a robust,  
16 adversarial arm's length negotiation process between experienced, knowledgeable, and  
17 capable counsel who fully understood the strengths and weaknesses of their positions. In  
18 my opinion, all sides were well-represented throughout the entire process. In light of the  
19 facts of the case and my extensive experience mediating complex business litigation  
20 matters, I believe that this is a highly successful result for all parties and the Class. The  
21 settlement obtained is particularly fair, adequate and reasonable under the circumstances  
22 of this case because it provides a material recovery for the Class (both monetary and non-  
23 monetary), especially when measured against the obstacles standing in the way of  
24 achieving a successful resolution of the claims. The settlement ensures that the Class will  
25 receive certain money and other relief without being exposed to the risks of the case  
26 dragging on for years and or of an adverse result

27 13. Based on my experience as an attorney and mediator, and my understanding  
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1 of the claims and defenses at issue based on the parties' mediation briefing, the proposed  
2 settlement is within the range of reasonableness.

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

5 Executed this 6<sup>th</sup> day of April, 2023, in Los Angeles, California.

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ROBERT A. MEYER