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3 **UNITED STATES DISTRICT COURT**
4 **CENTRAL DISTRICT OF CALIFORNIA**
5 **WESTERN DIVISION**

6 **EDWARD ASNER, et al.,**

7 **Plaintiffs,**

8 **vs.**

9 **THE SAG-AFTRA HEALTH**
10 **FUND, et al.,**

11 **Defendants.**

Case No. 2:20-cv-10914-CAS (JEM)

DECLARATION OF STEVEN A. SCHWARTZ IN SUPPORT OF PLAINTIFFS’ MOTION FOR FINAL APPROVAL OF SETTLEMENT; AND FOR ATTORNEYS’ FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARDS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

Date: September 11, 2023

Time: 10:00 a.m.

Courtroom: 8D

Judge: Christina A. Snyder

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17 Steven A. Schwartz, hereby declare as follows:

18 1. I am a partner in Chimicles Schwartz Kriner & Donaldson-Smith LLP and
19 have served as Lead Plaintiffs’ Counsel in this case along with my law partner Robert J.
20 Kriner, Jr., and submit this declaration based on personal knowledge, and if called to do
21 so, could testify to the matters contained herein. This Declaration supplements the Joint
22 Declaration of Steven A. Schwartz and Robert J. Kriner, Jr. in Support of Preliminary
23 Approval previously filed at ECF 128.

24 2. Pursuant to the Settlement, the SAG AFTRA Health Plan (“SAHP”) will
25 provide up to \$700,000 per year for eight years (up to a total of \$5.6 million) commencing
26 in 2023 to be paid annually to the Senior Performers who would have qualified for SAHP
27 coverage for those years but for the elimination of the Dollar Sessional Rule, in an
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1 amount equal to approximately one-half of the amount of the residual-based employer
2 contributions to the SAHP on behalf of the participant. These *annual* payments, which,
3 based on information produced in connection with Settlement negotiations and
4 discussions with Defendants' counsel, are projected to likely range from approximately
5 \$438 to \$4,375 per Qualifying Senior Performer, represent a substantial percentage of
6 damages measured as the average cost of acquiring Medicare or Medigap coverage to
7 most-closely replicate the scope of the SAHP coverage and taking account of the fact
8 that under the 2020 Amendments, many eligible Class members who had an HRA were
9 provided an HRA allocation of \$95 or \$20 per month (\$1,140 or \$240 per year) towards
10 the cost of obtaining replacement coverage. The Plan has calculated that if all of the
11 Senior Performers who it has identified as having lost their entitlement to Plan coverage
12 in 2023 due to the elimination of the Dollar Sessional Rule have HRA accounts by May
13 1, 2024 as provided in the settlement, the total payments for 2023 will be over \$625,000
14 and the average payment will be over \$1,600 per Qualifying Senior Performer.

15 3. The Settlement in the *Asner* case requires dismissal of plaintiffs' appeal in
16 the related *Fisher v. Screen Actors Guild-American Federation of Television and Radio*
17 *Artists, et al.*, No. 21-cv-05215-CAS (JEM) currently pending in the Ninth Circuit Court
18 of Appeals. The plaintiffs in *Fisher* have agreed in principle to dismiss their appeal in
19 exchange for SAG AFTRA's commitment to undertake to monitor, facilitate, and use
20 reasonable efforts to ensure compliance by the SAHP and its Board of Trustees with the
21 rights and entitlements of the Union under the Governance Provisions set forth in Section
22 11 of the Settlement Agreement in *Asner*. Even though Class Counsel have a collective
23 lodestar in excess of \$1 million in *Fisher*, we agreed to settle *Fisher* without payment to
24 us of any fees or expenses.

25 4. Attached as Exhibit 1 is a true and correct copy of a tweet posted by the
26 family of deceased plaintiff Edward Asner supporting the proposed Settlement.

27 5. In connection with my firm's investigation of potential claims, we spoke
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1 with certain firms that considered, but decided against filing a complaint with respect to
2 the 2020 Amendments. We provided substantial assistance to one California-based firm
3 specializing in age discrimination cases with respect to their investigation, but they too
4 decided against filing a case.

5 6. In evaluating the risk of filing this lawsuit on a contingent basis, my firm
6 assumed that before implementing the 2020 Amendments, Defendants' legal advisors
7 had received at least informal guidance from the relevant governmental agency that the
8 2020 Amendments did not violate the Medicare Secondary Payor Program rules and
9 regulations. statute or its governing rules and regulations. That assumption was
10 confirmed in discovery.

11 7. Despite the numerous formidable risks of litigation challenging the 2020
12 Amendments, due to our view that the 2020 Amendments represented an extreme
13 injustice, my firm agreed to conduct an extensive pre-suit investigation on a contingent
14 basis. That investigation, which resulted in the drafting of the class action complaint,
15 lasted about four months with a corresponding lodestar of about \$425,000 based on over
16 550 hours. Based on our careful and comprehensive analysis of the legal and factual
17 issues, my firm creatively crafted the Complaint to navigate the vicissitudes of ERISA
18 and the age discrimination laws to protect against the expected defenses and navigate
19 around expected coverage defenses by the Plan's fiduciary liability insurers.

20 8. As reflected in the parties' Joint Reports (ECF Nos. 77 and 88), the parties
21 had widely divergent views regarding the appropriate scope of discovery and schedule
22 for motion practice. The Court largely agreed with Plaintiffs' proposed scope of
23 discovery and proposed schedule. ECF No. 117. Thereafter we aggressively pursued
24 discovery against the Defendant Trustees, and the Defendants pursued discovery from
25 the named Plaintiffs. The parties battled extensively over objections and productions
26 with respect to their various requests. In addition to formal notice, there was extensive
27 coverage of the Settlement in entertainment-industry publications. *See:*

- 1 • [https://variety.com/2023/biz/news/sag-aftra-health-plan-ed-asner-](https://variety.com/2023/biz/news/sag-aftra-health-plan-ed-asner-settlement-1235578340/)
- 2 [settlement-1235578340/](https://variety.com/2023/biz/news/sag-aftra-health-plan-ed-asner-settlement-1235578340/);
- 3 • [https://www.hollywoodreporter.com/business/business-news/sag-aftra-](https://www.hollywoodreporter.com/business/business-news/sag-aftra-health-plan-lawsuit-settled-1235370142/)
- 4 [health-plan-lawsuit-settled-1235370142/](https://www.hollywoodreporter.com/business/business-news/sag-aftra-health-plan-lawsuit-settled-1235370142/);
- 5 • [https://deadline.com/2023/04/ed-asner-sag-aftra-health-plan-settled-](https://deadline.com/2023/04/ed-asner-sag-aftra-health-plan-settled-posthumous-1235321129/)
- 6 [posthumous-1235321129/](https://deadline.com/2023/04/ed-asner-sag-aftra-health-plan-settled-posthumous-1235321129/).

7 9. My firm has received dozens of calls and emails from class members
8 regarding the Settlement. We have responded to each of them and answered the questions
9 raised. We also provided several of the named Plaintiffs with answers to questions they
10 received from numerous class members.

11 10. Based on our calculations, there should be enough money in the \$15 million
12 fund to make the full target payments (which range from \$400 - \$4,400) in the proposed
13 plan of allocation even if the Court grants Class Counsel's fee and expense request in
14 full.

15 11. Class Counsel are experienced and have a track record of success in high-
16 stakes class actions, including recoveries and judgments representing the full recovery
17 of damages, *See*

- 18 a. <https://chimicles.com/steven-a-schwartz/>
- 19 b. <https://chimicles.com/robert-j-kriner-jr/>.

20 12. The Plan's fiduciary insurers paid defense counsel approximately \$4.5
21 million on a non-contingent basis.

22 13. My firm dedicated 4,471.8 hours to prosecuting this case on behalf of
23 Plaintiffs and the class from the outset through June 2023, resulting in a lodestar of
24 \$3,151,938.50. Attached as Exhibit 2 is a summary of the number of hours worked by
25 each professional of my firm, along with their current rate and resulting lodestar. Detailed
26 contemporaneously-maintained time records supporting the information in these charts
27 are available and will be submitted if requested by the Court. My firm's lodestar will
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1 further increase in the months to come as a result of our ongoing work responding to
2 class member inquiries, preparing the reply in support of Plaintiffs' motions for final
3 approval and for attorneys' fees, expense reimbursement, and service awards, preparing
4 for and attending the Final Fairness Hearing, and supervising the Settlement
5 Administrator's work, including with respect to distribution of the Settlement Fund.

6 14. While the Chimicles Schwartz firm's practice is primarily contingent, in
7 certain matters, we have been paid our full hourly rates on a non-contingent basis by
8 sophisticated clients, including recently by a multi-billion dollar company.

9 15. Attached as Exhibit 3 is a summary of Class Counsel's collective lodestar.

10 16. In this case, my co-counsel Mr. Siedle's work primarily consisted of
11 performing complex economic analyses that proved critical in framing the complaint,
12 analyzing the relevant documents, and negotiating the settlement. In essence, Mr. Siedle
13 served as Class Counsel's economic expert. If Mr. Siedle was not a co-counsel in this
14 case, we would have had to hire and pay an economic expert whose bills would then have
15 been submitted for reimbursement as a reasonable and necessary litigation expense.

16 17. My firm advanced a variety of expenses, all of which were reasonable and
17 necessary in furtherance of the prosecution of class members' claims and have not yet
18 been reimbursed. A chart itemizing those expenses is attached as Exhibit 4. They are
19 reflected in the books and records of my firm, which are prepared from expense vouchers,
20 check records, invoices, and other source materials, copies of which will be made
21 available upon the Court's request. Third party expenses are not marked up, meaning
22 that my firm requests reimbursement only for the amount actually billed by the third
23 party. Class Counsel may incur additional expenses in connection with the final approval
24 hearing and settlement administration. Class Counsel respectfully reserve the right to
25 seek reimbursement for those expenses.

26 18. A summary chart itemizing the collective expenses of all Class Counsel is
27 attached as Exhibit 5.

1 19. Plaintiff Mr. Jolliffe, who spent an extraordinary number of hours assisting
2 counsel, has committed to donating his Service Award to the SAG Foundation.

3 20. Each of the Plaintiffs have agreed that their support of the Settlement is not
4 contingent on receiving any service award.

5 21. Class Counsel recently received a letter from one Class Member raising
6 concerns about the Settlement. We promptly reached out to the Class Member to discuss
7 those concerns and answer any questions he may have, and, depending on his
8 availability, expect to discuss with him his concerns within a week or two.

9
10 I declare under penalty of perjury under the laws of the United States of America
11 that the foregoing is true and correct.

12 Executed this 12th day of July, 2023, in Berwyn, Pennsylvania.

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15 /s/ Steven A. Schwartz
16 STEVEN A. SCHWARTZ
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EXHIBIT 1



← Tweet



Matt Asner
@masner



This settlement is a great first step in righting a terrible wrong that was done by [@sagaftra](#) to many of its members. It is now up to the membership of this great union to make sure that members are protected from these kind of actions in the future. As Ed would say. Vote!



Deadline Hollywood @DEADLINE · Apr 10

A lawsuit filed against the SAG-AFTRA Health Plan, which claimed that changes to eligibility for benefits “illegally discriminated” against older members, has been settled deadline.com/2023/04/ed-asn...



4:21 PM · Apr 10, 2023 · 12.1K Views

3 Retweets 1 Quote 70 Likes



Tweet your reply!

Reply

EXHIBIT 2

Asner, et al. v. The SAG-AFTRA Health Fund, et al.

LODESTAR REPORT

FIRM NAME: CHIMICLES SCHWARTZ KRINER & DONALDSON-SMITH LLP

REPORTING PERIOD: INCEPTION TO JUNE 30, 2023

NAME	STATUS*	HOURLY RATE	HOURS	LODESTAR
Nicholas E. Chimicles	P	\$1,100.00	3.00	\$3,300.00
Robert J. Kriner, Jr.	P	\$1,000.00	1518.40	\$1,518,400.00
Steven A. Schwartz	P	\$1,000.00	625.70	\$625,700.00
Timothy N. Mathews	P	\$875.00	0.90	\$787.50
Scott M. Tucker	P	\$800.00	105.50	\$84,400.00
Benjamin F. Johns	FP	\$800.00	0.40	\$320.00
Beena M. McDonald	P	\$750.00	18.20	\$13,650.00
Andrew W. Ferich	FA	\$750.00	1.30	\$975.00
Tiffany J. Cramer	FOC	\$700.00	10.50	\$7,350.00
Alex M. Kashurba	A	\$550.00	0.20	\$110.00
Mark B. DeSanto	FA	\$535.00	215.40	\$115,239.00
Zachary P. Beatty	A	\$500.00	43.00	\$21,500.00
Emily L. Skaug	FA	\$425.00	1471.60	\$625,430.00
David W. Birch	FIT	\$400.00	22.20	\$8,880.00
Juliana Del Pesco	A	\$350.00	85.90	\$30,065.00
Justin P. Boyer	PL	\$350.00	34.70	\$12,145.00
W. Kennedy Comer	LC	\$280.00	78.90	\$22,092.00
Mariah Heinzerling	LC	\$280.00	16.20	\$4,536.00
Carlynn A. Wagner	FA	\$260.00	210.90	\$54,834.00
Amanda L. Roy	FPL	\$250.00	8.70	\$2,175.00
Corneliu P. Mastraghin	FPL	\$250.00	0.20	\$50.00
TOTALS			4,471.80	\$3,151,938.50

P = Partner

FP = Former Partner

FOC = Former Of Counsel

A = Associate

FA = Former Associate

FIT = Former Info. Tech.

PL = Paralegal

FPL = Former Paralegal

EXHIBIT 3

Asner, et al. v. The SAG-AFTRA Health Fund, et al.

LODESTAR REPORT - ALL FIRMS

REPORTING PERIOD: INCEPTION TO JUNE 30, 2023

FIRM NAME	HOURS	LODESTAR
Chimicles Schwartz Kriner & Donaldson-Smith LLP	4,471.80	\$3,151,938.50
Johnson & Johnson LLP	425.20	\$412,982.50
Law Offices of Edward Seidle	196.70	\$236,040.00
TOTALS	5,093.70	\$3,800,961.00

EXHIBIT 4

Firm Name: Chimicles Schwartz Kriner & Donaldson-Smith LLP
Expenses

Reporting Period: Inception to May 2023
SAG AFTRA

Travel & Related Expenses	\$20.91
Internal Reproduction/Copies	\$13,508.75
Hearing Transcripts	\$413.82
Mediation Fees	\$17,438.00
Technology Services/Data Collection/Hosting	\$6,017.03
External Reproduction/Copies/Document Production	\$1,733.40
Computer Research	\$7,041.73
Postage/Express Delivery/Messenger	\$569.53
Filing Fees	\$2,258.55
TOTAL	\$49,001.72

EXHIBIT 5

**All Plaintiffs' Counsel
Expenses**

**Reporting Period: Inception to May 2023
SAG AFTRA**

Travel & Related Expenses	\$20.91
Internal Reproduction/Copies	\$13,629.66
Hearing Transcripts	\$413.82
Mediation Fees	\$17,438.00
Technology Services/Data Collection/Hosting	\$6,017.03
External Reproduction/Copies	\$983.40
Computer Research	\$7,041.73
Postage/Express Delivery/Messenger	\$569.53
Filing Fees	\$2,758.55
Subpoenas	\$1,331.31
TOTAL	\$50,203.94