IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ANDREW SNITZER and PAUL LIVANT, Plaintiffs, v. THE BOARD OF TRUSTEES OF THE AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS' PENSION FUND, ET AL., Defendants.	Case 1:17-cv-05361-VEC

NOTICE OF PLAINTIFFS' UNOPPOSED MOTION FOR CERTIFICATION OF A SETTLEMENT CLASS, PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, AND APPROVAL OF NOTICE

PLEASE TAKE NOTICE that for the reasons set forth in the Memorandum of Law in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement and Approval of Notice ("Memorandum"), and the Class Action Settlement Agreement dated March 25, 2020 ("Settlement Agreement"), Plaintiffs in the above-captioned action ("Action") hereby move the Court for entry of an order that provides for among other things: (i) certification of the proposed settlement Class; (ii) preliminary approval of the proposed settlement ("Settlement"); (iii) approval of the forms of notice to Class Members and the procedures for their dissemination; and (iv) a schedule leading up to the final settlement hearing at which the Court will consider whether the proposed Settlement should receive final approval, and whether the application that Plaintiffs and Plaintiffs' counsel will make for attorneys' fees, litigation expenses, and Service Awards for the Class Representatives[1] should receive approval.

[1] The Class Representatives have made a commitment to donate any Service Awards approved by the Court to an organization or organizations fighting to protect the interests of AFM Plan participants.

The Settlement Agreement is attached as Exhibit 1 to the Declaration of Steven A. Schwartz in support of this Motion filed concurrently herewith.

Exhibit 1 to the Settlement Agreement is Plaintiff's proposed form of Order Granting Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement and Approval of Notice. Exhibit 2 to the Settlement Agreement is the Parties' proposed form of Notice.

For the reasons set forth in Plaintiffs' Memorandum, Plaintiffs respectfully request that the Court find that the proposed Settlement merits preliminary approval and enter the proposed Order.

Defendants do not oppose granting the relief sought this Motion. Defendants do not join in Plaintiffs' supporting Memorandum.

Dated: March 25, 2020

Respectfully submitted,

By: */s/ Steven A. Schwartz*

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CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2020, a true and correct copy of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement was served by CM/ECF to the parties registered to the Court's CM/ECF system.

Dated: March 25, 2020

/s/ Steven A. Schwartz
Steven A. Schwartz

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PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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INTRODUCTION

Plaintiffs Andy Snitzer and Paul Livant request that the Court certify a settlement class and grant the joint request by Plaintiffs and Defendants (collectively the "Parties") for Preliminary Approval of Class Action Settlement. A copy of the Settlement Agreement ("Settlement") is attached as Exhibit 1 to the accompanying Declaration of Steven A. Schwartz ("Schwartz Decl."). Plaintiffs only agreed to the Settlement after completing fact and expert discovery, which included taking 24 depositions, defending 5 depositions, and reviewing over 64,386 documents produced by the parties and various advisors to the Plan, and after more than two years of extensive negotiations that included the extraordinary efforts by mediator Robert Meyer, Esq. of JAMS, who conducted three in-person full-day mediation sessions along with dozens of additional conference calls with the parties and the Trustees' insurers.

The Settlement represents an unambiguous victory for Plaintiffs and all AFM Pension Plan Participants because it largely achieves all the goals sought by Plaintiffs *in this litigation*, which was focused on the excessive risks the Trustees took in connection with setting the Plan's asset allocations from 2010 through 2017.[1]

[1] The pending application by the Trustees seeking approval from the United States Department of Labor under the Multiemployer Pension Reform Act of 2014 ("MPRA") to impose benefit cuts on Plan Participants, while tragic, *is not* part of this litigation and the claims asserted in the Amended Complaint were never intended to or capable of preventing the Trustees from seeking approval for cuts nor would any damages that could have been awarded *and collected* after a successful trial likely been sufficient to prevent the Plan's eventual funding shortfall. The evidence that Plaintiffs obtained during discovery reflects that the Trustees should have but failed to disclose to Plan Participants years ago that they embarked on their risky investment strategy in a "hail Mary" bet to avoid disclosing the Plan's looming insolvency. The Governance Provisions of the Settlement are designed to prevent the Trustees from ever again blindsiding Plan Participants like they did from 2010 through the end of 2016 (when they first disclosed the precarious financial condition of the Plan and the risk that the Plan was on a path toward insolvency). Schwartz Decl., ¶ 15.

$26.85 Million Cash Recovery: The Settlement requires Defendants to pay $26.85 million. That amount represents the vast majority of provable damages that likely would have been won at trial and between about 65% to 75% of the Trustees' available insurance policy limits to pay any final judgment, which represent, for practical purposes, the only available source for payment of any judgment obtained at trial. That amount also represents about 55% of the average total annual contributions made to the Plan by contributing employers; over $1,300 for each active Plan participant currently contributing to the Plan; and over $750 for all active and retired Plan participants.[2] Schwartz Decl., ¶ 14.

New Governance Provisions to Bolster Independence and Expertise in Investment Decisions and Provide Transparency to Plan Participants: The evidence obtained in discovery and as explained in detail by Plaintiffs' experts reflected that the Trustees breached their duties with respect to their investment decisions and the processes used in making those investment decisions, and therefore the Trustees could not be trusted to make sound asset allocation decisions going forward if left to their own devices. Accordingly, the Settlement imposes on the Trustees stringent new "Governance Provisions" designed to deter the Trustees from ever again taking the wild and excessive investment risks that they took from 2010 through 2017 (and, in the event they do take similar imprudent investment risks, to create a written record that would increase the likelihood they would be held liable for such imprudence). **If the Court approves the Settlement, the Trustees and the Plan will be required by a Court Order to comply with all of the new Governance Provisions**. Those provisions, which are set forth at Section 8 of the Settlement Agreement, include the following:

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[2] Since the Plan is a defined benefit plan, the balance of $26.85 million Gross Settlement Amount, after deduction of any attorney' fees, expenses and Service Awards to the Class Representatives, will be paid to the Plan, not individual Plan participants.

- **Independent Fiduciary Trustee**: The Settlement at §8.1.5.1 requires the Trustees to appoint Andrew Irving, Esq., to serve as a Neutral Independent Fiduciary Trustee for the AFM Plan for 4-5 years. Mr. Irving was jointly selected by Plaintiffs and Defendants. In his capacity as Independent Fiduciary Trustee, Mr. Irving will serve as a non-voting member[3] of the AFM Plan Board of Trustees and as a member of the Plan's Investment Committee. Mr. Irving will have complete access to relevant information **and critically will "function in all respects" as a third Co-Chair of the Investment Committee**. He shall participate in all Board meetings related to the Plan's investments including asset management and allocation and shall be required to state his assessment, including the reasoning for his assessment, for all matters under deliberation that are subject to a decision or vote related to the Investment Committee (including asset management and allocation), and, make a written record any material disputes between himself and the Trustees. He shall also interface with the Trustees and the Plan's Outsourced Chief Investment Officer, Cambridge Investment Group (the "OCIO"), to prepare a written report regarding possible changes to the Plan's Investment Policy Statement ("IPS") and to ensure compliance with the IPS.[4] Mr. Irving has the requisite expertise in fiduciary standards, investments, and actuarial matters, and a reputation for independence. We believe that he will be a powerful force, both in addressing the Trustee-driven overly-risky asset allocations that persist to this day, and further restraining the Trustees from again breaching their fiduciary duties in connection with setting and monitoring the Plan's asset allocation. *See* Schwartz Decl., ¶ 16 (describing the evaluation of Mr. Irving by Class

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[3] Because of the nature of Taft-Hartley plans and the governing documents for the AFM Plan, the Plan Trustees make decisions based on unit voting (*i.e.*, one vote for the union-side Trustees, and one vote for the employer-side Trustees). Thus, the fact that the Independent Fiduciary is a non-voting Trustee has no practical limitation t because his vote could never trump the majority vote of the duly elected AFM union president Raymond Hai and his appointees.

[4] Plaintiffs' fiduciary standards expert opined that Trustees failed to comply with the IPS in making their imprudent asset allocation decisions. Schwartz Decl., ¶ 17.

Counsel and their experts) and Schwartz Decl., Exhibit 2 (Mr. Irving's declaration describing his credentials and attaching his resume). Critically, at Plaintiffs' insistence, Mr. Irving has no business, professional or personal relationships with any of the Plan's Trustees and has become familiar with the issues raised in the litigation by reading key court documents and expert reports. *Id*. Class Counsel interviewed Mr. Irving and conducted extensive research regarding his qualifications and independence, including getting input from their fiduciary expert and from various lawyers familiar with Mr. Irving and ERISA/Taft Hartley plans. Everyone with whom Class Counsel spoke endorsed Mr. Irving. Based on their investigation, Class Counsel are satisfied he will be a strong, independent force to deter the Trusts from committing the types of breaches alleged in the Amended Complaint. Schwartz Decl., ¶ 16.

- **Replacement of Meketa as OCIO Monitor**: The Trustees retained Meketa as the Plan's Investment Consultant from 2010 through 2017. During that time period, the Trustees adopted the disastrous risky asset allocations challenged in this lawsuit. They also invested an excessive percentage of Plan assets in high-cost actively-managed investment funds, most of which performed worse than passive index funds. Despite the disastrous track record with Meketa, the defendant Trustees nonetheless retained Meketa as the Plan's OCIO Monitor when the Plan shifted to an OCIO model in 2017. As reflected by the evidence obtained in discovery and explained in detail by Plaintiffs' experts, the Trustee's decision to hire Meketa was a disaster and their decision to retain Meketa as OCIO Monitor reflected their continuing breaches of duty, bad judgment and resistance to retaining advisors with the requisite degree of independence. Schwartz Decl., ¶ 18. Accordingly, the Settlement at §8.1.3 requires the Trustees to replace Meketa with a new OCIO Monitor pursuant to an RFP process approved by Plaintiffs. The Settlement also requires the Independent Fiduciary, Mr. Irving to educate the prospective OCIO Monitors about

the claims that were asserted in the lawsuit relating to asset allocation based on his review of various materials exchanged in the lawsuits including the reports of Plaintiffs' and Defendants' liability, damages and actuarial experts so that the OCIO candidates will in a position to guide the Trustees to make sound asset allocation decisions with an appropriate degree of risk and avoid the mistakes challenged in this lawsuit. *Id*. It also provides the new OCIO Monitor with an enhanced role in the Plan's asset allocation decisions. §8.1.4.

- **New Required Disclosures to the Trustees and Plan Participants**: The Settlement at §8.1.2 and Exhibit 5 requires the Plan's OCIO Cambridge to provide the Trustees and Plan Participants with a series of new additional information in its reports including charts showing a comparison of the Plan's asset allocation to the average asset allocations of comparable large Taft-Hartley plans plus a running cumulative comparison of Plan's actual equity performance since OCIO Cambridge took over in 2017 versus the performance of an appropriate index benchmark. These are the same type of charts and comparisons Plaintiffs' experts used in their reports to demonstrate that the Trustees breached their fiduciary duties by taking excessive, unprecedented investment risks and the same type of charts/comparisons that Plaintiffs' experts opined should have been, but were not, provided to the Trustees at each quarterly meeting as part of a prudent process of determining and monitoring the Plan's asset allocation and risk profile. Schwartz Decl., ¶ 19. As reflected by the evidence obtained in discovery and explained in detail by Plaintiffs' experts, the failure of the Trustees to have access to charts showing such comparison in a clear, understandable way resulted in certain Trustees being ignorant just how far the Plan's asset allocations deviated from the allocations of virtually every other large Taft Hartley plan. Indeed, Defendants' experts could not identify a single other large Taft Hartley plan with an asset allocation anywhere near as risky as the asset allocation implemented by the defendant Trustees.

Schwartz Decl., ¶ 19 Moreover, the evidence and expert reports reflected many of the defendant Trustees were ignorant of how poorly the performance of the actively managed funds chosen by Meketa and the Trustees compared, **net of fees**, with the performance of the benchmark index fund investment approach. Schwartz Decl., ¶ 19. Finally, the evidence obtained in discovery and explained in detail by Plaintiffs' experts reflected that the Trustees' communications with Plan participants failed to disclose the Trustees' excessively-risky asset allocation and the investment performance of the actively-managed funds picked by the Trustees in a meaningful, transparent way. Schwartz Decl., ¶ 19. Class Counsel and their experts believe that the requirement that the Trustees provide these new disclosures to Plan participants will effectively prevent the Trustees from hiding such critical information from the participants they represent. Schwartz Decl., ¶ 19.

- **Required Disclosure of New Trustees**: The Settlement at §8.1.6 requires the Trustees to provide Plan Participants with at least four weeks' notice of the identity and qualifications before the appointment of any new Trustees, so that Plan Participants have the opportunity to evaluate and raise any objections regarding those prospective new Trustees. The Trustees had previously rebuffed efforts from Plan participants to provide such notice. Schwartz Decl., ¶ 20.

- **Other Changes**: The Settlement at §8.1.1 acknowledges at least one Employer-designated Trustee and one Union-designated Trustee who are members of the Investment Committee plan to resign and that those two Trustees will be replaced within the next 18 months by two new Trustees who were not previously members of the Board and who will serve on the Investment Committee. The union-side co-chair of the Investment Committee, Phil Yao, resigned in 2018. In addition, a few weeks after undersigned Plaintiffs' counsel deposed employer-side Plan counsel Rory Albert, Mr. Albert was no longer Plan Counsel and he separated from the Proskauer

law firm. Previously, in 2017, union-side counsel Bredhoff & Kaiser was replaced with the Cohen Weiss firm. Schwartz Decl., ¶ 21. These changes will help bring new blood into the mix.

As reflected at paragraph 22 of the Schwartz Declaration, Class Counsel and Plaintiffs' experts (who described the Settlement as a "real win" and "excellent protection infrastructure" believe, collectively, these governance provisions are among the most stringent imposed in connection with settlements of similar private civil litigation under ERISA; will substantially limit the ability of the Trustees from ever again taking the type of excessive, out-of-the-box investment risks that they took from 2010 – 2017; and, to the extent that the Trustees nonetheless persist in their prior imprudent risk-taking, the provisions will create a record that will increase the Trustees' exposure to breach of fiduciary duty claims (which in turn will serve as a deterrent to their committing breaches).

Because the proposed Settlement largely achieves all the goals sought in the Amended Complaint, and for the additional reasons set forth below, Plaintiffs request that the Court find that the Settlement is fair, reasonable, and adequate, and enter an order: (1) preliminarily approving the Settlement; (2) approving the proposed Settlement Notices and authorizing distribution of the Notices; (3) certifying the proposed Settlement Class; and (4) scheduling a final approval hearing. Defendants join in seeking the relief set forth in this Motion.

BACKGROUND

I. PROCEDURAL HISTORY

A. Background that Led to the Complaint

The defendant Trustees claimed that during the financial crisis in 2008 and 2009, the Plan lost approximately $810 million (without providing reasonable answers to Plan participants' questions or divulging any useful/credible information as to the specific details of those alleged losses despite repeated Plan participant inquiry). As of April 2010, its funded percentage dropped to 72.8%. This decline, along with declining fundamentals of the music industry, put the Plan in "critical" (*a/k/a*, "red zone") status under the Pension Protection Act of 2006. This status required the Plan to formulate and disclose to participants a rehabilitation plan to emerge from critical status.

The Rehabilitation Plan adopted by the Trustees in 2010 stated: "This Rehabilitation Plan consists of reasonable measures adopted by the Board which… can be expected to enable the Plan to emerge from critical status… [by] achieving the 7.5% annual investment return assumption," and "under the Rehabilitation Plan… the Plan is estimated to emerge from critical status no later than March 31, 2047 and also is not projected to become insolvent at any point during the projection period." Schwartz Decl., ¶23. The Trustees knew beginning in December 2011 that the Rehabilitation Plan would not enable the Plan to emerge from critical status at any time in the future by achieving the 7.5% actuarial return assumption. But the Trustees waited until July 2016 before telling Plan participants that the Plan was not projected to emerge at any time in the future and that the Plan was on the verge of "critical and declining" status under the MPRA.

Given the failure to disclose the changed funding condition and projection, the Participants had no reason to suspect the Trustees made a series of increasingly-risky asset allocation

investment bets to attempt to exceed the 7.5% actuarial assumption. Those bets included: (1) increasing the Plan's long-term target return from 7.5% , which was standard in the Taft-Hartley world, to a whopping 9%; (2) radically increasing the Plan's investment in its two riskiest investment asset classes – Emerging Markets Equities (EMEs) and Private Equity – to one-third of its assets while reducing its investment in domestic equities below 20%; and (3) investing about 70% of the Plan's assets in high-cost actively-managed funds that repeatedly underperformed benchmarks. The Trustees ignored warnings that making these bets was a "highly-risky roll of the dice" and, as each bet failed, they doubled and tripled down like drunken gamblers chasing losses. Schwartz Decl., ¶ 24.

B. In 2010 Meketa Recommends the Initial Risky, Outsized 6% EME Bet

The Trustees hired Meketa in 2009, and in early 2010 Meketa recommended that the Trustees diversify the Plan's equity investments by reducing its investment allocation to domestic equities (from about 33% to 26%) and investing 6% of Plan's assets in EMEs (even though the average pension plan only invested about 4.5% of assets in EME's) plus another 3% in private equity. This 2010 asset allocation was questionable. However, it was expressly recommended by Meketa. Schwartz Decl., ¶ 25.

In 2011 and 2015, the Trustees doubled and tripled down by increasing the EME allocation from 6% to 11% and then to 15%, and then increasing the allocation to private equity from 3% to 15% and then to 18%, without an explicit, affirmative recommendation to do so from Meketa or Plan actuary Milliman. Essentially, Meketa told the Trustees the allocations were formulated to meet the Trustees' desired projected long-term annualized return substantially in excess of 7.5%. However, Meketa expressly stated that it was the Trustees' decision whether to take the extra risk. Schwartz Decl., ¶ 26.

Meketa provided the Trustees with a reasonable, albeit misguided rationale for the initial 2010 allocation (providing diversification in the equity portfolio since the Plan lost so much money in domestic equity investments in the 2008 recession and expected growth in emerging markets). The 6% EME allocation, while outsized, was not multiples higher than the EME allocation of peer plans. Moreover, ERISA's six-year statute of limitations prohibited Plaintiffs from recovering damages for investment allocation decisions made before July 2011, and the recommendation and initial decision to invest 6% in EME's occurred in 2010. Thus, while Plaintiffs vigorously prosecuted claims related to the initial 6% EME allocation that Meketa recommended in 2010, Class Counsel's best objective assessment, as confirmed by their experts, was that Plaintiffs were unlikely to obtain a verdict at trial that included damages caused by the initial 6% EME investment. Schwartz Decl., ¶ 27.

C. Defendants Ignore Known and Increasing Risks and Double Down by Increasing the EME Bet to 11% and the Private Equity Bet to 15% Despite Suffering Huge EME Losses

The 2010 asset allocation did not improve funding and returns. In fact, as of September 2011, the Plan's $96 million investment in EMEs lost 13.3% since the initial investment in 2010. Nonetheless, in late 2011, the Trustees decided to substantially increase the long-term expected return projection for the Plan's total assets substantially above the industry-norm 7.5% assumed actuarial rate of return by increasing the EMEs allocation from 6% to 11% and the private equity allocation from 3% to 15%. Notably, Defendants' decision to increase the EME and private equity allocations did not come from a corresponding decrease in other high-risk assets; rather, Defendants' decreased the target allocation to U.S. equities from 26% to 18%, even though comparable pension plans invested about 33% of assets in domestic equities.

Given the bull market in U.S. stocks, the reduction of the Plan's U.S. equities investment resulted in huge losses (*i.e.*, a decrease in the investment gains the Plan otherwise would have earned). As noted above, in contrast to the initial 6% EME investment, Meketa did not make an express recommendation for the Trustees to adopt this risky allocation; rather, Meketa told the Trustees that such an allocation was the best way to seek higher returns *to the extent that the Trustees could stomach the increased risk.* Schwartz Decl., ¶ 28.

Meketa should have expressly advised the Trustees against taking that risk, as should have other advisors hired by the Trustees. The failure of the Trustees' advisors to go on record unambiguously cautioning against the Trustees' doubling down is a major factor why Plaintiffs' Counsel and Plaintiffs' experts believe that the proposed Governance Provisions will be effective and provide "excellent protective infrastructure" to promote the independence and expertise in the investment decision-making to prevent the Trustees from committing breaches similar to those at issue in this litigation, and far more effective than simply replacing a few trustees with other trustees chosen by and/or who serve at the pleasure of the duly-elected AFM union president Ray Hair and/or appointed by the employers who make the lion's share of the contributions the AFM pension Plan. Schwartz Decl., ¶ 22.

The new Neutral Independent Fiduciary will not be beholden to either Mr. Hair or the contributing employers, and therefore will have every incentive to act as a voice of reason and can be expected to warn the Trustees against once again making reckless imprudent investment bets. Indeed, since the Settlement requires the Neutral Independent Fiduciary to state his position on all material Investment Committee decisions, the Neutral Independent Fiduciary would only expose himself to potential liability if he simply acquiesces to any future reckless investment decisions by the Trustees. The same is true of the new OCIO Monitor. And based on Plaintiffs' Counsel's

assessment of the document and deposition testimony, the departure of former employer-side Plan counsel Rory Albert, coupled with the replacement in 2017 of union-side counsel Bredhoff & Kaiser with the Cohen Weiss firm, will improve the effectiveness of the processes utilized by the Trustees in connection with fulfilling their fiduciary duties and the processes by which they make their decisions. Schwartz Decl., ¶ 29.

D. EMEs Continued to Underperform So Defendants Chased Losses Again by Increasing the Plan's EME Allocation from 11% to 15%

The Trustees excessive 2011 EME/private equity gamble continued to fail, and the Plan's performance lagged the performance of other Taft-Hartley pension plans precisely because, as the Trustees were told by Meketa, the other plans allocated far less to EMEs and private equity and much more to domestic equities. Nevertheless, in February 2015, Defendants recklessly increased the Plan's projected investment return even higher, to 9%, well above the norm of other Taft-Hartley plans, by increasing the already-overweight EME allocation from 11% to 15% and increasing the private equity allocation from 15% to 18%. Once again, Meketa did not recommend for the Trustees to do so. Meketa again told the Trustees that if they wanted to try and achieve an outsized 9% projected return, such an allocation was the best way to do so if the Trustees were willing to take the increased risk. At the same time, Milliman continued to refuse the Trustees' requests to increase the actuarial return assumption above 7.5%. Schwartz Decl., ¶ 30.

Meketa should have, but did not, advise the Trustees that taking such an increased risk was reckless. So too should have other advisor hired by the Trustees. For the same reasons described above, Plaintiffs' Counsel and Plaintiffs' experts believe that the proposed Governance Provisions will add substantial independence and expertise to the investment decision-making and limit the Trustees' ability to commit breaches similar to those challenged in this litigation. Schwartz Decl., ¶ 31.

E. The Trustees' Excessive Reliance on Active Managers

The Trustees' move to oversized investments in the highest risk asset classes was compounded by their additional risktaking by relying heavily on costly active managers. Defendants imprudently invested a substantial majority of the Plan's equities portfolio with active managers who charged high fees and costs. As of 2010, the Trustees had invested 100% of the Plan's investments in actively-managed funds, and by 2013, the Plan still had over 70% of its domestic equity portfolio and 80% of its intentional equity portfolio in high-cost actively-managed funds. Despite an overwhelming body of evidence to the contrary, Defendants made two distinct bets: (1) that there were active managers who could consistently achieve better-than-market returns sufficient to offset their high costs and fees, and (2) that Defendants and Meketa could somehow identify such active managers. Defendants made these outsized bets in active managers without undertaking meaningful analysis concerning whether it made sense. Critically, the Trustees never received a simple chart reflecting how their active-manager strategy compared to an index fund strategy. Schwartz Decl., ¶ 32. As a result, Defendants persisted in their active manager strategy even though the Plan's aggregate investments underperformed the relevant index benchmark five out of seven fiscal years and the active managers underperformed the market and failed to achieve a net return for extended periods of time.

As with the imprudent asset allocation decisions discussed above, Plaintiffs' Counsel and Plaintiffs' experts believe that the Governance Provisions required by the Settlement add substantial independence and expertise to the investment decision-making and add substantial transparency to Plan participants regarding the investments and performance by active managers. *Id*.

F. The Trustees Finally Disclose the Plan's Precarious Financial Condition

As discussed above, from 2010 through 2016, the Trustees became increasingly aware the Plan's precarious financial position included projected insolvency. By December 2011, Plan actuary Milliman was projecting that the Plan would likely not ever emerge from the red zone. Schwartz Decl., ¶ 33. Indeed, at their depositions, the primary reason the Trustees gave for doubling and tripling down on their increasingly risky asset allocation bets was to attempt to "shoot for the fences" in Hail Mary-like fashion in the hope that outsides investment returns would improve the projections. Schwartz Decl., ¶ 33. The Trustees, however, never told Plan Participants about the projections or that they were taking extraordinary investment risks pursuant to an asset allocation that was far outside the box compared to similar large Taft-Hartley plans. As soon as the MPRA became law, the Trustees began planning for vested benefit cuts as permitted by the new law.

In late 2016, the Trustees finally disclosed the Plan faced projected insolvency while at the same time withholding information about the precise nature of the Trustees' risky, out-of-the-box asset allocation bets, their excessive reliance on active managers, and the damages caused by both. As confirmed in discovery, the Trustees continued their lack of candor in connection with roadshows where they tried to sugarcoat the Plan's investment performance and shift blame elsewhere including to the 2008 recession. As a result, concerned Plan Participants began evaluating how best to hold the Trustees accountable.

Plaintiff Snitzer requested and obtained Plan documents under ERISA and provided the documents to counsel. Plaintiffs Snitzer and Livant determined that litigation was the best way to proceed. Other concerned Plan Participants disagreed with that approach (in part because they understood that the only practical source of recovery was the Plan's D&O Trustee insurance

policies which were insufficient to forestall benefit cuts)[5] in favor of a political-based course of action. Several of those Plan Participants formed a group called Musicians for Pension Security ("MPS"). *See* https://www.musiciansforpensionsecurity.com/. Both approaches proved to be effective in advancing the interests of Plan Participants in seeking to hold the Trustees accountable for their breaches.

1. The MPS Political Approach

One of the MPS leaders, Adam Krauthamer, successfully unseated AFM Plan Trustee Tino Gagliardi as President of the New York-based Local 802, the largest local in the AFM. The MPS undertook an education and lobbying campaign against the current slate of Trustees and achieved some of their goals. However, they were not able to achieve some of their other goals. For example, at the AFM's 2019 convention, the MPS group sponsored a resolution "to add an investment expert and an actuarial expert to the Board of Trustees" because, in its view:

> The task of overseeing actuaries and investment managers in a multi-billion dollar fund is extraordinarily complex. The training and education that our Trustees go through may be helpful but they cannot possibly provide the kind of sophisticated, and critical, expertise that finance and actuarial professionals would bring to the Board. … we cannot simply continue on into the future with the same Trustees and the same processes which have failed us, somehow expecting a different result.

https://www.musiciansforpensionsecurity.com/news/2019/3/5/the-afm-epf-crisis-andnbsp-what-you-can-do-right-now. Unfortunately, that resolution failed. Fortunately, the Neutral Independent Fiduciary Trustee and new OCIO Monitor mandated by the Governance Provisions of the Settlement do achieve the goals underlying that proposed resolution.

The MPS Group also advocated for a "[n]ominating committee to screen out any unqualified incoming trustees" and a requirement the Trustees "[d]isclose on AFM-EPF website

[5] *See* Schwartz Decl., ¶ 34 and Exhibit 3.

the qualifications of each trustee; what skill they bring to the table." https://www.musiciansforpensionsecurity.com/mps-action-plan. The Trustees rebuffed those suggestions by the MPS as well. The requirement under the Settlement providing all Plan Participants advance notice of the identification of each new proposed trustee along with a description of the proposed trustee's supposed qualifications (something the current Trustees had never disclosed before) provides much of the benefit sought in the failed MPS proposal.

2. The Snitzer/Livant Litigation Approach

In exploring the avenue of potential litigation to hold the Trustees accountable, Plaintiffs Snitzer and Livant made inquiries to several leading class action firms. Despite the strong evidence of Defendants' imprudent asset allocations, only one, Chimicles Schwartz Kriner & Donaldson-Smith LLP ("CKSD"), was willing to make the multi-million-dollar investment necessary to take the case for a variety of reasons. CSKD took the case despite the difficult standards under ERISA applicable to a case like this one (*i.e.*, while the Trustees took egregious risks, they nonetheless did so after extensive discussions with their legal, investment and actuarial experts, and discovery did not uncover evidence that the Trustees made such investment decisions in order to line their own pockets).[6] *See* Schwartz Decl., ¶ 35. Their counsel conducted an extensive six-month

[6] *See, e.g.*, *Pension Benefit Guar. Corp. v. Morgan Stanley Inv. Mgmt Inc.*, 712 F.3d 705, 716 (2d Cir. 2013) (ERISA prudence standard is an objective one that "ask[s] whether a fiduciary employed the appropriate methods to investigate and determine the merits of a particular investment."); *Chao v. Merino*, 452 F.3d 174, 182 (2d Cir. 2006) ("ERISA does not impose a duty to take any particular course of action if another approach seems preferable."); 29 C.F.R. § 2550.404a–1(b)(2)(ii) (prudence standards are met where consideration is given to the "projected return of the portfolio relative to the funding objectives of the plans"); *Hugler v. First Bankers Tr. Servs., Inc.*, No. 12 CV 8649 (VB), 2017 U.S. Dist. LEXIS 47813, at *29 (S.D.N.Y. Mar. 29, 2017) (ERISA trustees' use of investment consultant "is evidence of a thorough investigation."); *Donovan v. Cunningham*, 716 F.2d 1455, 1474 (5th Cir. 1983) ("fiduciaries need not become experts … they are entitled to rely on the expertise of others"); *Meiners v. Wells Fargo & Co.*, No. 16-cv-3981, 2017 WL 2303968, at *2 (D. Minn. May 25, 2017) (rejecting claim based on comparison to Vanguard index funds, reasoning that "a comparison of the returns for two different

investigation, which included consultation with Dr. Susan Mangiero, perhaps the leading fiduciary expert in the country (*see* https://susanmangiero.com/), analysis of boxes of documents received from the Plan pursuant to ERISA's disclosure requirements, review of the Plan's Form 5500's, and extensive legal research. *Id*.

G. The Complaints and Related Motion Practice

In July 2017, Plaintiffs filed their initial Complaint. ECF #1. Defendants filed a motion seeking to dismiss the Complaint based on the argument that under ERISA, Trustees cannot be held liable for poor, or even disastrous, decisions, as long as the Trustees followed a prudent process of consulting with experts and making decisions after a reasonable amount of discussion. In support of the motion, the Trustees submitted 29 documents, including 24 reports from their investment manager, Meketa, and an asset-liability study from their actuary, Milliman.

Instead of responding to that motion, Plaintiffs filed an Amended Complaint to better refine their allegations in light of the arguments made by Defendants. In addition, Plaintiffs' Counsel negotiated an extremely valuable deal. In exchange for dismissing the Plan's Executive Director Maureen Kilkelly as a named defendant in the lawsuit (Ms. Kilkelly was not a decision-maker; she was an administrator), Ms. Kilkelly agreed to produce documents from her files to Plaintiffs prior to Plaintiffs' deadline to file their Amended Complaint. This deal proved invaluable as Plaintiffs referenced highly probative information contained in several "hot" documents Ms. Kilkelly produced in their Amended Complaint. Schwartz Decl., ¶ 36.

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funds is insufficient because 'funds . . . designed for different purposes . . . choose their investments differently'"); *Cigna Corp. v. Amara*, 563 U.S. 421, 443-44 (2011) (requiring participants to prove "actual harm" caused by fiduciary non-disclosure to recover monetary relief); *Silverman v. Mut. Benefit Life Ins. Co.*, 138 F.3d 98 (2d Cir. 1998) (requiring causal connection between plan losses and fiduciary breach).

Defendants filed another motion to dismiss—and submitted 21 excerpts of board and committee minutes as attachments—but given the strengths of Plaintiffs' claims and the refinements made in the Amended Complaint, the Court denied Defendants' motion from the bench on the day of oral argument. However, in recognition of the difficult standards to win this type of ERISA claim, and the indisputable evidence that Trustees' decision-making process included extensive meetings, discussions, and evaluation of materials provided by their legal, investment and actuarial consultants, the Court warned plaintiffs that "the gestalt of the board minutes is likely to cause the plaintiffs difficulty at trial or at summary judgment …. In sum, plaintiff has plausibly alleged an ERISA violation, albeit one that will have a tough road to hoe to get past summary judgment." Hearing Transcript, ECF #90, at 39-40, 43. Undeterred, Plaintiffs' Counsel proceeded to take extensive discovery.

H. Discovery, Experts and Trial Submissions

Throughout the litigation, Plaintiffs' Counsel engaged in extensive discovery, including: (1) production of over 204,778 pages of documents by Defendants; (2) production of over 271,814 pages of documents by non-parties including the Trustees' Investment Consultant Meketa, actuary Milliman, legal counsel Proskauer Rose LLP and Bredhoff & Kaiser PLLC, OCIO search consultant Arthur J. Gallagher & Co., Local 802, and several of the Plan's investment managers; (3) production of a massive 100+ gigabyte database by Milliman; and (4) 2,850 pages of documents by Plaintiffs Snitzer and Livant. Schwartz Decl., ¶ 37. Based on the analysis of those documents, Plaintiffs' Counsel identified over 1,400 "hot documents" and more than1,100 additional documents deemed "highly relevant" that were each digested and segregated into approximately 40 different categories for use in depositions and at trial. Schwartz Decl., ¶ 38.

Defendants deposed Messrs. Snitzer and Livant. Plaintiffs deposed the following Trustees: Brockmeyer (two days), Rood (two days), DeMartini, Gagliardi, Greene, Hair, Johnson, Moriarity, Raphael, Thomas, and Yao, plus Executive director Kilkelly. Plaintiffs also deposed former plan counsel, Rory Albert and Penny Clark, three representatives of Meketa, three representatives of Milliman, plus representatives of Local 802 and Gallagher. The Parties also marked almost 350 documents as deposition exhibits. Schwartz Decl., ¶ 39.

Each party submitted reports from three experts, who collectively submitted four reports and five rebuttal reports. Each of the experts were deposed. Collectively, the experts' reports and deposition testimony (much of which is summarized in the expert reports) provide a comprehensive roadmap of the parties' competing contentions regarding liability and damages and the evidence supporting those contentions. Schwartz Decl., ¶ 40. Plaintiffs experts included the following:

- **David Witz AIF, GFS**: Mr. Witz has extensive experience in investing and fiduciary standards. His resume, which list his experience and qualifications, can be accessed at: https://plantools.com/assets/uploads/David%20Witz%20Curriculum%20Vitae.pdf. Mr. Witz served as Plaintiffs' liability and damages expert. He was the plaintiffs' expert in *Tibble v. Edison Int'l*, 135 S. Ct. 1823 (2015), where the Supreme Court issued a monumental decision increasing the fiduciary duties of pension plan trustees. Mr. Witz submitted two reports detailing how and why the Trustees' investment allocation decisions constituted breaches of the fiduciary duties, and calculating the damages associated with the 2010, 2011 and 2015 allocations discussed above and the Plan's use of active managers.

- **Susan Mangiero, PhD, AIFA, CFA, CFE, FRM, PPC**: Dr. Mangiero is recognized as one of the, if not the, leading expert regarding fiduciary duties of pension plan

Trustees. She is a CFA charterholder, certified Financial Risk Manager, Accredited Investment Fiduciary Analyst and Professional Plan Consultant. She works with institutional investors and their attorneys, auditors, financial advisors and asset manager. *See* https://susanmangiero.com/. Dr. Mangiero's report detailed how and why the Trustees' breached their fiduciary in connection with their 2010, 2011 and 2015 asset allocation decisions in the underlying processes used to implement those asset allocation decisions.

- **David Pitts**: Mr. Pitts served as Plaintiffs' actuarial expert. Mr. Pitts is a consulting actuary and the sole proprietor of Independent Actuarial Services, and has been a member of the Academy of Actuaries since 1990. In 1996, Mr. Pitts became a Fellow in the Society of Actuaries. His area of expertise is in pension plan valuation design, pricing, communication and risk analysis (classification and quantification). Independent Actuarial Services has been in business since 2009, providing actuarial support in legal and regulating matters concerning pensions and broaden compensation problems.

Mr. Pitts rebutted the arguments by Defendants' actuarial expert that the Trustees had no choice but to take extraordinary risks because absent those risks the Plan was headed towards a certain insolvency. Mr. Pitts did not address whether the Plan was headed for insolvency regardless of the Trustees' 2010, 2011 and 2015 investment allocation decisions, as that was not relevant to his assignment; he only opined that *from an actuarial perspective*, nothing excused defendants from responsibility for damages caused by their risky investment asset allocation decisions and that the Trustees' reliance on Milliman's stochastic analysis for those investment decisions was misplaced and reflected a failure to understand the results and limits of that analysis.

Defendants experts included:

- **Phyllis Borzi, Esq.**: Ms. Borzi served as the Assistant Secretary for Employee Benefits Security of the United States Department of Labor and was the official in charge of the Employee Benefits Security Administration in the Obama administration and who was the architect of the DOL's "fiduciary rule." She not only opined that the Trustees did not commit any breaches of fiduciary duty in connection with their 2010, 2011 and 2015 investment allocation decisions but also opined that the process used by the Trustees in making their decisions met or exceeded industry standards of prudence.

- **Andrew Carron**: Mr. Carron served as Defendants' damages expert. He was the Chairman and President of NERA economic Consulting, perhaps the most formidable global expert witness organization focused on economics and finance, and, as a result, charged Defendants' $1,000 per hour for his services. He opined that from 2010 through 2017 the Plan's investments returned over 7.5% per years, or slightly higher than the 7.5% actuarial assumption and target investment return Plaintiffs' alleged was industry norm. He also defended the Trustees' asset allocation and active manager decisions. He also rebutted Mr. Witz' damages calculations and opined that even if Plaintiffs somehow won a liability verdict at trial, the highest amount of legally-recognizable damages should not be more than the low to mid tens of millions of dollars.

- **Cary Franklin**: Mr. Franklin served as Defendants' actuarial expert. He is a senior consultant actuary and Managing Consultant with Horizon Actuarial Services. He opined that the Trustees' asset allocation decisions in 2011 2015 had no material impact on the projected insolvency, that given the Plan's "critical" funding status, the Trustees' asset allocation decisions represented a "reasonable measure" under the Pension Protection Act of 2006, and that his "review of the relevant documents of meeting minutes indicates that the AFM-EPF's Board of Trustees' process was second to none."

While Plaintiffs believe the analyses of their experts were correct and reliable, and those of Defendants' experts were wrong and unreliable, the "battle of the experts" undoubtedly created substantial trial risks for Plaintiffs, particularly given the qualifications of Defendants' experts and specifically Ms. Borzi's distinguished service in the Obama administration where she was viewed as a champion of pension holders rights, particularly in connection with her role in establishing the "fiduciary rule" for retirement advisors.

Plaintiffs were fully prepared to proceed to trial. Defendants requested that the Court take several steps to either delay or limit trial, including permitting defendants to submit a summary judgment motion, disqualify Plaintiffs' experts, and limiting the initial phase of trial to receive testimony from the parties' respective experts in order to avoid cross-examination of the Trustees. *See* ECF #118. Plaintiffs successfully defeated those requests and the Court set trial for April 2020 and ordered the parties to submit detailed proposed findings of facts and conclusions of law by the end of 2019. ECF #121. Plaintiffs were far along in the drafting of these proposed findings, with citations to the relevant deposition testimony, deposition exhibits and other documents, and other factual material. In short, at the time of the agreed settlement, Plaintiffs were almost fully prepared to proceed to trial. Schwartz Decl., ¶ 41.

II. AVAILABLE INSURANCE

When Plaintiffs Snitzer and Livant first retained undersigned counsel, we advised them that the Plan's Trustee D&O insurance policies likely represented the only source of recovery. Schwartz Decl., ¶ 42. At the outset of the litigation, the MPS leadership advised its constituency that it had reached the same conclusion. Schwartz Decl., ¶ 43 and Exhibit 3. At the Trustees' depositions, Plaintiffs' counsel verified that the individual Trustees did not have sufficient liquid,

recoverable assets from which to fund a settlement or judgment substantially higher than the available insurance, thereby confirming that their initial assessment Schwartz Decl., ¶ 42.

The Plan only has $50 million in Trustee D&O insurance, with a $25 million primary policy and excess policies of $15 million and $10 million respectively. Schwartz Decl., ¶ 43.[7] These policies are "wasting" policies meaning that the aggregate $50 million limits are reduced by the amount spent on the Trustees' defense counsel and expensive defense experts. Because of the nature of excess insurance policies, it is far more difficult to collect a settlement contribution from excess carriers than if all of the policies were in a single, primary layer. Schwartz Decl., ¶ 43. At the time the Settlement was reached, only about $41 million of insurance coverage remained, and, if the case proceeded to trial and judgment and appeal, Plaintiffs' Counsel estimated that there would only have been about $36 million left on the policies. *Id*. This reality informed Plaintiffs' negotiation strategy as it set a practical ceiling on the maximum amount Plaintiffs could likely recover on their claims regardless of how large of a judgment they obtained the trial and sustained through appeal.

III. MEDIATION AND SETTLEMENT NEGOTIATION HISTORY

[7] One employer-side trustee was arguably covered by two excess fiduciary liability policies with an outside fiduciary coverage endorsement that covered the employer's employees who served in a fiduciary capacity in connection with their work for the employer. Plaintiffs' Counsel independently evaluated these policies, researched the case law relevant to such policies, discussed them with mediator Meyer, who has extensive first-hand experience with insurance coverage generally and such excess policies specifically, and consulted with several insurance experts including one of the nation's leading experts on insurance coverage matters. Based on that comprehensive evaluation, Plaintiffs' Counsel concluded that it would be impossible to get any contribution from these policies in connection with any settlement and that it would be difficult, if not unlikely, to collect from these policies in the event any judgment won at trial exceeded the remaining balance of the Plan's $50 million Trustee D&O policies. Schwartz Decl., ¶ 43 and footnote 1.

In the summer of 2018, the Parties hired one of the country's most distinguished mediators with extensive experience mediating ERISA cases and related insurance issues, Robert Meyer, Esq., of JAMS. *See* https://www.jamsadr.com/meyer/. The Parties and Defendants' insurers participated in a full-day mediation August 2018. In connection with that mediation, the Parties exchanged extensive mediation briefs along with preliminary damages analyses. Schwartz Decl., ¶ 44. In their brief, Plaintiffs made a monetary demand plus a demand for certain injunctive relief designed to improve the governance of the Plan. That mediation was unsuccessful, so discovery continued apace. *Id*.

After Plaintiffs largely completed the fact depositions of the Trustees, their advisors and other non-parties, a second mediation was scheduled in February 2019. Once again, the Parties exchanged detailed mediation briefs that described the evidence supporting the Parties' respective claims and defenses. That mediation was abruptly canceled with one days' notice when the mediator unexpectedly learned that going forward as scheduled would be counter-productive. Schwartz Decl., ¶ 45.

The Parties began exchanging their expert reports, and shortly thereafter, at a status conference on March 1, 2019, the Court, after reviewing the Parties' detailed position statements, which summarized the evidence, denied the Trustees' request for permission to file a summary judgment motion, stating:

> As I think I said at the time of the motion to dismiss, I hear you, I get that the trustees were meeting and they were talking to experts and the like, **but what they ended up with is just hard to see why they thought that was a good idea for a pension fund. I mean, they adopted an exceedingly risky strategy**, and that is part of the gestalt of the facts. Again, there may well be a good record that makes it all make sense. I'm trying to not just look at this like, **looking back, it was really a bad decision, but even at the time, they were getting into very risky, illiquid investments, which just doesn't seem like what a pension fund should be invested in.**

March 1 Hearing Tr. at 7-8 (ECF #110) (emphasis added).[8] After that Hearing, conditions changed sufficiently that the mediator scheduled another mediation for April 30, 2019. Plaintiffs submitted yet another detailed mediation statement that summarized additional deposition and expert discovery for the benefit of the mediator, the Trustees, and their insurers. Schwartz Decl., ¶ 46. The Parties agreed to limit that mediation to the monetary issues and to defer negotiation of the governance issues until after a monetary settlement was reached. *Id.*

While the Parties and the Trustees' insurers made some progress at that mediation towards reaching agreement on a settlement amount, the mediation ended with a substantial gap between the Parties. Plaintiffs thereafter completed expert discovery and made substantial progress for trial, identifying over 700 documents that might be used at trial, categorized by date, witness, and topic; preparing proposed findings of fact and conclusions of law; digesting the various witnesses' depositions and identifying portions to be submitted at trial; and preparing direct and cross-examination witness outlines for trial. Schwartz Decl., ¶ 47.

At the same time, mediator Meyer doggedly engaged in shuttle diplomacy for over six months including dozens of telephone calls and emails in an attempt to close the substantial monetary gap between the parties. The mediator made substantial progress but ultimately concluded that the Parties would not be able to reach an agreement on their own, so he made a mediator's proposal for $26.85 million, which was accepted by all Parties and the Trustees' insurers in early November 2019. Schwartz Decl., ¶ 48.

On November 7, 2019, the Parties informed the Court that they had reached agreement on the monetary terms of a settlement and but that negotiations remained over governance issues. *See*

[8] In response to pleas from defense counsel to keep the Parties' position statements under seal, the Court decided to strike both of them from the record

ECF #132. In order to preserve the remaining insurance proceeds, the Court agreed to the Parties' joint request for flexibility with respect to the December 31, 2019 deadline to file their pretrial submissions so they could focus on the upcoming negotiation for the governance portion of the settlement. *Id.*

Plaintiffs and their counsel formulated their governance demands with the assistance of their expert Dr. Mangiero, and the Parties engaged in substantial direct negotiations over the governance issues. These negotiations, which lasted over three months, were difficult and extensive and resulted in numerous impasses, which resulted in the Parties seeking the assistance of the mediator. The parties participated in a full-day mediation session on January 9, 2020. That session was productive but raised as many new questions as answers. Schwartz Decl., ¶ 49. During the next month the Parties continued to engage in extensive direct negotiations and negotiations through the mediator, during which they encountered various impasses that threatened to derail the provisional monetary settlement. The Parties reported to the Court on January 30, 2020 that they needed two more weeks to see if a settlement on the governance issues could be reached, and the Court granted that additional time and vacated the trial date. *See* Jan. 30, 2020 Minute Entry. During these two weeks, the mediator once again played shuttle diplomat, with numerous joint and individual telephone conferences with the Parties, many emails, and the exchange of several competing term sheets. While the Parties made progress, the discussions were on the verge of irreconcilable impasse as the February 14, 2020 deadline approached. Accordingly, to bridge the gap, Mr. Meyer once again made a mediator's proposal, which both sides accepted late in the evening on February 13, 2020. Schwartz Decl., ¶ 50. The next day the Parties advised the Court that they had reached a settlement.

IV. OVERVIEW OF THE SETTLEMENT TERMS

A. The Settlement Class

On September 20, 2019, after extensive negotiations, the Parties filed a joint motion to certify a litigation class pursuant to Fed. R. Civ. P. 23(b)(1)(A) and 23(b)(1)(B) with a supporting memorandum of law. *See* ECF #130. The Settlement Agreement seeks certification of the same class for settlement purposes: "All participants and beneficiaries of the Plan from August 9, 2010 through the date the Court issues its Preliminary Approval Order (the "Class Period"), excluding the Defendants and their beneficiaries (the "Class"). *Id.* at 7; Settlement Agreement §2.4, The Court should certify the proposed class for settlement purposes for the reasons set forth in the memorandum of law filed as ECF #130.

B. Monetary Relief

Under the Settlement, Defendants and their insurers will pay a Gross Settlement Amount of $26.85 million. *Settlement Agreement* §6. None of that money will be paid from Plan assets. *Id.*

After accounting for any attorneys' fees, expenses, and class representative Service Awards[9] that are approved by the Court, the balance of the Gross Settlement Amount, at least $17 million, will be transferred to the Plan to help pay benefits for Plan Participants. *Id.* §6.1.

The $26.85 million represents a recovery of about 65% of the remaining insurance proceeds and about 75% of the insurance proceeds that Plaintiffs' Counsel projected would be available to pay any judgment achieved at trial and sustained on appeal. The $26.85 million represents about 55% of the average annual made to the Plan by contributing employers; over $1,300 for each active Plan participant currently contributing to the Plan; and over $750 for all active and retired Plan participants. The monetary recovery is also consistent with the MPS group's

[9] As discussed in section IV(G) below, Class Representatives Snitzer and Livant have committed to donating any service Awards approved by the Court to an organization or organizations fighting to protect the pension rights of AFM Plan Participants.

projection at the outset of the litigation of the maximum monetary recovery achievable if the litigation were a complete success. In short, the monetary recovery represents a clear victory for Plaintiffs and the other Plan Participants and a clear defeat for the defendant Trustees and their insurers; reflects that Plaintiffs developed a strong evidentiary record demonstrating the fiduciary breaches by the Trustees consistent with the claims asserted in the Amended Complaint and reports by their experts; and validates Plaintiffs' and Class Counsel's strategy of taking a hard line in settlement negotiations instead of acquiescing to a quicker, cheaper settlement.

C. Prospective Governance Relief

Because, based on the evidence developed through discovery, Plaintiffs, their counsel and their experts questioned the current Trustees' ability to prudently and independently manage the Plan's asset allocation and investment decisions going forward, and to make transparent disclosures to Plan Participants about the Plan's investments, the Settlement at Section 8 also requires the Trustees to implement the extensive Governance Provisions described above. For the reasons set forth above, Class Counsel and their experts believe these Governance Provisions represent a "big win" and will provide and "excellent protective infrastructure" to deter the Trustees from committing the types of breaches alleged in the Amended Complaint.

D. Release of Claims

In exchange for the relief provided by the Settlement, the Parties have a narrowly-tailored release limited to the claims asserted in the Amended Complaint including the Trustees' asset allocation decisions from 2010 through 2017 prior to the time the Plan switched to an OCIO model. The Settlement only releases the claims that:

> 2.22.1 were asserted in the Complaint or Amended Complaint or that arise out of, relate in any way to, are based on, or have any connection with any of the factual or legal allegations asserted in the Complaint or Amended Complaint, including, but not limited to, those that arise out of, relate to, are based on, or have any connection

with decisions made, prior to the OCIO Management Date, regarding (i) the Plan's asset allocation and the selection (including of the Plan's OCIO), retention, monitoring, oversight, compensation, fees, or performance of the Plan's investments or its investment managers; (ii) investment-related fees, costs, or expenses charged to, paid, or reimbursed by the Plan; (iii) disclosures or failures to disclose information regarding the Plan's investments and/or funding; (iv) any alleged breach of the duty of loyalty, care, prudence, diversification, or any other fiduciary duties or prohibited transactions in connection with (i) through (iv) above.

2.22.2 arise out of, relate in any way to, are based on, or have any connection with the approval by the Independent Settlement Evaluation Fiduciary of the Settlement Agreement, unless brought against the Independent Fiduciary alone;

2.22.3 would be barred by res judicata based on entry by the Court of the Final Approval Order.

Settlement at §2.22. Critically, the Settlement does not impact or impair any rights that Plan Participants may have to challenge any of the actions taken by the Trustees in connection with the MPRA benefit cut process. *Id*.

E. Class Notice

Class Members will be sent a direct notice of the settlement ("Settlement Notice") via email, and where necessary, postal mail. Settlement Agreement §§3.2, 3.3 and Exhibit 2. The Settlement Agreement, Notice and relevant Court documents, including the motion papers for preliminary and final approval and for attorneys' fees, costs and service awards, will also be posted on the AFM Plan website. *Id.*

These Settlement Notice provides information to the Settlement Class regarding, among other things: (1) the nature of the claims; (2) the scope of the Settlement Class; (3) the terms of the settlement; (4) Settlement Class members' right to object to or otherwise comment on the settlement and the deadline for doing so; (5) the class release; (6) the identity of Class Counsel and the amount of compensation they will seek in connection with the Settlement; (7) the amount of any requested Class Representatives' compensation; (8) the date, time, and location of the final

approval hearing; and (9) Settlement Class Members' right to appear at the final approval hearing. *Id.*

F. Attorneys' Fees and Expenses

The Settlement Agreement and proposed preliminary approval order requires Class Counsel to file their motion for attorneys' fees and costs at least 30 days before the deadline for objections to the proposed Settlement. Under the Settlement at Section 7 and Rule 23, attorneys' fees are subject to Court approval and are capped at no more than one third of the $26.85 Settlement recovery ($8.95 million), plus Plaintiffs' Counsel's litigation expenses (not to exceed $900,000). To date, Plaintiffs' Counsel has spent over 12,500 hours for a lodestar of about $7.6 million at their regular hourly rates (which have been repeatedly approved by courts across the country in connection with class action settlements and contested fee proceedings). Schwartz Decl., ¶ 51. Plaintiffs' Counsel's expected fee and expense reimbursement request is consistent with fees and expenses awarded to class counsel in other ERISA settlements approved by this court and others. *See, e.g., In re Marsh ERISA Litig.*, 265 F.R.D. 128, 146-50 (S.D.N.Y. 2010) (approving 33.33% attorney fee request as "fair and reasonable," and $1,27 million in "reasonable and necessary" litigation expenses); *Leber v. Citigroup 401(k) Plan Inv. Comm.*, 07-cv-9329-SHS, 2019 U.S. Dist. LEXIS 23593, at *12 (S.D.N.Y. Jan. 3, 2019) (approving 33.33% of $6.9 million settlement); *Spano v. Boeing Co.*, No. 06-CV-743-NJR-DGW, 2016 U.S. Dist. LEXIS 161078, at *7 (S.D. Ill. Mar. 31, 2016) (citation omitted) ("A one-third fee is consistent with the market rate in settlements concerning this particularly complex area of law."); *Tussey v. ABB, Inc.*, No. 06-CV-04305-NKL, 2019 U.S. Dist. LEXIS 138880, at *12 (W.D. Mo. Aug. 16, 2019) (same); *Ramsey v. Philips N. Am. LLC*, No. 18-CV-1099-NJR-RJD, 2018 U.S. Dist. LEXIS 226672, at *6

(S.D. Ill. Oct. 15, 2018) ("Comprising 33 1/3% of the monetary recovery, and far less when non-monetary relief is considered, as it must be, Class Counsel's fee application is reasonable.").

G. Proposed Service Award for Plaintiffs Snitzer and Livant

The Settlement also provides for service awards up to $10,000 for class Plaintiffs Snitzer and Livant for their efforts and the accompanying risks they assumed in bringing this litigation. Settlement Agreement, §7.[10] These service awards are consistent with service awards granted by courts in similar ERISA cases[11] and are well-deserved here.

Both Plaintiffs spent significant time consulting with counsel, producing numerous documents including emails from 2010 through 2017, sitting for full-day depositions by defendants' counsel, participating in mediation sessions, and reviewing various court in mediation documents. Schwartz Decl., ¶ 52. In addition, Plaintiff Snitzer, who holds an MBA with distinction from NYU business school, generated various damages analyses that undersigned Counsel used in connection with evaluating Plan Participants' claims and drafting the initial complaint. *Id*. In attaching their names of this lawsuit, both Mr. Snitzer and Mr. Livant exposed themselves to the risk of retaliation from AFM President Ray Hair, former Local 802 President Tino Gagliardi, and the Trustees and their supporters generally.

Messrs. Snitzer and Livant are distinguished musicians. Among other things, Mr. Snitzer has served as a member of Paul Simon's band as its solo saxophone player for decades and toured

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[10] Any Service Awards approved by the Court will be paid from the amount the Court approved for Class counsel's fees and expenses.

[11] *See, e.g.*, *Moreno v. Deutsche Bank Ams. Holding Corp.*, No. 15-cv-9936, 2019 U.S. Dist. LEXIS 36942, at *10 (S.D.N.Y. Mar. 7, 2019) ($10,000 service award to each of the 5 named plaintiffs); *Bd. of Trs. of Aftra Ret. Fund v. JPMorgan Chase Bank*, N.A., 09 Civ. 686 (SAS), 2012 U.S. Dist. LEXIS 79418, at *9 (S.D.N.Y. June 7, 2012) ($50,000 service award to each plaintiff); *In re Marsh ERISA Litig.*, 265 F.R.D. at 135 ($15,000 service award to each plaintiff); *Koch v. EMCOR Group Inc. et al.*, No. 98 Civ. 5519 (S.D.N.Y.), ECF No. 133 ($10,000 service award); *Leber*, 2019 U.S. Dist. LEXIS 23593, at *12 ($15,000 service awards).

with the Rolling Stones and Billy Joel. *See generally* andysnitzer.com. Mr. Livant is a guitar player who has played with leading pop artists such as Donna Summer, Carly Simon, Daryll Hall, Chicago, America, etc. and played and played in many Broadway shows. See http://www.peterfishgroup.com/member/paul-livant. Notwithstanding their distinguished careers, both face the same professional difficulties other musicians face given the current economic conditions in the music industry and both will be subject to the forthcoming benefit cuts sought by the Trustees in connection with the pending MPRA process. Thus, the economic risks they faced in bringing this litigation were real and tangible.

As reflected in the Notice, Mr. Snitzer and Livant have each indicated that if the Court approves the requested $10,000 service awards, they have committed to donating these awards to an organization or organizations fighting to protect the pension rights of AFM Plan Participants. Schwartz Decl., ¶ 53.

ARGUMENT

I. STANDARD OF REVIEW

Rule 23(e) of the Federal Rules of Civil Procedure requires judicial approval of any settlement agreement that will bind absent class members. Fed. R. Civ. P. 23(e). "Courts have discretion regarding the approval of a proposed class action settlement." *Illoldi v. Koi NY LLC*, No. 1:15-cv-6838 (VEC), 2016 U.S. Dist. LEXIS 71057, at *2 (S.D.N.Y. May 31, 2016) (Caproni, J.) (*citing, inter alia, Maywalt v. Parker & Parsley Petroleum Co.*, 67 F.3d 1072, 1079 (2d Cir. 1995)). "In exercising this discretion, courts should give weight to the parties' consensual decision to settle class action cases because they and their counsel are in unique positions to assess potential risks." *Id.* (citations omitted). Thus, "[c]ourts encourage early settlement of class actions, when

warranted, because early settlement allows class members to recover without unnecessary delay and allows the judicial system to focus resources elsewhere." *Id.* at *4 (citations omitted).

"Preliminary approval … is the first step in the settlement process." *Id.* at *3. "The purpose of preliminary approval is to simply allow notice to be issued to the class and for class members to either object to or opt-out of the settlement." *Id.* (citations omitted). "Preliminary approval requires only an initial evaluation of the fairness of the proposed settlement on the basis of written submissions and an informal presentation by the settling parties." Id. (citations omitted). "The preliminary determination of fairness is at most a determination that there is what might be termed probable cause to submit the proposal to class members and hold a full-scale hearing as to its fairness." *Id.* (citations omitted). "If the proposed settlement appears to fall within the range of possible approval, the court should order that the class members receive notice of the settlement." *Id.* at *4. The court is not required to answer the ultimate question of whether the settlement is fair, reasonable, and adequate. *See* 5 MOORE'S FEDERAL PRACTICE § 23.83[a], at 23-336.2 to 23-339. Instead, the court simply evaluates whether the settlement "appears to fall within the range of possible approval[.]" *Clark v. Ecolab Inc.*, 2009 WL 6615729, at *3 (S.D.N.Y. Nov. 27, 2009) (citing 4 NEWBERG ON CLASS ACTIONS ("NEWBERG") § 11:25 (4th ed. 2002)).

The Second Circuit has recognized that there is a "strong judicial policy in favor of settlements, particularly in the class action context." *McReynolds v. Richards-Cantave*, 588 F.3d 790, 803 (2d Cir. 2009). "The compromise of complex litigation is encouraged by the courts and favored by public policy." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (internal quotation marks and citation omitted); *citing* 4 NEWBERG ON CLASS ACTIONS ("NEWBERG") § 11:41, at 87 (4th ed. 2002). As a result, "courts should give proper deference to the private consensual decision of the parties ... [and] should keep in mind the unique ability of

class and defense counsel to assess the potential risks and rewards of litigation." *Clark*, 2009 WL 6615729, at *3 (citations omitted).

II. THE SETTLEMENT SATISFIES THE STANDARD FOR PRELIMINARY APPROVAL

"Fairness is determined upon review of both the terms of the settlement agreement and the negotiating process that led to such agreement." *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 184 (W.D.N.Y. 2005). Here, both the terms of the settlement and the manner in which they were negotiated strongly support preliminary approval.

A. The Settlement is the Product of Extensive Arms-Length Negotiations Between Experienced Counsel

A proposed class action settlement enjoys a "presumption of fairness, adequacy, and reasonableness" if "reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery." *Wal-Mart Stores*, 396 F.3d at 116; *see also In re Excess Value Ins. Coverage Litig.*, 2004 WL 1724980, *10 (S.D.N.Y. July 30, 2004); MANUAL FOR COMPLEX LITIGATION § 30.42 ("[A] presumption of fairness, adequacy and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel."). That is precisely the situation presented here. Counsel for Plaintiffs and Defendants are knowledgeable and experienced in complex class actions, particularly actions involving allegations of breaches of fiduciary duties under ERISA. *See* Schwartz Decl., ¶¶ 6-12 (describing qualifications and experience of class counsel including full recovery settlements and judgments against well-heeled defendants like Apple ($53 million settlement), Aramark ($21 million settlement), Cigna ($20 million settlements in ERISA cases), Safeway $42 million fully litigated judgment affirmed on appeal), Starz ($92.5 million settlement), Kinder Morgan ($200 million settlement), Genentech (settlement valued at over $4 billion), Bank of America ($62.5 million

settlement), American Airlines (settlement valued at over $100 million) and Certainteed (settlement validated over $600 million). *See generally* https://chimicles.com/steven-a-schwartz/ and https://chimicles.com/robert-j-kriner-jr/.

The Settlement of this matter occurred after Class Counsel conducted a thorough investigation, prepared a detailed Complaint and Amended Complaints, briefed and defeated Defendants' motion to dismiss and other attempts to dismiss or limit Plaintiffs' claims, conducted extensive document and deposition discovery, exchanged numerous expert reports and rebuttal reports, and substantially prepared for trial. Moreover, the parties only reached a settlement after a 19-month long mediation process conducted under the auspices of a widely respected mediator, and only then as a result of two separate mediator proposals regarding the monetary and governance relief that form the settlement.

All of these factors lend the Settlement a presumption of fairness.

B. The Settlement Provides Significant Relief to the Plan and Class Members

The product of these serious and informed negotiations was a Settlement that provides significant relief to the Class. As discussed above, the $26.85 million recovery represents over 75% of the projected available insurance proceeds from which Plaintiffs could have collected a judgment achieved at trial and represents the vast majority of damages plaintiffs would likely have been awarded in connection even with a successful trial verdict. Indeed, the $26.85 million Gross Settlement Amount is impressive not only in the aggregate, but also considering that it represents about 55% of the annual contributions made to the Plan by contributing employers; over $1,300 for each active Plan participant currently contributing to the Plan; and over $750 for all active and retired Plan participants. Schwartz Decl., ¶ 14. If the Court approves the full amount of the requested Attorneys' fees, costs and Service Awards, the Plan will receive a net payment of at least

$17 million, which represents about 35% of the annual contributions made to the Plan by contributing employers, to help pay benefits to Plan participants.

Moreover, the monetary portion of the Settlement compares favorably to other recent ERISA pension plan/401(k) settlements. *See, e.g., Moreno v. Deutsche Bank*, Case No. 1:15-cv-9936 (S.D.N.Y.) ($21.9 million settlement); *Main v. American Airlines, Inc.*, 3:16-cv-01033, ECF No. 137 (N.D. Tex. Feb. 21, 2018) ($22.0 million); *Sims v. BB&T Corp.*, No. 1:15-CV-732, 2019 U.S. Dist. LEXIS 75839, at *9 (M.D.N.C. May 6, 2019) ($24 million); *Clark v. Duke Univ.*, No. 1:16-CV-1044, 2019 U.S. Dist. LEXIS 105696, at *4-5 (M.D.N.C. June 24, 2019) ($10.65 million and other non-monetary relief); *Ramsey*, 2018 U.S. Dist. LEXIS 226672, at *1 ($17 million settlement); *Waldbuesser v. Northrop Grumman Corp.*, No. CV 06-6213-AB (JCx), 2017 U.S. Dist. LEXIS 223293, at *4 (C.D. Cal. Oct. 24, 2017) ($16.75 million).

The $26.85 million recovery represents the recovery of the vast amount of damages that Plaintiffs could have recovered from a successful trial verdict. As explained above, for a variety of reasons, it was unlikely that Plaintiffs would succeed in collecting damages with respect to their claims regarding the 2010 asset allocation, and the provable damages caused by the 2011 and 2015 asset allocations that Plaintiffs were likely to win at trial was in the low to mid tens of millions of dollars. Schwartz Decl., ¶ 27. The recovery percentage of likely provable damages and available insurance proceeds compares favorably to other class action settlements. *See generally In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 162 (S.D.N.Y. 2011) (settlement providing recovery of 16.5% of maximum recoverable damages was within the range of reasonableness); *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 191 (S.D.N.Y. 2012) (approving recovery of approximately 13% of maximum provable damages); *In re China Sunergy Sec. Litig.*, No. 07-7895, 2011 WL 1899715, at *5 (S.D.N.Y. May 13, 2011) (noting that average settlement amounts in securities

class actions over the past decade "have ranged from 3% to 7% of the class members' estimated losses") (internal quotation marks omitted); *see also In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 715 (E.D. Pa. 2001) (noting that since 1995, class action settlements have typically "recovered between 5.5% and 6.2% of the class members' estimated losses").

The recovery as a percentage of damages is particularly impressive given the inherent "uncertainties in fixing damages" in cases such as this. *Dardaganis v. Grace Capital Inc.*, 889 F.2d 1237, 1244 (2d Cir. 1989); *accord, Donovan v. Bierwirth*, 754 F.2d 1049, 1058 (2d Cir. 1985) (such determinations are "of necessity somewhat arbitrary").[12]

Moreover, in addition to the monetary compensation, the Settlement also provides for meaningful prospective relief the form of Governance Provision. Plaintiffs' experts have described these provisions as a "big win" that provides "excellent protective infrastructure" that addresses the specific weaknesses in Defendants' processes identified by Plaintiffs' experts in their reports. These Governance Provisions provide strong protections limiting the Trustees' ability to make excessively-risky investment bets like those at issue in this litigation and ensure that both the Trustees and Plan Participants are informed about how the Plan's asset allocation compares the asset allocation of similar large Taft-Hartley pension plans and how the Trustee's bets on active managers compares to an index fund investment strategy. The Governance Provisions further support approval of the Settlement. *See Mohney v. Shelly's Prime Steak, Stone Crab & Oyster Bar*, 06 CIV.4270 (PAC), 2009 WL 5851465, at *4 (S.D.N.Y. Mar. 31, 2009) (noting the settlement provided for "meaningful injunctive relief", the Court concluded that the settlement was "fair, reasonable, and adequate"); *Reyes v. Buddha-Bar NYC*, 08 CIV. 02494(DF), 2009 WL 5841177, at *3 (S.D.N.Y. May 28, 2009) (same).

C. Plaintiffs Would Have Faced Potential Litigation Risks and Substantial Delay in the Absence of the Settlement

In the absence of a Settlement, Plaintiffs would have faced potential litigation risks. *See In re WorldCom, Inc. ERISA Litig.*, 2004 WL 2338151, at *6 (S.D.N.Y. Oct. 18, 2004) (noting that there is a "general risk inherent in litigating complex claims such as these to their conclusion."); *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 126 (S.D.N.Y. 1997) ("Litigation inherently involves risks"). These risks are objectively illustrated by the trial judgment that was recently entered in favor of the defendants in another case in this District involving the New York University retirement plan, following a bench trial. *See Sacerdote v. New York Univ.*, 2018 WL 3629598 (S.D.N.Y. July 31, 2018). *See also Brotherston v. Putnam Investments, LLC*, 2017 WL 2634361 (D. Mass. June 19, 2017), *aff'd in part, vacated in part*, 907 F.3d 17 (1st Cir. 2018). While the claims and evidentiary record in these cases are different from those present here, they provide a clear demonstration that even strong cases face material risks of an adverse verdict at trial.

In this regard, it is important to keep in mind that this is not a case that alleged that the defendant Trustees made asset allocation decisions in order to line their own pockets or to divert Plan assets to related entities pursuant to conflicts of interest. While the Trustees took disastrous and imprudent investment risks, they did so after extensive discussions amongst themselves and after review of presentations and discussions with their legal, investment and actuarial consultants. Given the heightened legal standards to establish liability under ERISA, which focuses not on the actual investment decisions, but the process used in connection with those decisions,[12] victory at trial was not certain despite the strong evidentiary record compiled during discovery.

[12] *See, e.g.*, *Pension Benefit Guar. Corp. v. Morgan Stanley Inv. Mgmt.*, 712 F.3d 705, 728, 730 (2d Cir. 2013) (applying a "heightened pleading standard" that "focuses on the process of the fiduciary's conduct preceding the challenged decision.").

Moreover, even if Plaintiffs proved that the Trustees breached their fiduciary duties by making imprudent investment bets, proving causation and damages would have been difficult. Despite the Trustees' excessively risky asset allocation, the Plan still earned approximately 7.5% on its investment portfolio from 2010 through 2017, which is substantially similar to the 7.5 actuarial assumption and 7.5% target investment return that plaintiffs and their experts asserted was the norm for Taft-Hartley pension plans. Plaintiffs' damages theory was based on the notion that as a result of the Trustees' excessive allocation to EMEs and private equity, and corresponding under-allocation to domestic equities, the Plan missed out on substantial additional gains that would have been achieved, as a result of a prudent asset allocation during the extraordinary domestic equity bull market run from 2010 through 2017. The expected battle of the experts over damages at trial posed real risks for Plaintiffs, as did Defendants' legal challenges to Plaintiffs' "should have earned more" damages theory.

Brotherston v. Putnam Investments illustrates the risks that plaintiffs face in attempting to prove losses caused by a fiduciary breach. The trial court in Putnam found that the plaintiffs "failed to establish a prima facie case of loss," despite making a persuasive showing that the fiduciaries were "no paragon of diligence" and that the defendants had failed to monitor the plan's investments. 2017 WL 2634361, at *12. Similarly, in *Sacerdote v. NYU*, the court found that "while there were deficiencies in the Committee's processes—including that several members displayed a concerning lack of knowledge relevant to the Committee's mandate— plaintiffs have not proven that … the Plans suffered losses as a result." 2018 WL 3629598, at *2. Although Plaintiffs believed that their damages expert Mr. Witz had developed robust damages models, Defendants' expert Mr. Carron criticized Mr. Witz' models and opined that even if Plaintiffs

established liability at trial, damages should be no more than the low to mid tens of millions of dollars. There is no certainty that plaintiffs would have won the battle of the experts at trial.

In addition, Defendants likely would have continued to assert that Plaintiffs had actual knowledge more than three years before July 2011 and that therefore more of their claims were barred by the statute of limitations. The actual knowledge standard was only recently resolved by the Supreme Court in *Intel Cap Inv. Pol. Comm v. Sulyma*, No. 18-1116, 2020 U.S. LEXIS 1367 (Feb. 26, 2020), in which the Court held that "actual knowledge" does not mean constructive knowledge. The Parties negotiated the $26.85 million cash portion of the Settlement before that decision, thereby hedging Plaintiffs' risk that the Supreme Court issued an unfavorable decision.

Aside from these risks, continuing the litigation would have inherently resulted in additional complex and costly proceedings before this Court, which would have significantly delayed any relief to the Plan at a time when it is desperately needs the minimum $17 million cash infusion from the Settlement given the pending MPRA process to cut vested retirement benefits. It is well-recognized that ERISA pension cases "often lead[] to lengthy litigation." *See Krueger v. Ameriprise*, 2015 WL 4246879, at *1 (D. Minn. July 13, 2015). In fact, it is not unusual for ERISA cases to extend for a decade or longer before final resolution. *See Tussey v. ABB Inc.*, 2017 WL 6343803, at *3 (W.D. Mo. Dec. 12, 2017) (requesting proposed findings more than ten years after suit was filed on December 29, 2006); *Tibble v. Edison Int'l*, 2017 WL 3523737, at *15 (C.D. Cal. Aug. 16, 2017) (outlining remaining issues ten years after suit was filed on August 16, 2007); *Abbott v. Lockheed Martin Corp.*, 2015 WL 4398475, at *4 (S.D. Ill. July 17, 2015) (noting that the case had originally been filed on "September 11, 2006").

Even if Plaintiffs had prevailed at trial and the Court found that Defendants breached their fiduciary duties, caused the Plan to suffer losses, and awarded damages, Defendants would have

appealed such findings to the Second Circuit. Given the risks, cost, and delay of further litigation, it was reasonable and appropriate for Plaintiffs to reach a settlement on the terms that were negotiated. *See Kruger v. Novant Health, Inc.*, 2016 WL 6769066, at *5 (M.D.N.C. Sept. 29, 2016) ("settlement of a 401(k) excessive fee case benefits the employees and retirees in multiple ways").

III. THE CLASS NOTICE PLAN IS REASONABLE AND SHOULD BE APPROVED

In addition to reviewing the substance of the parties' Settlement Agreement, the Court must ensure that notice is sent in a reasonable manner to all class members who would be bound by the proposed settlement. Fed. R. Civ. P. 23(e)(1). The "best notice" practicable under the circumstances includes individual notice to all class members who can be identified through reasonable effort. Fed. R. Civ. P. 23(c)(2)(B). That is precisely the type of notice proposed here.

The Settlement Agreement provides that the Plan will provide direct notice of the Settlement to the Settlement Class via email and postal mail where necessary and post the settlement agreement, the notice, and relevant court documents on the Plan website. This type of notice is presumptively reasonable. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). The Settlement Notice is clearly reasonable as it "fairly apprise[s] the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *See Lomeli v. Sec. & Inv. Co. Bahrain*, 546 Fed. App'x 37, 41 (2d Cir. 2013) (*quoting Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 438 (2d Cir. 2007)) (internal citations omitted); *In re Michael Milken & Assocs. Sec. Litig.*, 150 F.R.D. 57, 60 (S.D.N.Y. 1993) (settlement notice "need only describe the terms of the settlement generally").

IV. THE CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES

Finally, Plaintiffs request that the Court certify the class for settlement purposes for the reasons set forth above. Certification under Rule 23(b)(1) continues to be appropriate for the

Settlement Class, given the ongoing risk that separate actions would be dispositive of the interests of other participants not parties to those separate actions, or substantially impair other participants' ability to protect their own interests. *See also Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 834 (1999) (noting that a breach trust action by a fiduciary is a "classic example" of a Rule 23(b)(1) class). Accordingly, the Court should certify the Settlement Class as defined in the Settlement Agreement.

CONCLUSION

Many class settlements represent compromises that recover only for a fraction of provable damages or available insurance and/or other sources of recovery. Many class actions are settled early before class counsel spend the time and money to complete discovery and before plaintiffs gain the negotiating leverage of removing *any* risk that defendants can win a pre-trial motion dismissing or substantially limiting the claims and damages to be presented at trial. Plaintiffs and their counsel here spent the time (over $7 million worth) and money (almost $900,000) to complete discovery and defeat any obstacles to proceeding to trial and used that leverage to negotiate a settlement that largely mirrors the best result they could have achieved *and collected* if they proceeded to trial, won, and defeated the expected appeal. Accordingly, Plaintiffs respectfully request that the Court (1) preliminarily approve the Settlement; (2) approve the proposed Settlement Notices and authorize distribution of the Notices; (3) certify the Settlement Class; (4) schedule a final approval hearing; and (5) enter the accompanying Preliminary Approval Order.

Dated: March 25, 2020

Respectfully submitted,

By: */s/ Steven A. Schwartz*
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CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2020, a true and correct copy of Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement was served by CM/ECF to the parties registered to the Court's CM/ECF system.

Dated: March 25, 2020

/s/ Steven A. Schwartz
Steven A. Schwartz

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ANDREW SNITZER and PAUL LIVANT, Plaintiffs, v. THE BOARD OF TRUSTEES OF THE AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS' PENSION FUND, ET AL., Defendants.	Case 1:17-cv-05361-VEC

DECLARATION OF STEVEN A. SCHWARTZ IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT

I, Steven A. Schwartz, declare as follows pursuant to 28 U.S.C. § 1746:

1. I am a Partner and member of the Executive Committee at the law firm of Chimicles Schwartz Kriner & Donaldson-Smith LLP ("CSKD"). I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of Proposed Class Action Settlement. My partner Robert J. Kriner, Jr., with whom I prosecuted this case, has reviewed and approved this declaration.

2. CSKD maintains offices in Haverford, Pennsylvania, and Wilmington, Delaware.

3. CSKD is a leading class action firm with a national practice, that has recovered billions of dollars on behalf of institutional, individual, and business clients.

4. CSKD has extensive experience litigating complex class action cases, as further detailed at my Firm's website, chimicles.com.

5. I graduated from Duke Law School in 1987, where I served as an editor and a senior editor of *Law & Contemporary Problems.*

6. I am admitted to practice in the Commonwealth of Pennsylvania, the Supreme Court of the United States, the Courts of Appeals for the Third, Sixth, Eighth, and Ninth Circuits,

and the United States District Courts in the Eastern and Western Districts of Pennsylvania, the Eastern District of Michigan, and the District of Colorado.

7. I hold an "AV" rating from Martindale Hubbell and have been named a "Super Lawyer" by Law & Politics and the publishers of *Philadelphia Magazine* every year beginning in 2006, and I have also been named a Top 100 Trial Lawyer and Top100 High Stakes Litigator by National Trial Lawyers.

8. I have a considerable track record of obtaining not just settlements, but also fully-litigated judgments sustained on appeal, representing a full recovery of damages suffered by class members. Cases where I have obtained full or near-full recoveries of class members' damages include the following:

- ***In re Aramark Bonus Litigation***, No. 2:19-cv-02762-JP (E.D. Pa.). I served as Plaintiffs' Co-Lead Counsel in this case in which Aramark agreed to pay $21 million to settle claims that Aramark failed to pay the full amount of bonuses owed to its managers for 2018. If the settlement is approved, all class members will automatically receive checks that are greater than the difference between their maximum estimated 2018 bonus and any bonus or "Special Recognition Awards" that Aramark paid to them in February 2019.

- ***In re Cigna-American Specialty Health Administrative Fee Litigation***, No. 2:16-cv-03967-NIQA (E. D. Pa.). I served as co-lead counsel in this national class action alleging that defendant Cigna and its subcontractor, ASH, violated the written terms of ERISA medical benefit plans by treating ASH's administrative fees as medical expenses to artificially inflate the amount of "benefits" owed by plans and the cost-sharing obligations of plan participants and beneficiaries. The Court approved the $8.25 million settlement in which class members were automatically mailed checks representing a full or near-full recovery of the actual amount they paid for the administrative fees. ECF 101 at 4, 23-24.

- ***In re Apple iPhone/iPod Warranty Litig.***, No. 3:10-1610-RS (N.D. Cal.). I served as co-lead counsel in this national class action in which Apple agreed to a $53 million non-reversionary, cash settlement to resolve claims that it had improperly denied warranty coverage for malfunctioning iPhones due to alleged liquid damage. Class members were automatically mailed settlement checks for more than 100% of the average replacement costs of their iPhones, net of attorneys' fees. *See* May 8, 2014 Order Granting Final Approval to Settlement Agreement, ECF 154 at 5 ("the Net Settlement Fund is sufficient to pay eligible Settlement Class Members approximately

117 percent of the average replacement cost paid to Apple for Class Devices of the same type and configuration, which represents an average payment of about $241 for each affected Class Device.").

- ***Rodman v. Safeway Inc.***, No. 11-3003-JST (N.D. Cal.). I served as Plaintiffs' Lead Trial Counsel and presented all district court and appellate arguments in this national class action regarding grocery delivery overcharges. I was successful in obtaining a national class certification and a series of summary judgment decisions as to liability and damages resulting in a $42 million judgment, which represents a full recovery of class members' damages plus interest. The $42 million judgment was entered shortly after a scheduled trial was postponed due to Safeway's discovery misconduct, which resulted in the district court imposing a $688,000 sanction against Safeway. The Ninth Circuit affirmed the $42 million judgment. 2017 U.S. App. LEXIS 14397 (9th Cir. Aug. 4, 2017).

- ***In re Sears, Roebuck & Co. Front-Loading Washer Prods. Liab. Litig.***, No. 06 C 7023, (N.D. Ill.) & Case 1:09-wp-65003-CAB (N. D. Ohio) (MDL No. 2001). I served as co-lead class counsel in this case which related to defective central control units ("CCUs") in front load washers manufactured by Whirlpool and sold by Sears. After extensive litigation, including two trips to the Seventh Circuit and a trip to the United States Supreme Court challenging the certification of the plaintiff class, I negotiated a settlement shortly before trial that the district court held, after a contested proceeding approval proceeding, provided a "full-value, dollar-for-dollar recovery" that was "as good, if not a better, [a] recovery for Class Members than could have been achieved at trial." 2016 U.S. Dist. LEXIS 25290 at *35 (N.D. Ill. Feb. 29, 2016).

- ***Chambers v. Whirlpool Corp., et al.***, *Case No.* 11-1773 FMO (C.D. Cal.). I am co-lead counsel in this national class action involving alleged defects resulting in fires in Whirlpool, Kenmore, and KitchenAid dishwashers. The district court approved a settlement which I negotiated that provides wide-ranging relief to owners of approximately 24 million implicated dishwashers, including a full recovery of out-of-pocket damages for costs to repair or replace dishwashers that suffered Overheating Events. In approving the settlement, Judge Olguin of the Central District of California described me as "among the most capable and experienced lawyers in the country in [consumer class actions]." 214 F. Supp. 3d 877, 902 (C.D. Cal. 2016).

- ***Wong v. T-Mobile*****,** No. 05-cv-73922-NGE-VMM (E.D. Mich.). In this billing overcharge case, I served as co-lead class counsel and negotiated a settlement where T-Mobile automatically mailed class members checks representing a 100% net recovery of the overcharges and with all counsel fees paid by T-Mobile in addition to the class members' 100% recovery.

- ***In re Certainteed Corp. Roofing Shingle Products Liability Litig.***, No, 07-md-1817-LP (E.D. Pa.). In this MDL case related to defective roof shingles, I served as Chair of Plaintiffs' Discovery Committee and worked under the leadership of co-lead class counsel. The parties reached a settlement that provided class members with a

substantial recovery of their out-of-pocket damages and that the district court valued at between $687 to $815 million. *See ECF No. 217 at 8.*

- ***Shared Medical Systems 1998 Incentive Compensation Plan Litig.***, Mar. Term 2003, No. 0885 (Phila. C.C.P.). In this case on behalf of Siemens employees, after securing national class certification and summary judgment as to liability, on the eve of trial, I negotiated a net recovery for class members of the full amount of the incentive compensation sought (over $10 million) plus counsel fees and expenses. At the final settlement approval hearing, Judge Bernstein remarked that the settlement "should restore anyone's faith in class action[s]. . . ." I served as co-lead counsel in this case and handled all of the arguments and court hearings.

- ***In re Pennsylvania Baycol: Third-Party Payor Litig.***, Sept. Term 2001, No. 001874 (Phila. C.C.P.) ("Baycol"). I served as co-lead class counsel in this case brought by health and welfare funds and insurers to recover damages caused by Bayer's withdrawal of the cholesterol drug Baycol. After extensive litigation, the court certified a nationwide class and granted plaintiffs' motion for summary judgment as to liability, and on the eve of trial, I negotiated a settlement providing class members with a net recovery that approximated the maximum damages (including pre-judgment interest) that class members suffered. That settlement represented three times the net recovery of Bayer's voluntary claims process (which AETNA and CIGNA had negotiated and was accepted by many large insurers who opted out of the class early in the litigation).

- ***Wolens v. American Airlines, Inc.*** I served as plaintiffs' co-lead counsel in this case involving American Airlines' retroactive increase in the number of frequent flyer miles needed to claim travel awards. In a landmark decision, the United States Supreme Court held that plaintiffs' claims were not preempted by the Federal Aviation Act. 513 U.S. 219 (1995). After eleven years of litigation, American Airlines agreed to provide class members with mileage certificates that approximated the full extent of their alleged damages, which the Court, with the assistance of a court-appointed expert and after a contested proceeding, valued at between $95.6 million and $141.6 million.

- ***In Re ML Coin Fund Litigation*****,** (Superior Court of the State of California for the County of Los Angeles). I served as plaintiffs' co-lead counsel and successfully obtained a settlement from defendant Merrill Lynch in excess of $35 million on behalf of limited partners, which represented a 100% net recovery of their initial investments (at the time of the settlement the partnership assets were virtually worthless due to fraud committed by Merrill's co-general partner Bruce McNall, who was convicted of bank fraud).

- ***Nelson v. Nationwide*****,** July Term 1997, No. 00453 (Phila. C.C.P.). I served as lead counsel on behalf of a certified class. After securing judgment as to liability in the trial court (34 Pa. D. & C. 4th 1 (1998)), and defeating Nationwide's Appeal before the Pennsylvania Superior Court, 924 PHL 1998 (Dec. 2, 1998), I negotiated a settlement whereby Nationwide agreed to pay class members approximately 130% of their bills.

9. My partner Robert J. Kriner, Jr., who heads my firm's Delaware office. Mr. Kriner graduated from the Widener University Law School in 1988, where he was editor of the Delaware Journal of Corporate Law, the school's law review. Mr. Kriner served as law clerk to the Honorable James L. Latchum, in the United States District Court for the District of Delaware. Mr. Kriner has extensive practice experience in matters of fiduciary governance and fiduciary duties including substantial experience in fiduciary duty litigation in class and derivative actions, on behalf of stockholders, limited partners and other investors with claims relating to mergers and acquisitions, hostile acquisition proposals, the enforcement of fiduciary duties, the election of directors, and the enforcement of statutory rights of investors such as the right to inspect books and records. Among his recent achievements are:

- ***Sample v. Morgan, C.A. No. 1214-VCS*** (obtaining full recovery for shareholders diluted by an issuance of stock to management).
- ***In re Genentech, Inc. Shareholders Litigation***, Consolidated C.A. No. 3911-VCS (leading to a nearly $4 billion increase in the price paid to the Genentech stockholders).
- ***In re Kinder Morgan, Inc. Shareholders Litigation***, Consolidated Case No. 06-C-801 (action challenging the management led buyout of Kinder Morgan, settled for $200 million).
- ***In re Freeport McMoRan Copper & Gold Inc. Deriv. Lit.*** C.A. No. 4815 VCN (Del. Ch.) (stockholder action challenging acquisition resulting in $154 million settlement paid as dividend to stockholders)
- ***In Re Starz Stockholder Litigation,*** C. A. No. 12584 VCG (Del. Ch.) (stockholder class action challenging acquisition of Starz resulting in $92.5 million settlement paid to stockholders in addition to merger price).

10. CSKD associate Mark DeSanto and former associate Vera G. Belger (who recently retired to raise her three young children) assisted us in the prosecution of this action.

11. Mr. DeSanto has extensive experience in securities, consumer protection, data breach, TCPA and other forms of class actions. To date, Mr. DeSanto has been involved in the prosecution of the following federal court class actions:

- ***In re Aramark Bonus Litigation*** mentioned above.
- ***In re Cigna-American Specialty Health Admin. Fee Litig.*** mentioned above.
- ***High St. Rehab., LLC v. Am. Specialty Health Inc.***, No. 2:12-cv-07243-NIQA, 2019 U.S. Dist. LEXIS 147847 (E.D. Pa. Aug. 29, 2019) (settled – $11.75 million) (represented a class of chiropractors and other similar healthcare practitioners alleging, inter alia, that Cigna and its third-party claims management provider's use of utilization management review ("UMR") when evaluating out-of-network claims for chiropractic services performed on individuals who participated in employer-sponsored health benefits Plans that Cigna insured and/or for which Cigna administered benefits claims violated ERISA).
- ***In re St. Jude Medical, Inc. Securities Litigation***, Civ. No. 10-0851 (D. Minn.) (settled – $39.25 million) (represented financial institutions in class action lawsuit brought on behalf of all St. Jude Medical Inc. shareholders, alleging that the company and its executives violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934).
- ***In re Target Corporation Customer Data Security Breach Litigation***, MDL No. 14–2522 (D. Minn.) (settled – $39 million) (represented a class of payment card issuing financial institutions in nationwide class action against Target for its highly-publicized 2013 data breach in which roughly 110 million Target customers' personal and financial information was compromised by hackers).
- ***Louisiana Municipal Police Employees' Retirement System v. Green Mountain Coffee Roasters, Inc. et al.,*** Civ. No. 2:11-cv-00289 (D. Vt.) (settled – $36.5 million) (represented financial institutions in class action lawsuit brought on behalf of all Keurig Green Mountain shareholders, alleging that the company and its executives violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934).
- ***Washtenaw County Employees' Retirement System v. Walgreen Co. et al.***, Civ. No. 1:15-cv-03187 (N.D. Ill.) (represented financial institutions in class action lawsuit brought on behalf of all Walgreens shareholders, alleging that the company and its executives violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934);
- ***Dennington et al. v. State Farm Fire & Casualty Co. et al.***, Civ. No. 4:14-cv-04001-SOH (W.D. Ark.) (represented a class of State Farm insureds in nationwide class action against State Farm alleging that it breached its homeowners insurance policies by unlawfully depreciating labor when calculating actual cash value payments to insureds);

- ***Green v. American Modern Home Ins. Co.***, Civ. No. 4:14-cv-04074-SOH (W.D. Ark.) (represented a class of American Modern insureds in nationwide class action against American Modern alleging that it breached its homeowners insurance policies by unlawfully depreciating labor when calculating actual cash value payments to insureds); and,

- ***Larey et al. v. Allstate Property and Casualty Co.***, Civ. No. 14-cv-04008-SOH (W.D. Ark.) (represented a class of Allstate insureds in nationwide class action against Allstate alleging that it breached its homeowners insurance policies by unlawfully depreciating labor when calculating actual cash value payments to insureds).

12. Vera G. Belger was an associate resident in the firm's Delaware office until she retired in February 2020. Ms. Belger graduated from the University of Virginia law school in 2008. Ms. Belger's practice with Mr. Kriner included extensive experience in matters of fiduciary governance and duties.

13. A copy of the Settlement Agreement ("Settlement") is attached as Exhibit 1 hereto.

14. The $26.85 million Gross Settlement Amount represents the vast majority of provable damages that likely would have been won at trial and between about 65% to 75% of the Trustees' available insurance policy limits to pay any final judgment, which represent, for practical purposes, the only available source for payment of any judgment obtained at trial. That amount also represents about 55% of the average total annual contributions made to the Plan by contributing employers; over $1,300 for each active Plan participant currently contributing to the Plan; and over $750 for all active and retired Plan participants. If the Court awards the full amount of the requested attorneys' fees, expenses and service Awards, the Plan will receive a net payment of at least $17 million, which represents about 35% of the average total annual contributions made to the Plan by contributing employers.

15. The evidence that Plaintiffs obtained during discovery reflects that the Trustees should have but failed to disclose to Plan Participants years ago that they embarked on their risky investment strategy in a "hail Mary" bet to avoid disclosing the Plan's looming insolvency. The

Governance Provisions of the Settlement are designed to prevent the Trustees from ever again blindsiding Plan Participants like they did from 2010 through the end of 2016 (when they first meaningfully disclosed the precarious financial condition of the Plan and the risk that the Plan was on a path toward insolvency).

16. We carefully vetted the qualifications, experience, judgment and independence of the proposed Neutral Independent Fiduciary Trustee, Andrew Irving. That vetting included interviewing Mr. Irving outside the presence of Defendants' counsel; interviewing five lawyers with substantial ERISA/Taft Hartley expertise (inducing several plaintiffs'-side lawyers) familiar with Mr. Irving and his expertise, and consulting with our expert Dr. Susan Mangiero, who not only knows Mr. Irving but also is herself a leading, if not the leading, expert on fiduciary standards and independent fiduciaries in the country. Everyone we spoke with spoke highly of Mr. Irving and believed that he would be an excellent and effective Neutral Independent Fiduciary Trustee. Moreover, we received assurances from Mr. Irving that he has no business, professional or personal relationships with any of the Plan's Trustees and at our insistence, made sure that he was familiar with the issues raised in that litigation and read key court documents including the Parties' expert reports so he would be familiar with the specific weaknesses of the Trustees and understand the fiduciary breaches they committed as reflected by the evidence summarized in Plaintiffs' expert reports. Based on our investigation, we are satisfied he will be a strong, independent force to deter the Trustees from committing the types of breaches alleged in the Amended Complaint. A copy of Mr. Irving's Declaration and resume are attached hereto as Exhibit 2.

17. Dr. Mangiero's expert report detailed how and why the Trustees breached their fiduciary duties. Among other things, she opined that the Trustees failed to comply with the Plan's Investment Policy Statement in making their imprudent asset allocation decisions.

18. As reflected by the evidence obtained in discovery and explained in detail by Plaintiffs' experts, the Trustees' decision to hire Meketa was a disaster and their decision to retain Meketa as OCIO Monitor reflected their continuing breaches of duty, bad judgment and resistance to retaining advisors with the requisite degree of independence.

19. The Settlement at §8.1.2 and Exhibit 5 requires the Plan's OCIO Cambridge to provide the Trustees and Plan Participants with a series of new additional information in its reports including charts showing a comparison of the Plan's asset allocation to the average asset allocations of comparable large Taft-Hartley plans plus a running cumulative comparison of Plan's actual equity performance since OCIO Cambridge took over in 2017 versus the performance of an appropriate index benchmark. These are the same type of charts and comparisons Plaintiffs' experts used in their reports to demonstrate that the Trustees breached their fiduciary duties by taking excessive, unprecedented investment risks, and the same type of charts/comparisons that Plaintiffs' experts opined should have been, but were not, provided to the Trustees at each quarterly meeting as part of a prudent process of determining and monitoring the Plan's asset allocation and risk profile. As reflected by the evidence obtained in discovery and explained in detail by Plaintiffs' experts, the failure of the Trustees to have access to charts showing such comparison in a clear, understandable way resulted in certain Trustees being ignorant just how far the Plan's asset allocations deviated from the allocations of virtually every other large Taft Hartley plan. Indeed, Defendants' experts could not identify a single other large Taft Hartley plan with an asset allocation anywhere near as risky as the asset allocation implemented by the defendant Trustees. Moreover, the evidence and expert reports reflected many of the defendant Trustees were ignorant of how poorly the performance of the actively managed funds chosen by Meketa and the Trustees compared, **net of fees**, with the performance of the benchmark index fund investment approach.

Finally, the evidence obtained in discovery and explained in detail by Plaintiffs' experts reflected that the Trustees' communications with Plan participants failed to disclose the Trustees' excessively-risky asset allocation and the investment performance of the actively-managed funds picked by the Trustees in a meaningful, transparent way. Class Counsel and our experts believe that the requirement that the Trustees provide these new disclosures to Plan participants will effectively prevent the Trustees from hiding such critical information from the participants they represent.

20. The Settlement at §8.1.6 requires the Trustees to provide Plan Participants with at least four weeks' notice of the identity and qualifications before the appointment of any new Trustees. That will provide interested Plan Participants the opportunity to evaluate and raise any objections regarding those prospective new trustees. The Trustees had previously rebuffed efforts from certain plan participants to provide such notice.

21. The union-side co-chair of the Investment Committee, Phil Yao, resigned in 2018. In addition, a few weeks after I deposed Plan counsel Rory Albert, Mr. Albert was no longer Plan Counsel and he separated from the Proskauer law firm.

22. Class Counsel concur with our experts' view that the Settlement is a "real win" and the Governance Provisions will provide an "excellent protection infrastructure" that collectively, are among the most stringent imposed in connection with settlements of similar private civil litigation under ERISA; will substantially limit the ability of the Trustees from ever again taking the type of excessive, out-of-the-box investment risks that they took from 2010 – 2017; that, to the extent that the Trustees nonetheless persist in their prior imprudent risk-taking, the provisions will create a record that will increase the Trustees' exposure to breach of fiduciary duty claims (which in turn will serve as a deterrent to their committing breaches); and that the Governance Provisions

will be far more effective than simply replacing a few trustees with other trustees chosen by and/or who serve at the pleasure of the duly-elected AFM union president Ray Hair and/or appointed by the employers who make the lion's share of the contributions the AFM pension Plan.

23. The Rehabilitation Plan adopted by the Trustees in 2010 stated: "This Rehabilitation Plan consists of reasonable measures adopted by the Board which… can be expected to enable the Plan to emerge from critical status… [by] achieving the 7.5% annual investment return assumption," and "under the Rehabilitation Plan… the Plan is estimated to emerge from critical status no later than March 31, 2047 and also is not projected to become insolvent at any point during the projection period."

24. Based on the evidence developed during discovery and given the failure to disclose the changed funding condition and projection, the Participants had no reason to suspect the Trustees made a series of increasingly-risky asset allocation investment bets to attempt to exceed the 7.5% actuarial assumption. Those bets included: (1) increasing the Plan's long-term target return from 7.5% , which was standard in the Taft-Hartley world, to a whopping 9%; (2) radically increasing the Plan's investment in its two riskiest investment asset classes – Emerging Markets Equities (EMEs) and Private Equity – to one-third of its assets while reducing its investment in domestic equities below 20%; and (3) investing about 70% of the Plan's assets in high-cost actively-managed funds that repeatedly underperformed benchmarks. The Trustees ignored warnings that making these bets was a "highly-risky roll of the dice" and, as each bet failed, they doubled and tripled down like drunken gamblers chasing losses.

25. The Trustees hired Meketa in 2009, and in early 2010 Meketa recommended that the Trustees diversify the Plan's equity investments by reducing its investment allocation to domestic equities (from about 33% to 26%) and investing 6% of Plan's assets in EMEs (even

though the average pension plan only invested about 4.5% of assets in EME's) plus another 3% in private equity. This 2010 asset allocation was questionable. However, it was expressly recommended by Meketa.

26. In 2011 and 2015, the Trustees doubled and tripled down by increasing the EME allocation from 6% to 11% and then to 15% and increasing the allocation to private equity from 3% to 15% and then to 18%, without an explicit, affirmative recommendation to do so from Meketa or Milliman. Essentially, Meketa told the Trustees the allocations were formulated to meet the Trustees' desired projected long-term annualized return substantially in excess of 7.5%. However, Meketa expressly stated that it was the Trustees' decision whether to take the extra risk.

27. Meketa provided the Trustees with a reasonable, albeit misguided rationale for the initial 2010 allocation (providing diversification in the equity portfolio since the Plan lost so much money in domestic equities in 2008 recession and projected growth in emerging markets). The 6% EME allocation, while outsized, was not multiples higher than the EME allocation of peer plans. Moreover, ERISA's six-year statute of limitations prohibited Plaintiffs from recovering damages for investment allocation decisions made before July 2011, and the recommendation and initial decision to invest 6% in EME's occurred in 2010. Thus, while we vigorously prosecuted claims related to the initial 6% EME allocation that Meketa recommended in 2010, our best objective assessment, as confirmed by our experts, was that Plaintiffs were unlikely to obtain a verdict at trial that included damages caused by the initial 6% EME investment and that the provable damages caused by the 2011 and 2015 asset allocations Plaintiffs were likely to win at trial was in the low to mid tens of millions of dollars.

28. Given the bull market in U.S. stocks, the reduction of the Plan's U.S. equities investment resulted in huge losses (*i.e.*, a decrease in the investment gains the Plan otherwise

would have earned). As noted above, in contrast to the initial 6% EME investment, Meketa did not make an express recommendation that the Trustees adopt this risky allocation; rather, Meketa told the Trustees that such an allocation was the best way to seek higher returns *to the extent that the Trustees could stomach the increased risk.*

29. Based on our assessment of the document and deposition testimony, the removal of former employer-side Plan counsel Rory Albert, coupled with the replacement in 2017 of union-side counsel Bredhoff & Kaiser with the Cohen Weiss firm will improve the effectiveness of the processes utilized by the Trustees in connection with fulfilling their fiduciary duties and the processes by which they make their decisions.

30. The Trustees excessive 2011 EME/private equity gamble continued to fail and the Plan's performance lagged the performance of other Taft-Hartley pension plans precisely because, as the Trustees were told by Meketa, the other plans allocated far less to EMEs and private equity and much more to domestic equities. Nevertheless, in February 2015, Defendants recklessly increased the Plan's projected investment return even higher, to 9%, well above the norm of other Taft-Hartley plans, by increasing the already-overweight EME allocation from 11% to 15% and increasing private equity allocation from 15% to 18%. Once again, Meketa did not recommend that the Trustees do so. Meketa again told the Trustees that if they wanted to try and achieve an outsized 9% projected return, such an allocation was the best way to do so if the Trustees were willing to take the increased risk. At the same time, Milliman continued to refuse the Trustees' requests to increase the actuarial return assumption above 7.5%.

31. In our view, and the view of our experts, Meketa should have, but did not, advise the Trustees that taking such an increased risk was reckless and imprudent. We and our experts believe that the proposed Governance Provisions replacing Meketa with a new OCIO Monitor will

add substantial independence and expertise to the investment decision-making and limit the Trustees' ability to commit breaches similar to those challenged in this litigation.

32. Our experts opined that the Trustees should have received a simple chart reflecting how their active-manager strategy compared to an index fund strategy. We and our experts also believe that the mandatory disclosures and revised Cambridge reports required by the Settlement will add substantial independence and expertise to the investment decision-making and add substantial transparency to Plan participants regarding the investments and performance by active managers.

33. By December 2011, Plan actuary Milliman was projecting that the Plan would likely not emerge from the red zone. At their depositions, the primary reason the Trustees gave for doubling and tripling down on their increasingly risky asset allocation bets was to attempt to "shoot for the fences" in Hail Mary-like fashion in the hope that outsized investment returns would improve the projections.

34. Plaintiff Snitzer requested and obtained Plan documents under ERISA and provided the documents to Cass Counsel. Plaintiffs Snitzer and Livant determined with our input that litigation was the best way to proceed. Certain other concerned Plan Participants disagreed with that approach (in part because they understood that the only practical source of recovery was the Plan's D&O Trustee insurance policies which were insufficient to forestall benefit cuts) in favor of a political-based course of action. *See* Exhibit 3 hereto (MPS email).

35. In exploring the avenue of potential litigation to hold the Trustees accountable, Plaintiffs Snitzer and Livant made inquiries to several leading class action firms but to my knowledge, my firm was the only one willing to make the multi-million-dollar investment necessary and take the case for a variety of reasons. We decided to take the case despite the

difficult standards under ERISA to establish liability for investment decisions that, albeit misguided, were made after extensive discussions with consultants and amongst the Trustees. Our decision to take the case and recommend litigation was based on our extensive six-month investigation, which included consultation with Dr. Susan Mangiero, analysis of boxes of documents received from the Plan pursuant to ERISA's disclosure requirements, review of the Plan's Form 5500's, and extensive legal research.

36. Instead of responding to Defendants' Motion to Dismiss the Complaint, Plaintiffs filed an Amended Complaint to better refine their allegations in light of the arguments made by Defendants. In that regard, we negotiated an extremely valuable deal. In exchange for dismissing as a named defendant the Plan's Executive Director Maureen Kilkelly, who was an administrator, not a decision-maker, Ms. Kilkelly agreed to produce documents from her files prior to Plaintiffs' deadline to file their Amended Complaint. This deal proved invaluable as we referenced highly probative and damaging information contained in several "hot" documents that Ms. Kilkelly produced in the Amended Complaint.

37. We engaged in extensive discovery, including: (1) production of over 204,778 pages of documents by Defendants; (2) production of over 271,814 pages of documents by non-parties including the Trustees' Investment Consultant Meketa, actuary Milliman, legal counsel Proskauer Rose LLP and Bredhoff & Kaiser PLLC, OCIO search consultant Arthur J. Gallagher & Co., Local 802, and several of the Plan's investment managers; (3) production of a massive 100+ gigabyte database by Milliman; and (4) 2,850 pages of documents by Plaintiffs Snitzer and Livant.

38. Based on the analysis of those documents, Plaintiffs' Counsel identified over 1,431 "hot documents" and more than 1,100 additional documents deemed "highly relevant" that we

digested and segregated into approximately 40 different categories for use in depositions and at trial. *Id*.

39. Defendants deposed Messrs. Snitzer and Livant. We deposed the following Trustees: Brockmeyer (two days), Rood (two days), DeMartini, Gagliardi, Greene, Hair, Johnson, Moriarity, Raphael, Thomas, and Yao, plus Executive director Kilkelly. We also deposed former plan counsel, Rory Albert and Penny Clark, three representatives of Meketa, and three representatives of Milliman, plus representatives of Local 802 and Gallagher. The Parties also marked almost 350 documents as deposition exhibits.

40. Each party submitted reports from three experts, who collectively submitted four reports and five rebuttal reports. Each of the experts were deposed. Collectively, the experts' reports and deposition testimony (much of which is summarized in the expert reports) provide a comprehensive roadmap of the parties' competing contentions regarding liability and damages and the evidence supporting those contentions.

41. In preparation for trial, we were far along in the drafting of a detailed set of proposed findings of fact and conclusions of law, with citations to the relevant deposition testimony, deposition exhibits and other documents, and other factual material. By the time of the agreed settlement, we were almost fully prepared to proceed to trial.

42. When Plaintiffs Snitzer and Livant first retained my firm, we advised them that the Plan's Trustee D&O insurance policies likely represented the only source of recovery. At the outset of the litigation, the MPS leadership advised its constituency that it reached the same conclusion. *See* Exhibit 3 hereto. At the Trustees' depositions, we verified that the individual Trustees did not have sufficient liquid, recoverable assets from which to fund a settlement or judgment substantially in excess of the insurance, thereby confirming our initial assessment.

43. The Plan only has $50 million in Trustee D&O insurance, with a $25 million primary policy and excess policies of $15 million and $10 million respectively.[1] These policies are "wasting" policies, meaning that they are reduced by the amount spent on the Trustees' defense counsel and expensive defense experts. In my experience, because of the nature of excess insurance policies, it is far more difficult to collect a settlement contribution from excess carriers than if all of the policies were in a single, primary layer. At the time the Settlement was reached, only about $41 million of insurance coverage remained, and, if the case proceeded to trial and judgment, we estimated that there would only have been no more than about $36 million left on the policies to fund a judgement. This reality informed our negotiation strategy as it set a practical ceiling on the maximum amount Plaintiffs could likely recover on their claims regardless of how large of a judgment they obtained at trial and sustained through appeal.

44. In the summer of 2018, the Parties hired one of the country's most distinguished mediators with extensive experience mediating ERISA cases and related insurance issues, Robert Meyer, Esq., of JAMS In connection with that mediation. The Parties exchanged extensive mediation briefs along with preliminary damages analyses. In our brief, we made a monetary demand plus a demand for injunctive relief designed to improve the governance of the Plan. That mediation was unsuccessful, so discovery continued apace.

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[1] One employer-side trustee was arguably covered by two excess fiduciary liability policies with an outside fiduciary coverage endorsement that covered the employer's employees who served in a fiduciary capacity in connection with their work for the employer. Plaintiffs' Counsel independently evaluated these policies, researched the case law relevant to such policies, discussed them with mediator Meyer, who has extensive first-hand experience with insurance coverage generally and such excess policies specifically, and consulted with several insurance experts including one of the nation's leading experts on insurance coverage matters. Based on that comprehensive evaluation, Plaintiffs' Counsel concluded that it would be practically impossible to get any contribution from these policies in connection with any settlement and that it would be difficult, if not unlikely, to collect from these policies in the event any judgment won at trial exceeded the remaining balance of the Plan's $50 million Trustee D&O policies.

45. After we largely completed the fact depositions of the Trustees, their advisors and other non-parties, a second mediation was scheduled in February 2019. Once again, the Parties exchange detailed mediation briefs that described the evidence supporting the Parties' respective claims and defenses. That mediation was abruptly canceled with one days' notice when the mediator unexpectedly learned that going forward as scheduled would be counterproductive.

46. After the March 1, 2019 Hearing with the Court, conditions changed sufficiently that the mediator scheduled another mediation for April 30, 2019. We submitted yet another detailed mediation statement that summarized additional deposition and expert discovery for the benefit of the mediator, he Trustees, and their insurers. The Parties agreed to limit that mediation to the monetary issues and to defer negotiation of the governance issues until after a monetary settlement was reached.

47. While the Parties and the Trustees' insurers made some progress at that mediation towards reaching agreement on a settlement amount, the mediation ended with a substantial gap between the Parties. We completed expert discovery and made substantial progress for trial, identifying over 700 documents that might be used at trial, categorized by date, witness, and topic; preparing proposed findings of fact and conclusions of law; digesting the various witnesses' depositions and identifying portions to be submitted at trial; and preparing direct and cross-examination witness outlines for trial.

48. Over the next six months, mediator Bob Meyer doggedly engaged in shuttle diplomacy including dozens of telephone calls and emails in an attempt to close the substantial monetary gap between the parties. The mediator made substantial progress but ultimately concluded that the Parties would not be able to reach an agreement on their own, so he made a

mediator's proposal for $26.85 million, which was accepted by all Parties and the insurers in early November 2019.

49. Thereafter we formulated Plaintiffs' governance demands with the assistance of our expert Dr. Mangiero, and the Parties engaged in substantial direct negotiations over the governance issues. These negotiations, which lasted over three months, were difficult and extensive and resulted in numerous impasses, which led the Parties to seek the assistance of the mediator. The parties participated in a full-day mediation session on January 9, 2020. That session was productive but raised as many new questions as answers.

50. During the next month the Parties continued to engage in extensive direct negotiations and negotiations through the mediator, during which we encountered many more impasses that threatened to derail the provisional monetary settlement. The Parties reported to the Court on January 30, 2020 that they needed two more weeks to see if a settlement on the governance issues could be reached, and the Court granted that additional time and vacated the trial date. *See* Jan. 30, 2020 Minute Entry (Telephone Conference held on 1/30/2020). During these two weeks, the mediator once again played shuttle diplomat, with numerous joint and individual telephone conferences with the Parties, many emails, and the exchange of several competing term sheets. While the Parties made progress, the discussions were on the verge of an irreconcilable impasse as the February 14, 2020 deadline approached. Accordingly, to bridge the gap the mediator once again made a mediator's proposal, which both sides accepted late in the evening on February 13, 2020.

51. To date, Plaintiffs' Counsel has spent over 12,500 hours for a lodestar of about $7.6 million at our regular hourly rates. Courts across the country have approved our rates in connection with class action settlements and contested fee proceedings:

- ***In re Cigna-American Specialty Health Administrative Fee Litigation***, No. 2:16-cv-03967-NIQA (E.D. Pa.), August 29, 2019 Order, ECF No. 101 (approving CSKD rates, including my rate, in connection with settlement providing class members a net recovery of the full amount of administrative fees they paid);

- ***Rodman v. Safeway***, No. 3:11-cv-03003-JST (N.D. Cal.), August 23, 2018 Order, ECF No. 496 at 11-12 (approving CSKD rates, including my rate, in connection with $42 million full-recovery judgment affirmed on appeal at 2017 U.S. App. LEXIS 14397 (9th Cir. Aug. 4, 2017);

- ***Chambers v. Whirlpool Corp., et al.***, 11-1773 FMO (C.D. Cal.) (October 11, 2016) (reviewing the hourly rates of CSKD's attorneys and holding, over Defendants' objections, that "the hourly rates sought by counsel are reasonable." In approving CSKD's fee petition over defendants' objections, Judge Olguin specifically held that I, along with one of my partners, "are among the most capable and experienced lawyers in the country in these kinds of cases."). *See* Dkt. No. 351 at 23; Dkt. No. 218-7 at 77;

- ***In re LG Front-Loading Washing Machine Litigation***, Case No. 08-51 (D.N.J.) at Dkt. No. 421 at page 1 ("the hourly rates of each Lead Counsel firm are likewise reasonable and appropriate in a case of this complexity"); approved rates including my rate. *See* Dkt. 421 at page 1); Dkt. No. 409-5 at page 59;

- ***Alessandro Demarco v. Avalon Bay Communities, Inc.***, No. 2:15-628 (D.N.J), July 11, 2017 Order; Dkt. No. 223 at ¶18 ("The court, after careful review of the time entries and rates requested by Class Counsel, and after applying the appropriate standards required by relevant case law, hereby grants Class Counsel's application for attorneys' fees …"). The hourly rates specifically reviewed and approved by this Court include various CSKD partners and associates;

- ***In re Elk Cross Timbers Decking Marketing, Sales Practices and Products Liability Litigation***, Case No. 15-0018 (JLL)(LAD) (D.N.J. Feb 27, 2017); Dkt. No. 126 at pg. 2, which specifically reviewed Class Counsel's "time summaries and hourly rates," and found that "the hourly rates of each of Plaintiffs' Steering Committee firm are ... reasonable and appropriate in a case of this complexity." The hourly rates specifically reviewed and approved by this Court include various CSKD partners and associates;

- ***Johnson et al. v. W2007 Grace Acquisition I Inc. et al.***, Case No. 2:13-cv-2777 (W.D. Tenn.), at ECF #135 pg. 37 (opinion filed Dec. 4, 2015) ("Both the hours spent and the hourly rates [by lead counsel CSKD] are reasonable given the nature and circumstances of this case, and the applied lodestar multiplier is at the low end of the range regularly approved in securities class actions"). The hourly rates reviewed by this Court include various CSKD partners and associates;

- ***Ardon v. City of Los Angeles***, Case No. BS363959 (Superior Court, County of Los Angeles), Final approval Order at 19-20; (approving CSKD's rates);

- ***Henderson v. Volvo Cars of N. Am.****, LLC,* 2013 U.S. Dist. LEXIS 46291 *4-47 (D.N.J. Mar. 22, 2013) (CSKD's rates "are entirely consistent with hourly rates routinely approved by this Court in complex class action litigation.");

- ***In re Philips/Magnavox TV Litig.***, 2012 U.S. Dist. LEXIS 67287, 44-48 (D.N.J. May 14, 2012) ("The Court finds the billing rates to be appropriate and the billable time to have been reasonably expended."). I was Co-Lead Counsel in that case and the court approved my rate; and

- ***In re Prudential Sec. Ins. Limited Partnerships Lit.***, 985 F. Supp. 410, 414 (S.D.N.Y. 1997) (approving CSKD's rates and hours billed in case where CSKD was on Plaintiffs' Executive Committee in settlement resulting in a $130 million recovery).

52. Plaintiffs Snitzer and Livant spent significant time consulting with my firm, producing numerous documents including emails from 2010 through 2017, sitting for full-day depositions by defendants' counsel, participating in mediation sessions, and reviewing various court in mediation documents. In addition, Plaintiff Snitzer, who holds an MBA with distinction from NYU business school, generated various damages analyses that we used in connection with evaluating Plan Participants' claims and drafting the initial complaint.

53. Mr. Snitzer and Livant have each committed that if the Court approves the requested $10,000 service awards, they will donate these awards to an organization or organizations fighting to protect the pension rights of AFM Plan Participants.

I declare pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on March 25, 2020 in Haverford, Pennsylvania.

By: /s/ *Steven A. Schwartz*
Steven A. Schwartz

Counsel for Plaintiffs
and Interim Class Counsel
for the Proposed Class

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ANDREW SNITZER and PAUL LIVANT, individually and as representatives of a class of similarly situated persons, on behalf of the American Federation of Musicians and Employers' Pension Plan,

Plaintiffs,

v.

THE BOARD OF TRUSTEES OF THE AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS' PENSION FUND, THE INVESTMENT COMMITTEE OF THE BOARD OF TRUSTEES OF THE AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS' PENSION FUND, RAYMOND M. HAIR, JR., AUGUSTINO GAGLIARDI, GARY MATTS, WILLIAM MORIARITY, BRIAN F. ROOD, LAURA ROSS, VINCE TROMBETTA, PHILLIP E. YAO, CHRISTOPHER J.G. BROCKMEYER, MICHAEL DEMARTINI, ELLIOT H. GREENE, ROBERT W. JOHNSON, ALAN H. RAPHAEL, JEFFREY RUTHIZER, BILL THOMAS, JOANN KESSLER, MARION PRESTON,

Defendants.

No. 1:17-cv-5361 (VEC)

CLASS ACTION SETTLEMENT AGREEMENT

This CLASS ACTION SETTLEMENT AGREEMENT ("Settlement Agreement") is entered into between and among, on the one hand, the Class Representatives, on behalf of themselves, all Class Members, and the Plan, and, on the other hand, the Defendants, as defined herein.

1. RECITALS

1.1 On July 14, 2017, the Class Representatives, on behalf of themselves and a class of other similarly situated participants and beneficiaries of the American Federation of Musicians and Employers' Pension Plan (the "Plan"), filed a Class Action Complaint (the "Complaint"), on behalf of the Plan, in the United States District Court for the Southern District of New York titled *Snitzer and Livant v. The Board of Trustees of the American Federation of Musicians and Employers' Pension Fund et al.*, No. 17-cv-05361 (VEC) (the "Action");

1.2 Thereafter, and including in response to defendants' motion to dismiss, the Class Representatives amended the Complaint to add and subtract defendants and allegations. As a

result, the operative complaint became the Amended Class Action Complaint (the "Amended Complaint") filed on December 1, 2017, naming as defendants The Board of Trustees of the American Federation of Musicians and Employers' Pension Fund (the "Board of Trustees"), The Investment Committee of The Board of Trustees of the American Federation of Musicians and Employers' Pension Fund (the "Investment Committee"), as well as then-existing and former individual Board and Investment Committee members Raymond M. Hair, Jr., Augustino Gagliardi, Gary Matts, William Moriarity, Brian F. Rood, Laura Ross, Vince Trombetta, Phillip E. Yao, Christopher J.G. Brockmeyer, Michael DeMartini, Elliot H. Greene, Robert W. Johnson, Alan H. Raphael, Jeffrey Ruthizer, Bill Thomas, Marion Preston, and JoAnn Kessler (collectively, the "Defendants").

1.3 The Amended Complaint advanced: (i) two direct claims for breach of fiduciary duty under ERISA stemming from decisions regarding the Plan's asset allocation, including the decision to allocate Plan assets to investments in emerging market equities and private equity, as well as to allegedly underperforming and costly actively managed investments (Counts I and II); and (ii) one claim for co-fiduciary breach for knowingly participating and failing to remedy the breaches in Counts I and II (Count III).

1.4 On January 10, 2018, Defendants filed a motion to dismiss the Amended Complaint for failure to state a claim. By Opinion and Order dated April 8, 2018, the Court granted the motion as to Count III, but denied the motion with respect to Counts I and II.

1.5 On May 29, 2018, Defendants filed their Answer to the Amended Complaint, denying all allegations of wrongdoing and liability and advancing certain affirmative and other defenses.

1.6 At the conclusion of fact and expert discovery, on September 16, 2019, the Class Representatives and the Defendants jointly requested that the Court certify the Action as a class action pursuant to Fed. R. Civ. Pro. 23(b)(1).

1.7 During the course of the Action, the Settling Parties engaged in extensive discovery, including (1) production of over 200,000 pages of documents by Defendants, (2) production of additional documents by the Class Representatives, (3) production of over 200,000 pages of documents by non-parties, including the Plan, (4) twelve depositions of defense fact witnesses, (5) depositions of each of the Class Representatives, (6) ten non-party fact witness depositions, and (7) six expert depositions.

1.8 During the course of the Action, the parties engaged in settlement discussions, including through several private mediations with Mediator Robert Meyer, Esq. (the "Mediator"). The Parties ultimately reached an agreement to settle. The terms of the parties' settlement are memorialized in this Settlement Agreement.

1.9 In evaluating the terms of this Settlement Agreement, Class Counsel have also taken into account the fact that: (i) the Plan previously decided to terminate Meketa's role as an investment consultant when it shifted to an OCIO model to the Plan and that as part of the Settlement, Defendants have agreed to replace Meketa as OCIO monitor; and (ii) two Defendants who are members of the Investment Committee have stated their intention to resign from their positions as trustees within the next eighteen (18) months.

1.10 Class Representatives and Class Counsel consider it desirable and in the Plan's and Class Members' best interests that the claims in the Action be settled upon the terms set forth below. The Class Representatives and Class Counsel have concluded that such terms are fair,

reasonable, and adequate and that this settlement will result in valuable benefits to the Plan and the Settlement Class. While Class Representatives and Class Counsel believe that the evidence reflected in the deposition testimony, deposition exhibits, and expert reports demonstrate that Defendants breached their duties and as a result caused damage to the Plan, they are mindful that the only practical source of monetary recovery is from the applicable policies issued by the Plan's fiduciary liability insurance carriers and the $26.85 million monetary recovery represents a significant majority of the remaining limits of those policies that would have been available to pay any judgment obtained at trial and after any appeals.

1.11 Defendants continue to deny all allegations of wrongdoing and deny all liability for the allegations and claims made in the Action. Defendants maintain that they are without fault or liability and are settling the Action solely: to avoid litigation costs (both monetary and nonmonetary); in recognition of the fact that the settlement will result in a substantial payment to the Plan from insurance proceeds that might otherwise be consumed by the continued defense of this Action; and to prevent interference with the orderly operation of the Plan at a time when the Plan has been determined to be in critical and declining status within the meaning of the Multiemployer Pension Reform Act of 2014 ("MPRA").

1.12 Therefore, the Settling Parties, in consideration of the promises, covenants, and agreements herein described, acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree as follows:

2. DEFINITIONS

As used in this Settlement Agreement and the Exhibits thereto, unless otherwise defined, the following terms have the meaning specified below:

2.1 "Attorneys' Fees and Costs" means the amount awarded by the Court as compensation for the services provided by Class Counsel and the expenses incurred by Class Counsel in connection with the Action, which shall be recovered from the Gross Settlement Amount.

2.1 "CAFA" means the Class Action Fairness Act of 2005.

2.2 "Class Counsel" means Chimicles Schwartz Kriner and Donaldson-Smith LLP and Shepherd Finkelman Miller & Shah LLP. Chimicles Schwartz Kriner and Donaldson-Smith LLP are "Lead Plaintiffs' Counsel."

2.3 "Class Members" means all individuals in the Settlement Class, including the Class Representatives.

2.4 "Class Period" means the period from August 9, 2010 through the date the Court issues its Preliminary Approval Order.

2.5 "Class Representatives" means Andrew Snitzer and Paul Livant.

2.6 "Court" means the United States District Court for the Southern District of New York.

2.7 "Defense Counsel" means Proskauer Rose LLP and Cohen Weiss & Simon LLP.

2.8 "Fairness Hearing" means the hearing scheduled by the Court to consider (a) any objections from Class Members to the Settlement Agreement, (b) Class Counsel's petition for Attorneys' Fees and Costs and for Service Awards for the Class Representatives, and (c) whether to finally approve the Settlement under Federal Rule of Civil Procedure 23.

2.9 "Final" when referring to the Final Approval Order or any other judgment or court order means (i) if no appeal is filed, the expiration date of the time provided for filing or noticing of any appeal under the Federal Rules of Civil Procedure, *i.e.*, thirty (30) days after entry of the judgment or order; or (ii) if there is an appeal from the judgment or order, the latter of (a) the date of final dismissal of all such appeals, or the final dismissal of any proceeding on certiorari or otherwise, or (b) the date the judgment or order is finally affirmed on an appeal, the expiration of the time to file a petition for a *writ of certiorari* or other form of review, or the denial of a *writ of certiorari* or other form of review, and, if certiorari or other form of review is granted, the date of final affirmance following review pursuant to that grant.

2.10 "Final Approval Order" means the order and final judgment approving the Settlement Agreement, implementing the terms of this Settlement Agreement, and dismissing the Action with prejudice as contemplated in Section 5 of this Agreement, which order shall be substantially in the form set out as Exhibit 3. The Parties may agree to additions or modifications to the form of the Final Approval Order as they agree are appropriate at the time that it is submitted to the Court for final approval of the Settlement.

2.11 "Independent Settlement Evaluation Fiduciary" means an independent fiduciary who will serve as a fiduciary to the Plan in accordance with Section 4 that has no relationship or interest in any of the Settling Parties.

2.12 "Large Taft-Hartley Plans" means employee benefit pension plans that are jointly-administered by employer and union appointed trustees and that hold assets exceeding $1 billion.

2.13 "MPRA Proceeding" means the proceeding surrounding the application made by the Plan on December 30, 2019 to the U.S. Treasury Department for approval to reduce Plan benefits under MPRA.

2.14 "Meketa" means Meketa Investment Group and its past, present and future principals, partners, officers, directors, employees and agents. Meketa formerly served as OCIO monitor but as part of this Settlement has been notified it is being removed from this position.

2.15 "Neutral Independent Fiduciary Trustee" shall mean Blakeman Crest Advisors LLC, with Andrew Irving performing the services for Blakeman. Blakeman, with Mr. Irving acting for it, has been jointly agreed upon by the Class Representatives and Class Counsel and Defendants to serve in this role (described below in Section 8), following the Settling Parties' meetings with him and their evaluation and research of his qualifications.

2.16 "OCIO" means an Outside Chief Investment Officer. The term OCIO shall refer to the Plan's current OCIO, *i.e.*, Cambridge Associates, Inc., and any person or entity to succeed Cambridge in performing discretionary investment-related functions for the Plan.

2.17 "OCIO Management Date" refers to October 1, 2017, *i.e.*, the date when the OCIO first had Plan assets under management.

2.18 "Participants and Beneficiaries" shall have the same meaning as is accorded these terms by ERISA Section 3(7) and (8), 29 U.S.C.§§ 1002(7), (8).

2.19 "Plan" means the American Federation of Musicians and Employers' Pension Plan. The Amended Complaint also refers to the American Federation of Musicians and Employers' Pension Fund, which is the funding vehicle for the pension benefits provided under the Plan. The Plan and the Fund are both referred to as the "Plan."

2.20 "Preliminary Approval Order" means the order proposed by the Settling Parties and entered by the Court in connection with the Motion for Entry of the Preliminary Approval Order to be filed by Class Representatives through Class Counsel, as described in Section 3.1 and in substantially the form attached hereto as Exhibit 1.

2.21 "Released Parties" means (a) each Defendant and the Plan; (b) each Defendant's predecessors, successors, assigns, past, present, and future employers, affiliates, descendants, spouses, dependents, beneficiaries, marital community, heirs, executors, and administrators; (c) each of the Plan's past, present and future trustees, fiduciaries, parties in interest, committees and committee members, Executive Directors, employers, employees, service providers, investment vehicles or funds, managers, independent contractors, administrators, actuaries, consultants (including, but not limited to Meketa), accountants, and auditors; and (d) each of the past, present and future agents, representatives, attorneys, experts, advisors, insurers, shareholders, owners, directors, officers, and employees of the individuals and entities in (a) through (c).

2.22 "Released Claims" means any and all actual or potential claims, actions, allegations, demands, rights, obligations, liabilities, damages, attorneys' fees, expenses, costs, and causes of action, whether arising under federal, state or local law, whether by statute, contract or equity, whether brought in an individual, derivative, or representative capacity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, that:

2.22.1 were asserted in the Complaint or Amended Complaint or that arise out of, relate in any way to, are based on, or have any connection with any of the factual or legal allegations asserted in the Complaint or Amended Complaint, including, but not limited to, those that arise out of, relate to, are based on, or have any connection with decisions made, prior to the OCIO Management Date, regarding (i) the Plan's asset allocation and the selection (including of the Plan's OCIO), retention, monitoring, oversight, compensation, fees, or performance of the Plan's investments or its investment managers; (ii) investment-related fees, costs, or expenses charged to, paid,

or reimbursed by the Plan; (iii) disclosures or failures to disclose information regarding the Plan's investments and/or funding; or (iv) any alleged breach of the duty of loyalty, care, prudence, diversification, or any other fiduciary duties or prohibited transactions in connection with (i) through (iii) above;

2.22.2 arise out of, relate in any way to, are based on, or have any connection with the approval by the Independent Settlement Evaluation Fiduciary of the Settlement Agreement, unless brought against the Independent Fiduciary alone; or

2.22.3 would be barred by res judicata based on entry by the Court of the Final Approval Order.

Nothing in this Settlement Agreement shall impact or impair any rights that any members of the Settlement Class or participants and/or beneficiaries of the Plan may have in connection with the pending MPRA Proceeding.

2.23 "Resigning Trustees" means the two trustees who are currently members of the Investment Committee and who have communicated their plan to resign from the Plan's Board of Trustees within the next eighteen (18) months.

2.24 "Settlement" means the settlement to be consummated under this Settlement Agreement pursuant to the Final Approval Order.

2.25 "Settlement Class" means the following class to be certified by the Court: All Participants and Beneficiaries of the Plan during the Class Period, excluding Defendants and their Beneficiaries.

2.26 "Settlement Effective Date" means the date on which the Final Approval Order is Final, provided that by such date the Settlement has not been terminated in accordance with Section 11 and provided that any appeal or challenge affecting only the Court's approval regarding any Attorneys' Fees and Costs or Service Awards shall in no way disturb or affect the finality of the other provisions of the Final Approval Order or the Settlement Effective Date.

2.27 "Settlement Notice" means the Notice of Class Action Settlement and Fairness Hearing to be sent to Class Members identified by the Plan following the Court's issuance of the Preliminary Approval Order, in substantially the form attached hereto as Exhibit 2.

2.28 "Settlement Website" means the website at www.afm-epfsettlement.com, established for purposes of communicating with Class Members about the Settlement.

2.29 "Settling Parties" means the Defendants and the Class Representatives, on behalf of themselves, the Plan, and each of the Class Members.

3. PRELIMINARY APPROVAL AND NOTICE TO THE CLASS

3.1 Class Representatives, through Class Counsel, shall file with the Court a motion seeking preliminary approval of this Settlement Agreement and for entry of the Preliminary Approval Order in substantially the form attached hereto as Exhibit 1. The Preliminary Approval Order to be presented to the Court shall, among other things:

(a) Grant the motion to certify the Settlement Class as defined in Section 2.25 under Federal Rule of Civil Procedure 23(b)(1)(A) and/or (B);

(b) Approve the text of the Settlement Notice for mailing or sending by electronic means to Class Members to notify them (1) of the Fairness Hearing and (2) that notice of changes to the Settlement Agreement, future orders regarding the Settlement, modifications to the Settlement Notice, changes in the date or timing of the Fairness Hearing, or other modifications to the Settlement may be provided to the Class through the Settlement Website without requiring additional mailed or electronic notice;

(c) Determine that under Federal Rule of Civil Procedure 23(c)(2), the Settlement Notice constitutes the best notice practicable under the circumstances, provides due and sufficient notice of the Fairness Hearing and of the rights of all Class Members, and complies fully with the requirements of Federal Rule of Civil Procedure 23, the Constitution of the United States, and any other applicable law;

(d) Cause the Plan to send the Settlement Notice by electronic means and/or mail to each Class Member identified by the Plan based on a review of its records (as specified further below in Sections 3.2 and 3.3);

(e) Preliminarily enjoin Class Members and the Plan from commencing, prosecuting, or pursuing any claim or complaint that arises out of or relates in any way to the Released Claims;

(f) Set the Fairness Hearing for no less than one hundred and ten (110) calendar days after the date of the Preliminary Approval Order in order to determine whether (i) the Court should approve the Settlement as fair, reasonable, and adequate, (ii) the Court should enter the Final Approval Order, and (iii) the Court should approve the application for Attorneys' Fees and Costs and Service Awards for the Class Representatives;

(g) Provide that any objections to any aspect of the Settlement Agreement shall be heard, and any papers submitted in support of said objections shall be considered, by the Court at the Fairness Hearing if they have been filed validly with the Clerk of the Court; and that, to be filed validly, the objection and any notice of intent to appear or supporting documents must be filed at least thirty (30) calendar days prior to the scheduled Fairness Hearing.

(h) Provide that any Settling Party may file a response to an objection by a Class Member;

(i) Provide that the Fairness Hearing may, without further direct notice to the Class Members, other than by notice to Class Counsel, be adjourned or continued by order of the Court, as long as notice of the same is posted on the Settlement Website; and

(j) Approve the Form of CAFA Notices attached as Exhibit 4 and order that upon mailing of the CAFA notices, the Defendants shall have fulfilled their obligations under CAFA.

3.2 Within thirty (30) calendar days of the entry of the Preliminary Approval Order or as may be modified by the Court, the Plan shall cause to be provided to each Class Member a Settlement Notice in the form and manner to be approved by the Court, which shall be in substantially the form attached hereto as Exhibit 2 or a form subsequently agreed to by the Settling Parties and the Court. The Settlement Notice shall be sent to the last known address, or e-mail address if sent electronically, of each Class Member on record with the Plan. For Participants and Beneficiaries in the Settlement Class who reside at the same address, a single mailing or email shall suffice.

3.3 The Settling Parties agree that, in recognition that the Plan lacks either an email or mailing address for 21,881 Class Members (out of a total of 114,285), the following documents or links to the following documents will be posted to the Settlement Website as soon as practicable following the date of the Preliminary Approval Order: the Complaint, the Amended Complaint, the Settlement Agreement and its Exhibits, Plaintiffs' Motion for Preliminary Approval and any response thereto by Defendants, the Settlement Notice, Class Representatives' Motion for Attorneys' Fees, Costs and Service Awards and any response thereto by Defendants, any Court orders related to the Settlement, any amendments or revisions to these documents, any responses by the Settling Parties to any objections that may be filed, and any other documents or information mutually agreed upon by the Settling Parties. No other information or documents will be posted on the Settlement Website unless agreed to in advance by the Settling Parties in writing or as ordered by the Court.

4. REVIEW AND APPROVAL BY INDEPENDENT SETTLEMENT EVALUATION FIDUCIARY

4.1 The Plan shall retain an Independent Settlement Evaluation Fiduciary, who has been agreed to by the Class Representatives. The Independent Fiduciary shall have the following responsibilities, including whether to approve and authorize the settlement of Released Claims on behalf of the Plan.

(a) The Independent Settlement Evaluation Fiduciary shall review the Settlement and comply with all relevant conditions set forth in Prohibited Transaction Class Exemption 2003-39, "Release of Claims and Extensions of Credit in Connection with Litigation," issued December 31, 2003, by the United States Department of Labor, 68 Fed. Reg. 75,632, as amended ("PTE 2003-39") in making its determination, for the purpose of Defendants' reliance on PTE 2003-39.

(b) The Independent Settlement Evaluation Fiduciary shall notify the Defendants (with copies to Class Counsel and Defense Counsel) directly of its determination in writing, which

notification shall be delivered no later than thirty (30) calendar days before the Fairness Hearing.

(c) Defendants, Defense Counsel, and Class Counsel shall respond to reasonable requests by the Independent Settlement Evaluation Fiduciary for information so that the Independent Settlement Evaluation can review and evaluate the Settlement Agreement.

(d) Within fifteen (15) calendar days of receipt of the written determination by the Independent Settlement Evaluation Fiduciary, Defendants shall (a) review the determination by the Independent Fiduciary, (b) conclude whether the Independent Settlement Evaluation Fiduciary has made the determinations required by PTE 2003-39, and (c) notify Class Counsel in writing of its conclusion in that regard.

5. FINAL SETTLEMENT APPROVAL

5.1 No later than fourteen (14) calendar days before the Fairness Hearing, or no later than a date set by the Court in its Preliminary Approval Order, Class Counsel shall submit to the Court a mutually agreed upon motion for entry of the Final Approval Order (Exhibit 3) in the form approved by Class Counsel and Defense Counsel, which shall request approval by the Court of the terms of this Settlement Agreement and entry of the Final Approval Order in accordance with this Settlement Agreement. The Final Approval Order as proposed shall provide for the following, among other things:

(a) Approval of the Settlement covered by this Settlement Agreement, adjudging the terms of the Settlement Agreement to be fair, reasonable, and adequate to the Plan and the Class Members, and directing the Settling Parties to take the necessary steps to effectuate the terms of the Settlement Agreement;

(b) A determination under Federal Rule of Civil Procedure 23(c)(2) that the Settlement Notice constituted the best notice practicable under the circumstances and that due and sufficient notice of the Fairness Hearing and the rights of all Class Members was provided;

(c) Dismissal with prejudice of the Action and all Released Claims asserted therein whether asserted by Class Representatives on their own behalf or on behalf of the Class Members, or on behalf of the Plan, without costs to any of the Settling Parties other than as provided for in this Settlement Agreement;

(d) That the dismissal with prejudice shall cover certain defendants who were previously dismissed from the Action without prejudice;

(e) That the Class Representatives, Class Members and the Plan shall be (i) deemed to have, and by operation of the Final Approval Order and Judgment shall have, fully, finally, and forever settled, released, relinquished, waived, and discharged all Released Claims against the Released Parties in the manner(s) set forth in the Settlement Agreement; and (ii) permanently barred and enjoined from asserting, commencing,

prosecuting, or continuing any of the Released Claims in the manner(s) set forth in the Settlement Agreement.

(f) That Defendants and each Class Member shall be deemed to have fully, finally, and forever settled, released, relinquished, waived, and discharged any claims against the Class Representatives or Class Counsel, that arise out of the institution, prosecution, settlement or dismissal of the Action.

(g) That all applicable CAFA requirements have been satisfied.

5.2 The Final Approval Order and judgment entered by the Court approving the Settlement Agreement shall provide that, upon its entry, all Settling Parties, the Settlement Class, and the Plan shall be bound by the Settlement Agreement and by the Final Approval Order.

6. PAYMENT OF THE SETTLEMENT AMOUNT

6.1 Defendants have agreed to settle the Action for a monetary payment of twenty-six million and eight hundred and fifty thousand dollars ($26,850,000) (the "Gross Settlement Amount"). This amount shall be the full and sole monetary payment made by or on behalf of the Defendants in connection with the Settlement effectuated through this Settlement Agreement. As described further below in Section 7.1, Class Representatives have reserved the right to seek up to $9,850,000 in Attorneys' Fees and Costs and $20,000 in Service Awards, but have agreed that any Service Awards will be payable out of any awarded Attorneys' Fees and Costs, rather than from the Gross Settlement Amount. If these sums are awarded, the net recovery to the Plan, from the Gross Settlement Amount, will be seventeen million dollars ($17,000.000).

6.2 Except as provided in Section 6.2.1, within thirty (30) calendar days after the later of the Settlement Effective Date or the date any order with respect to Attorneys' Fees and Costs and Service Awards is Final, Defendants will cause the Plan's primary fiduciary liability insurance carrier to pay Attorneys' Fees and Costs (inclusive of any Service Awards) to Class Counsel as awarded by the Court; and Defendants will cause the Plan's fiduciary liability insurance carriers to pay the remaining balance of the Gross Settlement Amount to the Plan. The Attorneys' Fees and Costs (inclusive of Service Awards) will be deducted from and are not in addition to the Gross Settlement Amount.

6.2.1 **Payments During Appeal**: In the event of an appeal or challenge to the Final Approval Order or the award of Attorneys' Fees and Costs and Service Awards provided for therein, Class Counsel may require Defendants' primary fiduciary liability insurance carrier to pay to Class Counsel the Attorneys' Fees and Costs (inclusive of Service Awards) awarded by the Court within seventy-five (75) calendar days after entry of the Final Approval Order provided that (1) Class Counsel provide, within forty-five (45) days of the time the Final Approval Order is entered, written notice of such demand and include all necessary payment and routing information to facilitate the transfer; and (2) if Defendants' primary fiduciary liability insurance carrier requires a letter of credit from Class Counsel that provides the carrier reasonable security, that letter of credit has

been provided no less than five (5) business days before payment is due. Any disputes regarding the reasonableness of such a request or the security provided by any letter of credit shall be decided by Mediator Robert Meyer Esq. of JAMS. In the event that payments are made to Class Counsel pursuant to this provision following an appeal or challenge affecting only the Court's approval regarding any Attorneys' Fees and Costs or Service Awards, Defendants will cause the Plan's fiduciary liability insurance carriers to pay the remaining balance of the Gross Settlement Amount to the Plan within forty-five (45) days after payments to Class Counsel are made pursuant to this provision.

6.2.2 **Refund or Repayment Obligation for Attorneys' Fees and Costs and Service Awards**. The payment of Attorneys' Fees and Costs (inclusive of Service Awards) shall be subject to Class Counsel's joint and several obligation to make appropriate and prompt refunds or repayments of the applicable portion of the Attorneys' Fees and Costs and Service Awards received plus interest at the average of 30-day Treasuries over the relevant period, if the Settlement Agreement is properly and timely terminated in accordance with its terms, or as a result of any further proceedings or collateral attack, the Attorneys' Fees and Costs or Service Awards is vacated or the amount of such award is reduced. If the Settlement Agreement is terminated, payment shall be refunded to the appropriate carriers. If only the Attorneys' Fees and Costs or Service Awards order is vacated or the amount of such award is reduced, refund shall be made to the Plan.

6.2.3 **Distribution of Attorneys' Fees and Costs**. Lead Plaintiffs' Counsel Chimicles Schwartz Kriner & Donaldson-Smith LLP shall have sole responsibility and discretion to distribute the Attorneys' Fees and Costs amongst Class Counsel.

7. ATTORNEYS' FEES AND COSTS AND SERVICE AWARDS

7.1 Class Counsel will file a motion for an award of Attorneys' Fees (not to exceed one-third of the Gross Settlement Amount or $8,950,000) and Class Counsel's litigation Costs (not to exceed $900,000) and Service Awards (not to exceed $10,000 for each of the Class Representatives) no later than thirty (30) calendar days before the deadline set in the Preliminary Approval Order for objections to the proposed Settlement, which may be supplemented thereafter. The motion will specify that any Service Awards are payable out of Attorneys' Fees and Costs rather than the Gross Settlement Amount, so that the maximum amount being sought from the Gross Settlement Amount is $9,850,000.

7.2 Defendants reserve all rights to oppose Class Counsel's application for Attorneys' Fees and Costs and Class Representatives' application for Service Awards.

8. GOVERNANCE PROVISIONS

8.1 The Plan's Board of Trustees agrees that, as further consideration to settle the Action, the following governance provisions shall become operative no later than thirty (30) calendar

days after the Settlement Effective Date:

8.1.1 Replace the Resigning Trustees with two new trustees who were not previously members of the Plan's Board of Trustees and who will serve on the Investment Committee once the Resigning Trustees have formally resigned;

8.1.2 Arrange to be posted on the Plan's website at www.afm-epf.org: a quarterly investment report, in substantially the same form as Exhibit 5, prepared by the OCIO comparing the Plan's asset allocation to the asset allocation of Large Taft-Hartley Plans and containing a running cumulative comparison of Plan's actual equity performance since October 2017 versus an appropriate index benchmark;

8.1.3 Select a replacement for Meketa to serve as OCIO monitor in accordance with a Request for Proposal ("RFP") process described in Exhibit 6. As part of the RFP process, the Neutral Independent Fiduciary Trustee will be responsible for advising the RFP selected candidates of the claims that were asserted in the Action relating to asset allocation and the use of actively managed funds based on the Neutral Independent Fiduciary Trustee's review of certain lawsuit materials including the parties' respective expert reports.

8.1.4 Adopt asset allocation procedures such that the Board of Trustees retains responsibility for setting the asset allocation policy, subject to the following procedures: the investment consultant who will be retained (in lieu of Meketa) to periodically review the performance of the OCIO will also be charged with providing proposed asset allocation targets for the OCIO, subject to: (i) instructions from the Trustees on the Plan's investment return and risk objectives, and (ii) the Trustees' right to veto any proposed targets, in which case the consultant will be responsible for selecting other targets. The Board minutes will include the consultant's written description of his or her rationale for proposing both sets of targets, including any considerations against implementing them, as well as the Trustees' grounds for vetoing the initial set of targets, and the consultant shall be permitted to review and comment on the full description of the relevant discussion in the relevant portion of the minutes;

8.1.5 Appoint the Neutral Independent Fiduciary Trustee to serve as an additional, nonvoting, neutral trustee. The Neutral Independent Fiduciary Trustee shall serve as (i) a nonvoting member of the Investment Committee; (ii) an advisory resource to the voting members of the Investment Committee Trustees, including the Investment Committee co-chairs.

8.1.5.1 In addition, the Neutral Independent Fiduciary shall have the following responsibilities:

a. Work with, and provide input to, the Union- and Employer-side Co-Chairs of the Investment Committee in fulfilling their functions and responsibilities as Co-Chairs.

b. Have complete access to the information available to the Union- and

Employer-side Co-Chairs of the Investment Committee, and function in all respects (other than voting authority) as those Co-Chairs;

c. Participate in Investment Committee meetings, deliberations and decisions, with all the authority and responsibilities of a Trustee with respect the Plan's investments (other than voting authority);

d. Participate in the portion of the Board meetings, deliberations and decisions, with all the authority and responsibilities of a Trustee, related to the Plan's investments (other than voting authority);

e. Be responsible to state his/her assessment, including his/her reasoning for such assessment, for all matters under deliberation or subject to a decision or vote related to the Investment Committee (including asset management and allocation);

f. Make recommendations, at least annually, regarding changes (if any) in the processes pursuant to which the Investment Committee performs its responsibilities;

g. In coordination with the Trustees and the OCIO, prepare a written report regarding possible changes to the Plan's Investment Policy Statement;

h. Have such other responsibilities as appropriate based on input from the prospective Neutral Independent Fiduciary Trustee.

8.1.5.2 Subject to 8.1.5.3 below, the Neutral Independent Fiduciary Trustee shall be retained for a four-year term commencing from the effective date of his engagement (whether it is before or after the Settlement Effective Date). At the conclusion of the four-year term, the Neutral Independent Fiduciary Trustee shall determine whether the four-year term should be extended for an additional year.

8.1.5.3 The Board of Trustees shall retain the power to remove the Neutral Independent Fiduciary Trustee for "good cause" (which shall mean a failure to adequately perform the responsibilities and functions set forth above, but which shall not include making recommendations adverse to the decisions of the Trustees) after vote, on the record, of a majority of the Employer-side Trustees and Union-side Trustees. Should the Neutral Independent Fiduciary Trustee be removed, the Board of Trustees shall appoint another Neutral Independent Fiduciary Trustee to serve out the remainder of the term pursuant to procedures attached as Exhibit 7.

8.1.6. At least four weeks before the effective date of any new Trustees' appointment to serve on the Board, the Trustees shall post on the Plan's website the identity of such new Trustees along with their bios and any other experience relevant to their qualifications to

serve as a Trustee. The Plan Website will also provide a description of the training or education any new Trustees will receive. Notwithstanding the foregoing, if the President of the American Federation of Musicians changes, notice shall be provided of new Union Trustee appointments as soon as practicable under the circumstances. In addition, in the case of a resignation, death, or incapacity of a Trustee within four weeks of a previously scheduled Trustees meeting, notice of the replacement Trustee will be posted as soon as practicable.

9. RELEASES AND COVENANTS NOT TO SUE

9.1. As of the Settlement Effective Date, the Class Representatives and the Class Members (on behalf of themselves and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns), on their own behalves and on behalf of the Plan, shall be deemed to have fully, finally, and forever settled, released, relinquished, waived, and discharged all Released Parties from the Released Claims, regardless of whether or not such Class Members receive a monetary benefit from the Settlement, filed an objection to the Settlement or to any application by Class Counsel for an award of Attorneys' Fees and Costs and Service Awards, and whether or not the objections have been allowed. Class Members and Defendants shall also be deemed to have fully, finally, and forever settled, released, relinquished, waived, and discharged any claims against the Class Representatives or Class Counsel, that arise out of the institution, prosecution, settlement or dismissal of the Action.

9.2. As of the Settlement Effective Date, the Plan (subject to Independent Settlement Evaluation Fiduciary approval as required by Section 4.1) shall be deemed to have fully, finally, and forever settled, released, relinquished, waived, and discharged all Released Parties from the Released Claims.

9.3. Notwithstanding anything in Section 9.1 and 9.2, the release of future entities or persons included among the Released Parties in Section 2.22 shall be limited to those Released Claims that are based on conduct preceding the Settlement Effective Date.

9.4. As of the Settlement Effective Date, the Class Representatives and the Class Members (on behalf of themselves and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns), on their own behalves and on behalf of the Plan and the Plan (subject to Independent Settlement Evaluation Fiduciary approval as required by Section 4.1), expressly agree that they, acting individually or together, or in combination with others, shall not sue or seek to institute, maintain, prosecute, argue, or assert in any action or proceeding (including but not limited to an IRS determination letter proceeding, a Department of Labor proceeding, an arbitration or a proceeding before any state insurance or other department or commission), any cause of action, demand, or claim on the basis of, connected with, or arising out of any of the Released Claims. Nothing herein shall preclude any action to enforce the terms of this Settlement Agreement. As set forth above, nothing in this Settlement Agreement shall impact or impair any rights that any members of the Settlement Class or participants and/or beneficiaries of the Plan may have in connection with the pending MPRA

Proceeding.

9.5. Class Counsel, the Class Representatives, Class Members, or the Plan may hereafter discover facts in addition to or different from those that they know or believe to be true with respect to the Released Claims. Such facts, if known by them, might have affected the decision to settle with the Released Parties, or the decision to release, relinquish, waive, and discharge the Released Claims, or the decision of a Class Member not to object to the Settlement. Notwithstanding the foregoing, the Class Representatives, Class Members, and the Plan shall expressly, upon the entry of the Final Approval Order, be deemed to have, and, by operation of the Final Approval Order, shall have fully, finally, and forever settled, released, relinquished, waived, and discharged any and all Released Claims. The Class Representatives, Class Members, and the Plan acknowledge and shall be deemed by operation of the Final Approval Order to have acknowledged that the foregoing waiver was bargained for separately and is a key element of the Settlement embodied in this Settlement Agreement of which this release is a part. Defendants and the Plan acknowledge and shall be deemed by operation of the Final Approval Order to have acknowledged that nothing in this Settlement Agreement shall impact or impair any rights that any members of the Settlement Class or participants and/or beneficiaries of the Plan may have in connection with the pending MPRA Proceeding.

9.6. With respect to the Released Claims, it is the intention of the Settling Parties and all other Class Members and the Plan expressly to waive to the fullest extent of the law: (i) the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides that "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party"; and (ii) the provisions, rights and benefits of any similar statute or common law of any other jurisdiction that may be, or may be asserted to be, applicable.

9.7. Notwithstanding the foregoing releases, nothing in Section 9 above or elsewhere in this Settlement Agreement shall release, impact or impair any rights that the fiduciary liability insurers of the Plan and the Defendants may have by way of subrogation claims against any Released Parties under any insurance policy.

10. REPRESENTATIONS AND WARRANTIES

10.1. The Settling Parties represent:

(a) That they are voluntarily entering into this Settlement Agreement as a result of arm's length negotiations among their counsel, and that in executing this Settlement Agreement they are relying solely upon their own judgment, belief, and knowledge, and upon the advice and recommendations of their own independently selected counsel, concerning the nature, extent, and duration of their rights and claims hereunder and regarding all matters that relate in any way to the subject matter hereof;

(b) That they assume the risk of mistake as to facts or law;

(c) That they recognize that additional evidence may have come to light, but that they nevertheless desire to avoid the expense and uncertainty of litigation by entering into the Settlement;

(d) That they have read carefully the contents of this Settlement Agreement, and this Settlement Agreement is signed freely by each individual executing this Settlement Agreement on behalf of each of the Settling Parties; and

(e) That they have made such investigation of the facts pertaining to the Settlement and all matters pertaining thereto, as they deem necessary.

10.2 Each individual executing this Settlement Agreement on behalf of a Settling Party does hereby personally represent and warrant to the other Settling Parties that he/she has the authority to execute this Settlement Agreement on behalf of, and fully bind, each principal that each such individual represents or purports to represent.

11. TERMINATION, CONDITIONS OF SETTLEMENT, AND EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION

11.1. The Settlement Agreement shall automatically terminate, and thereby become null and void with no further force or effect if:

(a) Under Section 4.1, (1) either the Independent Settlement Evaluation Fiduciary does not approve the Settlement, or disapproves the Settlement for any reason whatsoever or the Defendants reasonably conclude that the Independent Settlement Evaluation Fiduciary's approval does not include the determinations required by PTE 2003-39 in either case; and (2) the Settling Parties do not mutually agree to modify the terms of the Settlement to facilitate an approval by the Independent Settlement Evaluation Fiduciary or the Independent Settlement Evaluation Fiduciary's determinations required by PTE 2003-39;

(b) The Preliminary Approval Order or the Final Approval Order are not entered by the Court substantially in the form submitted by the Settling Parties or in a form which is otherwise agreed to by the Settling Parties;

(c) The Settlement Class is not certified as defined herein or in a form which is otherwise agreed to by the Settling Parties;

(d) This Settlement Agreement is disapproved by the Court or fails to become effective for any reason whatsoever; or

(e) The Preliminary Approval Order or Final Approval Order is finally reversed on appeal, or is modified on appeal, and the Settling Parties do not mutually agree to any such modifications.

11.2. If the Settlement Agreement is terminated, deemed null and void, or has no further force or effect, the Action and the Released Claims asserted by Class Representatives shall for all purposes with respect to the Settling Parties revert to their status as though the Settling Parties never executed the Settlement Agreement and the provisions of Section 6.2.2 regarding the refund or repayment of Attorneys' Fees and Costs shall apply.

11.3. It shall not be deemed a failure to approve the Settlement Agreement if the Court denies, in whole or in part, Class Counsel's request for Attorneys' Fees and Costs and/or Class Representatives' Service Awards and/or modifies any of the proposed orders relating to Attorneys' Fees and Costs and/or Class Representatives' Service Awards accordingly.

12. NO ADMISSION OF WRONGDOING

12.1. This Settlement Agreement, whether or not consummated, and any negotiations or proceedings hereunder are not, and shall not be construed as, deemed to be, or offered or received as evidence of an admission by or on the part of any Released Party of any wrongdoing, fault, or liability whatsoever by any Released Party, or give rise to any inference of any wrongdoing, fault, or liability or admission of any wrongdoing, fault, or liability in the Action or any other proceeding, and the Defendants and Released Parties admit no wrongdoing, fault or liability with respect to any of the allegations or claims in the Action.

12.2. This Settlement Agreement, whether or not consummated, and any negotiations or proceedings hereunder, shall not constitute admissions of any liability of any kind, whether legal or factual. Subject to Federal Rule of Evidence 408, the Settlement and the negotiations related to it are not admissible as substantive evidence, for purposes of impeachment, or for any other purpose. Defendants deny all allegations of wrongdoing and deny all allegations and claims in the Action. Defendants contend that the Plan has been managed, operated, and administered at all relevant times in accordance with ERISA, including its fiduciary duty provisions.

13. GENERAL PROVISIONS

13.1 The Settling Parties agree to cooperate fully with each other in seeking Court approval of the Preliminary Approval Order and the Final Approval Order, and to do all things as may reasonably be required to effectuate preliminary and final approval and the implementation of this Settlement Agreement according to its terms.

13.2 This Settlement Agreement shall be interpreted, construed, and enforced in accordance with applicable federal law and, to the extent that federal law does not govern, by New York law.

13.3 Each Settling Party to this Settlement Agreement hereby acknowledges that he, she, or it has consulted with and obtained the advice of counsel prior to executing this Settlement Agreement and that this Settlement Agreement has been explained to that Settling Party by

his, her, or its counsel.

13.4 Any headings included in this Settlement Agreement are for convenience only and do not in any way limit, alter, or affect the matters contained in this Settlement Agreement or the Sections they caption.

13.5 References to a person are also to the person's permitted successors and assigns, except as otherwise provided herein.

13.6 Whenever the words "include," "includes" or "including" are used in this Settlement Agreement, they shall not be limiting but shall be deemed to be followed by the words "without limitation."

13.7 Before entry of the Preliminary Approval Order and approval of the Independent Settlement Evaluation Fiduciary, this Settlement Agreement may be modified or amended only by written agreement signed by or on behalf of all Settling Parties. Following approval by the Independent Settlement Evaluation Fiduciary, the Settlement Agreement may be modified or amended only if such modification or amendment is set forth in a written agreement signed by or on behalf of all Settling Parties and only if the Independent Settlement Evaluation Fiduciary approves such modification or amendment in writing. Following entry of the Preliminary Approval Order, this Settlement Agreement may be modified or amended only by written agreement signed on behalf of all Settling Parties, and only if the modification or amendment is approved by the Independent Settlement Evaluation Fiduciary in writing and approved by the Court.

13.8 This Settlement Agreement and the exhibits attached hereto constitute the entire agreement among the Settling Parties and no representations, warranties, or inducements have been made to any Settling Party concerning the Settlement other than those contained in this Settlement Agreement and the exhibits thereto.

13.9 The provisions of this Settlement Agreement may be waived only by an instrument in writing executed by the waiving party and specifically waiving such provisions. The waiver of any breach of this Settlement Agreement by any Settling Party shall not be deemed to be or construed as a waiver of any other breach or waiver by any other Settling Party, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

13.10 Each of the Settling Parties agrees, without further consideration, and as part of finalizing the Settlement hereunder, that it will in good faith execute and deliver such other documents and take such other actions as may be necessary to consummate and effectuate the subject matter of this Settlement Agreement.

13.11 All of the covenants, representations, and warranties, express or implied, oral or written, concerning the subject matter of this Settlement Agreement are contained in this Settlement Agreement. No Settling Party is relying on any oral representations or oral agreements. All such covenants, representations, and warranties set forth in this Settlement Agreement shall

be deemed continuing and shall survive the Settlement Effective Date.

13.12 All of the exhibits attached hereto are incorporated by reference as though fully set forth herein. The exhibits shall be: Exhibit 1 - Preliminary Approval Order; Exhibit 2 - Notice of Class Action Settlement; Exhibit 3 - Final Approval Order; Exhibit 4- Form of CAFA Notice; Exhibit 5 – Website Disclosure; Exhibit 6 – OCIO RFP Process; Exhibit 7 – Replacement of Neutral Independent Fiduciary Trustee.

13.13 No provision of the Settlement Agreement or of the exhibits attached hereto shall be construed against or interpreted to the disadvantage of any Settling Party to the Settlement Agreement because that Settling Party is deemed to have prepared, structured, drafted, or requested the provision.

13.14 Any notice, demand, or other communication under this Settlement Agreement (other than the Settlement Notice, or other notices given at the direction of the Court) shall be in writing and shall be deemed duly given upon receipt if it is addressed to each of the intended recipients as set forth below and personally delivered, sent by registered or certified mail postage prepaid, or delivered by reputable express overnight courier;

IF TO THE CLASS REPRESENTATIVES:

Steven A. Schwartz
CHIMICLES SCHWARTZ KRINER
& DONALDSON-SMITH LLP
One Haverford Centre
361 West Lancaster Avenue
Haverford, PA 19041
sas@chimicles.com

-and-

Robert J. Kriner, Jr.
CHIMICLES SCHWARTZ KRINER
& DONALDSON-SMITH LLP
2711 Centerville Road, Suite 201
Wilmington, DE 19808
rjk@chimicles.com

IF TO DEFENDANTS:

Myron D. Rumeld
PROSKAUER ROSE LLP
Eleven Times Square
New York, New York 10036
mrumeld@proskauer.com

and

Jani K. Rachelson
COHEN WEISS & SIMON LLP
900 Third Avenue, Suite 2100
New York, NY 10022-4869
jrachelson@cwsny.com

13.15 This Agreement may be executed in one or more counterparts. All executed copies of this Agreement and photocopies thereof (including emailed copies of the signature pages), shall have the same force and effect and shall be as legally binding and enforceable as the original.

13.16 The Settling Parties agree that Defendants' Counsel, Myron D. Rumeld, has been authorized to execute the Settlement Agreement on behalf of the Defendants. Signatures for the Defendants themselves will be collected as soon as reasonably practicable, but will not impact the enforceability of the Settlement Agreement or delay its approval.

13.17 The Settling Parties agree that the Court shall maintain continuing jurisdiction over the Settlement proceedings to assure the effectuation thereof for the benefit of the Settlement Class.

SIGNED ON BEHALF OF CLASS REPRESENTATIVES, Paul Livant and Andy Snitzer, For Themselves and as Class Representatives:

Dated: Mar 25, 2020

Paul Livant
PAUL LIVANT

Dated: _____

_____
ANDREW SNITZER

and

Jani K. Rachelson
COHEN WEISS & SIMON LLP
900 Third Avenue, Suite 2100
New York, NY 10022-4869
jrachelson@cwsny.com

13.15 This Agreement may be executed in one or more counterparts. All executed copies of this Agreement and photocopies thereof (including emailed copies of the signature pages), shall have the same force and effect and shall be as legally binding and enforceable as the original.

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13.17 The Settling Parties agree that the Court shall maintain continuing jurisdiction over the Settlement proceedings to assure the effectuation thereof for the benefit of the Settlement Class.

SIGNED ON BEHALF OF CLASS REPRESENTATIVES, Paul Livant and Andy Snitzer, For Themselves and as Class Representatives:

Dated:_____

_____
PAUL LIVANT

Dated: Mar 25, 2020

_____
ANDREW SNITZER

FOR DEFENDANTS:

Dated: March 25, 2020

Myron D. Rumeld
PROSKAUER ROSE LLP
Eleven Times Square
New York, New York 10036

Dated: _____

RAYMOND M. HAIR, JR.
For Himself and as Board Co-Chair

Dated: _____

AUGUSTINO GAGLIARDI

Dated: _____

GARY MATTS

Dated: _____

WILLIAM MORIARITY

Dated: _____

BRIAN F. ROOD
For Himself and as Investment
Committee Co-Chair

Dated: _____

LAURA ROSS

APPROVED AS TO FORM AND CONTENT:

Dated: March 25, 2020

Steven A. Schwartz
CHIMICLES SCHWARTZ KRINER
& DONALDSON-SMITH LLP
One Haverford Centre
361 West Lancaster Avenue
Haverford, PA 19041

Counsel for the Class Representatives and the Class

Dated: March 25, 2020

Myron D. Rumeld
PROSKAUER ROSE LLP
Eleven Times Square
New York, New York 10036

Dated: _____

Jani K. Rachelson
COHEN WEISS & SIMON LLP
900 Third Avenue, Suite 2100
New York, NY 10022-4869

Counsel for Defendants

APPROVED AS TO FORM AND CONTENT:

Dated: _____

_____
Steven A. Schwartz
CHIMICLES SCHWARTZ KRINER
& DONALDSON-SMITH LLP
One Haverford Centre
361 West Lancaster Avenue
Haverford, PA 19041

Counsel for the Class Representatives and the Class

Dated: _____

_____
Myron D. Rumeld
PROSKAUER ROSE LLP
Eleven Times Square
New York, New York 10036

Dated: March 25, 2020

Jani K. Rachelson
COHEN WEISS & SIMON LLP
900 Third Avenue, Suite 2100
New York, NY 10022-4869

Counsel for Defendants

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ANDREW SNITZER and PAUL LIVANT, individually and as representatives of a class of similarly situated persons, on behalf of the American Federation of Musicians and Employers' Pension Plan, Plaintiffs, v. THE BOARD OF TRUSTEES OF THE AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS' PENSION FUND, THE INVESTMENT COMMITTEE OF THE BOARD OF TRUSTEES OF THE AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS' PENSION FUND, RAYMOND M. HAIR, JR., AUGUSTINO GAGLIARDI, GARY MATTS, WILLIAM MORIARITY, BRIAN F. ROOD, LAURA ROSS, VINCE TROMBETTA, PHILLIP E. YAO, CHRISTOPHER J.G. BROCKMEYER, MICHAEL DEMARTINI, ELLIOT H. GREENE, ROBERT W. JOHNSON, ALAN H. RAPHAEL, JEFFREY RUTHIZER, BILL THOMAS, JOANN KESSLER, MARION PRESTON, Defendants.	No. 1:17-cv-5361 (VEC)

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, PROVISIONALLY CERTIFYING SETTLEMENT CLASS, DIRECTING NOTICE TO THE SETTLEMENT CLASS, AND SCHEDULING FAIRNESS HEARING

WHEREAS, Plaintiffs Andy Snitzer and Paul Livant, individually and on behalf of all Class Members and the American Federation of Musicians and Employers' Pension Plan (the "Plan"), and Defendants The Board of Trustees of the American Federation of Musicians And Employers' Pension Fund (the "Board of Trustees"), The Investment Committee of The Board of Trustees of the American Federation of Musicians and Employers' Pension Fund (the "Investment Committee"), Raymond M. Hair, Jr., Augustino Gagliardi, Gary Matts, William Moriarity, Brian

F. Rood, Laura Ross, Vince Trombetta, Phillip E. Yao, Christopher J.G. Brockmeyer, Michael DeMartini, Elliot H. Greene, Robert W. Johnson, Alan H. Raphael, Jeffrey Ruthizer, Bill Thomas, Marion Preston, and JoAnn Kessler (collectively, the "Defendants") (together with Plaintiffs, the "Parties"), have agreed to settle the above-captioned matter (the "Action") on the terms and conditions set forth in the Settlement Agreement dated March 25, 2020 and all exhibits thereto;

WHEREAS, Plaintiffs have filed a motion for an order that *inter alia*, (1) certifies the proposed class for Settlement purposes; (2) preliminarily approves the Settlement on the terms set forth in the Settlement Agreement; (3) approves and authorizes the dissemination of notice to members of the Settlement Class per the approved form and method of notice; (4) establishes deadlines and procedures for members of the Settlement Class to object to the Settlement; and (5) sets various deadlines and schedules a hearing to determine whether the Settlement should be finally approved as fair, reasonable and adequate, and whether an order finally approving the Settlement Agreement should be entered;

WHEREAS, Defendants do not agree with many of the factual representations and/or characterizations made in Plaintiffs' memorandum in support of their motion, but do not oppose the motion insofar as it seeks this Court's preliminary approval of the Settlement;

WHEREAS, the Court, having read and considered the motion, the memorandum submitted in support of the motion, the Settlement Agreement and the exhibits thereto, finds that substantial and sufficient grounds exist for entering this Order Preliminarily Approving Class Action Settlement, Provisionally Certifying Settlement Class, Directing Notice to Settlement Class, and Scheduling Fairness Hearing ("Preliminary Approval Order");

WHEREAS, the Court has adopted and incorporated the definitions and terms set forth in the Settlement Agreement; and

WHEREAS, upon review and consideration of the foregoing materials, the Court has found good cause for entering this Preliminary Approval Order;

NOW, THEREFORE, IT IS ORDERED THAT:

I. CERTIFICATION OF SETTLEMENT CLASS

The Settlement Agreement provides for a class action settlement of the claims alleged in this Action. The Court has considered the (1) allegations, information, arguments, and authorities provided by the Parties in connection with pleadings previously filed in this case; (2) information, arguments, and authorities provided by Plaintiffs in their brief in support of their motion for entry of an order granting preliminary approval of the Settlement; and (3) the terms of the Settlement Agreement, including, but not limited to, the benefits to be provided to the Settlement Class; and (4) the Parties' joint motion to certify a litigation class pursuant to Fed. R. Civ. P. 23(b)(1)(A) and 23(b)(1)(B) with a supporting memorandum of law. *See* ECF #130. Based on those considerations, the Court hereby finds as follows:

A. That the prerequisites for a class action under Rules 23(b)(1)(A) and 23(b)(1)(B) of the Federal Rules of Civil Procedure have been satisfied. The Court finds, in the specific context of this Settlement, that the following requirements are met: (a) the number of Class Members is over 100,000 and is so numerous that joinder of all Class Members is impracticable; (b) there are questions of law and fact common to the Class Members; (c) Plaintiffs' claims are typical of the claims of the Class Members they seek to represent for purposes of this Settlement; (d) Plaintiffs and Class Counsel have fairly and adequately represented the interests of the Settlement Class and will continue to do so; (e) prosecuting separate actions would create a risk of inconsistent or varying adjudications with respect to individual Class Members that would establish incompatible standards of conduct for Defendants; (f) Defendants have acted on grounds that apply generally to the Settlement Class, so that the benefits provided in the Settlement Agreement are appropriate for

the Settlement Class as a whole; (g) questions of law and fact common to the Class Members predominate over any questions affecting any individual Settlement Class Member; and (h) a class action provides a fair and efficient method for settling the controversy under the criteria set forth in Rule 23.

B. The Court also concludes that, because the Action is being settled rather than litigated, the Court need not consider manageability issues that might otherwise be presented by trial of a class action involving the issues in the Action.

C. Pursuant to Federal Rules of Civil Procedure 23(b)(1)(A) and 23(b)(1)(B), the Court hereby provisionally certifies the following Settlement Class:

> All participants and beneficiaries of the American Federation of Musicians and Employers' Pension Plan (the "Plan") from August 9, 2010 through the date of this Order, excluding Defendants and their beneficiaries.

D. For the purposes of Settlement only, Plaintiffs Andy Snitzer and Paul Livant are appointed as the Class Representatives of the Settlement Class. The prior appointment of Chimicles Schwartz Kriner & Donaldson-Smith LLP as Interim Class Counsel (ECF # 39) remains in effect and Steven A. Schwartz and Robert J. Kriner of Chimicles Schwartz Kriner & Donaldson-Smith LLP, and their firm Chimicles Schwartz Kriner & Donaldson-Smith LLP are appointed as Class Counsel.

II. PRELIMINARY APPROVAL OF THE TERMS OF THE SETTLEMENT

A. The Settlement Agreement requires Defendants' insurers to pay $26,850,000 as the Gross Settlement Amount, of which at least $17 million will be paid into the Plan if this Court grants Plaintiffs' motion for Attorneys' Fees and Costs and Service Awards. In the Settlement Agreement, Defendants and the Plan have also agreed to implement certain Governance Provisions.

B. On a preliminary basis, taking into account (1) the value and certainty of the benefits to be provided by the Settlement to Class Members and the Plan; (2) the defenses asserted by Defendants; (3) the risks to Plaintiffs and Class Members that Defendants would be successful in whole or part at trial on the merits of the claims alleged in this Action; and (4) the length of time that would be required for Class Members to obtain a final judgment after trials and appeals, the Settlement appears sufficiently fair, reasonable, and adequate to authorize dissemination of notice to the Settlement Class as set forth in the Settlement Agreement.

C. Moreover, the Court finds that the Settlement falls within the range of reasonableness because the Settlement has key indicia of fairness, in that (1) the Parties have reached the Settlement after completing extensive discovery and shortly before trial, (2) the extensive negotiations were contentious, arm's length, and facilitated by an experienced professional mediator (Robert Meyer, Esq., of JAMS), and (3) the proponents of the Settlement are experienced in similar litigation.

D. Accordingly, the Settlement is hereby preliminarily approved.

III. APPROVAL OF NOTICE PLAN

As set forth in the Settlement Agreement, the Parties have submitted a proposed Notice of Settlement (the "Notice"), attached as Exhibit 2 to the Settlement Agreement.

A. The Notice fairly, accurately, and reasonably informs Class Members of: (1) appropriate information about the nature of this Action and the essential terms of the Settlement Agreement; (2) appropriate information about how to obtain additional information regarding this Action and the Settlement, in particular, through the Settlement Website, www.afm-epfsettlement.com; and (3) appropriate information about how to object to the Settlement if they wish to do so. The Notice of Settlement also fairly and adequately informs Class Members that if they do not comply with the specified procedures and the deadline for objections, they will lose

any opportunity to have any objection considered at the Fairness Hearing or to otherwise contest approval of the Settlement or appeal from any order or judgment entered by the Court in connection with the Settlement.

B. The Settlement Agreement provides that, within thirty (30) calendar days of the date of this Order, the Plan shall send the Notice to each Class Member for whom the Plan has either an email or mailing address on record with the Plan. For Participants and Beneficiaries in the Settlement Class who reside at the same address, a single mailing or email shall suffice. The Settlement Agreement also provides that, in recognition that the Plan lacks either an email or mailing address for 21,881 of the total 114,285 Class Members, the Notice and other documents identified in the Settlement Agreement, or links to those identified documents, will be posted to the Settlement Website and that the initial posting of the Notice will occur no later than the date when the Notice is first mailed or emailed to Class Members.

C. Within thirty (30) calendar days of the date of this Order, the Plan shall send the Notice by either email or first class mail to each Class Member for whom the Plan has an address, as specified in the Settlement Agreement. On or before the date that Notice is sent, the Plan shall establish the Settlement Website on which the Notice will be posted.

D. At or before the Fairness Hearing, the Plan shall file with the Court a proof of timely compliance with the foregoing requirements.

E. The Notice satisfies the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 ("CAFA"), and any other applicable laws, constitutes the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

F. Accordingly, the Court hereby approves the proposed Notice and orders that the form and content of the proposed Notice be provided to the Settlement Class by the Plan as set forth in the Settlement Agreement.

G. The Parties have also submitted as Exhibit 4 to the Settlement Agreement a Form Notice under the Class Action Fairness Act of 2005 ("CAFA"). The Court also approves the form of the CAFA Notice. Defendants shall notify the appropriate Federal and State officials under CAFA. Proof of compliance will be filed with the Motion for Final Approval. Upon mailing the CAFA Notices, Defendants shall have fulfilled their obligations under CAFA.

IV. PRELIMINARY INJUNCTION

Pending a final determination of whether the Settlement Agreement should be approved, the Plan and each Class Member (and his or her heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns), are preliminarily enjoined from: (1) suing any Released Party in any action or proceeding alleging any of the Released Claims, even if any Class Member may discover facts in addition to or different from those which the Class Members or Class Counsel now know or believe to be true with respect to the Action and the Released Claims; (2) directly, representatively or derivatively, or in any other capacity, commencing, prosecuting or litigating, in any local, state, or federal court, or in any tribunal, agency or other forum, any claim, allegation, cause of action, matter, lawsuit, or action (including but not limited to actions pending as of the date of this Order) against (a) any Released Party that arises out of or relates in any way to the Released Claims; or (b) Class Counsel or the Class Representatives that arise out of the institution, prosecution, proposed settlement or dismissal of the Action.

V. OBJECTIONS

A. All Class Members have the right to object to the Settlement pursuant to the procedures and schedule set forth in the Settlement Agreement and the Notice.

B. All written objections and supporting papers must (1) clearly identify the case name and number (*Snitzer and Livant v. The Board of Trustees of the American Federation of Musicians and Employers' Pension Fund, et al.*, No. 1:17-cv-05361-VEC), (2) the objector's printed name, address, telephone number, and email address; (c) a statement with specificity of the grounds for the objection along with any supporting papers, materials, briefs or evidence that the objector may wish the Court to consider when reviewing the objection; (d) the objector's actual written signature; and (e) a statement whether the objector and/or objector's counsel intends to appear at the Fairness Hearing. If a Settlement Class Member or counsel for the Settlement Class Member who submits an objection to this Settlement has objected to a class action settlement during the past 5 years, the objection shall also disclose all cases in which they have filed an objection by caption, court and case number, and for each case, the disposition of the objection, including whether any payments were made to the objector or his or her counsel, and if so, what incremental benefits, if any, were achieved for the class in exchange for such payments.

VI. FINAL APPROVAL HEARING

The Court hereby schedules the Fairness Hearing at ____:____ __m on _____, 2020, which date is approximately (and no less than) one hundred and ten (110) calendar days after the date this Preliminary Approval Order is filed, to determine whether the certification of the Settlement Class, the designation of Plaintiffs as Class Representatives, the appointment of Class Counsel, and the Settlement should receive final approval. At that time, the Court will also consider Plaintiffs' Motion for Attorneys' Fees, Costs and Service Awards, which shall be filed at least sixty (60) calendar days before the Fairness Hearing and any responses thereto, which shall

be posted on the Settlement Website; as well as Plaintiffs' Motion for Final Approval of the Settlement, which shall be filed no later than fourteen (14) calendar days before the Fairness Hearing. The Fairness Hearing may be postponed or rescheduled by order of the Court without further notice to the Settlement Class, but any rescheduled date will be posted on the Settlement Website.

VII. STAY OF PROCEEDINGS

Pending final determination of whether the Settlement should be approved, the Court hereby also stays all proceedings in this case, other than those proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement.

VIII. OTHER PROVISIONS

A. In the event that the Settlement Agreement is not finally approved by the Court or does not reach the Settlement Effective Date, or the Settlement Agreement is terminated pursuant to its terms for any reason, the Parties reserve all of their rights, including the right to continue with the Action and all claims and defenses pending at the time of the Settlement. All of the following shall also apply:

1. All orders and findings, shall become null and void and have no force and effect whatsoever, and shall not be admissible or discoverable in this or any other proceeding.

2. Nothing contained in this Preliminary Approval Order is to be construed as a presumption, concession, or admission by or against Defendants or Plaintiffs of any default, liability, or wrongdoing as to any facts or claims alleged or asserted in the Action, or in any actions or proceedings, whether civil, criminal, or administrative, including, but not limited to, factual or legal matters.

3. Nothing in this Preliminary Approval Order or pertaining to the Settlement Agreement, including any of the documents or statements generated or received pursuant to the

Settlement administration process, shall be used as evidence in any further proceeding in this case or any other litigation or proceeding, including, but not limited to, motions or proceedings or trial.

4. All of the Court's prior orders shall, subject to this Preliminary Approval Order, remain in force and effect.

B. Class Counsel and Counsel for Defendants are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Preliminary Approval Order or the Settlement Agreement, including making, without further approval of the Court, minor changes to the Settlement Agreement, to the form or content of the Settlement Notice, or to the form or content of any other exhibits attached to the Settlement Agreement, that the Parties jointly agree are reasonable or necessary, and which do not limit the rights of the Class Members under the Settlement Agreement.

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

D. The Court approves the following schedule for Settlement-related activities:

DATE	**EVENT**
_____, 2020 [Day 1]	Entry of Preliminary Approval Order
_____, 2020 [Day 30]	Last day for the Plan to make the documents identified in the Settlement Agreement available online at www.afm-epfsettlement.com, and in the case of subsequently filed documents, within five (5) calendar days after filing.
_____, 2020 [Day 30]	Last day for the Plan to email or mail the Notice to Class Members ("Notice Date")
_____, 2020 [60 days before Fairness Hearing]	Last day for Class Counsel to file Motion for Attorneys' Fees, Costs, and Service Awards
_____, 2020 [30 days before Fairness Hearing]	Last day for Defendants to respond to Motion for Attorneys' Fees, Costs, and Service Awards

_____, 2020 [30 days before Fairness Hearing]	Last day for Class Members to object to the Settlement.
_____, 2020 [14 calendar days before the Fairness Hearing]	Last Day for Class Counsel to file Motion for Final Approval of the Settlement, and submit determination from Independent Settlement Evaluation Fiduciary
_____, 2020 [110 days from Preliminary Approval Order)	Fairness Hearing

IT IS SO ORDERED.

Dated: _____, 2020

_____
Honorable Valerie Caproni, U.S.D.J.

EXHIBIT 2

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

TO: All Participants and Beneficiaries of the American Federation of Musicians and Employers' Pension Plan (the "Plan") from August 9, 2010 through the date of the Preliminary Approval Order [fill in date], excluding the Defendants and their Beneficiaries.

A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

- Please read this Notice and the Settlement Agreement available at www.afm-epfsettlement.com carefully. Your legal rights may be affected whether you act or don't act. This Notice is a summary, and it is not intended to, and does not, include all of the specific details of the Settlement Agreement. To obtain more specific details concerning the Settlement, please read the Settlement Agreement and other Court documents available on the website above, such as Plaintiffs' Memorandum of Law in Support of Preliminary Approval of Class Action Settlement ("Preliminary Approval Memorandum"). Any amendments to the Settlement Agreement or any other settlement documents will be posted on that website. You should visit that website if you would like more information about the Settlement and any possible amendments to the Settlement Agreement or other changes, including changes to the date, time, or location of the Fairness Hearing, or other Court orders concerning the Settlement.

- Plaintiffs Andy Snitzer and Paul Livant ("Plaintiffs" or "Class Representatives") brought this class action lawsuit against certain trustees of the Plan ("Defendants") on behalf of Class Members and the Plan, seeking recovery for breach of fiduciary duties and other violations of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1000, *et seq.* ("ERISA"). Plaintiffs believe their claims have merit for the reasons set forth in their Preliminary Approval Memorandum. Defendants deny all claims, and nothing in the Settlement is an admission or concession on Defendants' part of any fault or liability whatsoever.

- To settle Plaintiffs' claims, Defendants have agreed to pay $26.85 million and to implement certain Governance Provisions negotiated by the parties that Plaintiffs believe address the concerns raised in the Amended Complaint regarding the manner in which the Defendants carried out their fiduciary duties. If the Court grants Class Counsel's application for Attorneys' Fees and Costs and Service Awards to the Plaintiffs, the Plan will receive at least $17 million of the total Settlement.

- Your legal rights will be affected whether you act or don't act. This Notice includes information on the Settlement and the lawsuit. Please read the entire Notice carefully.

- The Court in charge of this case has given its preliminary approval to the Settlement and approved this Notice, but still has not yet decided whether to grant final approval of the Settlement. If the Court finally approves the Settlement, it will issue an Order requiring Defendants to comply with the terms of the Settlement. Once the time for any appeals has run or any such appeals have been rejected, the $26.85 million settlement amount (minus

any Attorneys' Fees and Costs, and Service Awards to Messrs. Snitzer and Livant awarded by the Court) will be transferred to the Plan and will be available to pay Plan costs and benefits to Class Members, and the Plan Trustees will implement the Governance Provisions provided for by the Settlement.

- The following rights and options – and deadlines to exercise them – are explained in this Notice.

YOUR LEGAL RIGHTS AND OPTIONS		
DO NOTHING	You do not need to do anything. Inclusion in the Settlement is automatic and if the Court approves the Settlement all Class Members will be bound by its terms.	_____
OBJECT TO THE SETTLEMENT	If you have an objection to the Settlement, or otherwise wish to comment on the Settlement, you can write to the Court explaining why you agree or disagree with the Settlement, Attorneys' Fees and Costs, or Service Awards.	_____
GO TO THE HEARING	Ask to speak in Court about your opinion of the Settlement.	_____

BASIC INFORMATION

1. What Is This Notice About?

This Notice is to inform you about a Settlement reached in this litigation, before the Court decides whether to grant final approval of this Settlement. This Notice explains the lawsuit, the Settlement, and your legal rights. The Court in charge is the United States District Court for the Southern District of New York. This litigation is known as *Snitzer and Livant v. The Board of Trustees of the American Federation of Musicians and Employers' Pension Fund, et al.*, No. 1:17-cv-05361-VEC. The people who sued are called the "Plaintiffs" or "Class Representatives." The trustees they sued are called the "Defendants" or the "Defendant Trustees."

2. What Is This Lawsuit About?

In the lawsuit, Plaintiffs alleged that Defendants violated ERISA and breached their fiduciary duties in connection with certain investment decisions they made and the processes used by them to make those decisions from 2010-2017.

Throughout the litigation and in the Settlement Agreement, Defendants have denied any and all claims and have also denied that they committed any wrongdoing whatsoever. Defendants assert that they have always managed the Plan, including its investments, loyally and prudently.

3. What Is Not Part of this Lawsuit

The Amended Complaint, which was filed in 2017, did not raise any claims – and thus does not settle any claims – regarding the Trustees' subsequent decision in 2019 to seek approval

for benefit cuts under the Multiemployer Pension Reform Act of 2014 ("MPRA") and the proposed Settlement does not impact or impair any right Plan Participants and Beneficiaries may have in connection with the pending MPRA process.

4. Why Is This a Class Action?

In a class action, one or more people, called the "Class Representatives," sue on behalf of themselves and other people with similar claims in the specific class action. All of these people together are the "class" or "class members." In a class action, one court may resolve the issues for all class members.

5. Why Is There A Settlement?

The Court has not decided in favor of the Plaintiffs or Defendants. Instead, both sides have agreed to the Settlement to avoid the costs and risks of a lengthy trial and appeals process. Nothing in the Settlement Agreement is an admission or concession on Defendants' part of any fault or liability whatsoever, nor is it an admission or concession on Plaintiffs' part that their claims lacked merit. The Class Representatives and Class Counsel believe the Settlement is fair, reasonable, and adequate, and in the best interests of the Class Members.

THE SETTLEMENT

6. How Do I Know If I May Be Included in the Settlement Class?

The Settlement Class includes: All Participants and Beneficiaries of the Plan from August 9, 2010 through the date of the Preliminary Approval Order, excluding Defendants and their Beneficiaries.

It is important to note that the fact that you are included in the Settlement Class, and receiving this Notice, does not mean that you are entitled to a Plan benefit now or in the future. It only means that you (or, if you are a beneficiary, the person who designated you) had some period of Plan participation during the Class Period.

The Settlement Agreement, the Preliminary Approval Order, and other relevant pleadings and Court orders are accessible on the website at www.afm-epfsettlement.com.

7. How Much Money Does the Settlement Provide for the Plan?

To settle the lawsuit, Defendants will cause their insurers to pay $26.85 million. After a deduction of Attorneys' Fees and Costs, and Service Awards to Plaintiffs Snitzer and Livant (see FAQ 12 below), as approved by the Court, the remaining balance of the Gross Settlement Amount will be transferred to the Plan and will be available to pay Plan costs and benefits to Participants and Beneficiaries. As discussed further below, Class Counsel and Plaintiffs will be making an application for Attorneys' Fees of up to one third of the Gross Settlement Amount plus $900,000 in costs, which is inclusive of the $20,000 in Service Awards they are seeking for the Plaintiffs. If approved, these amounts would be paid out of the Gross Settlement Amount, leaving at least $17 million for the Plan.

8. What Governance Provisions Will the Plan Implement If the Court Approves the Settlement?

In addition to the $26.85 million payment, the Trustees agreed in the Settlement to make certain disclosures and Plan governance changes negotiated by the parties.

The following is a summary of the Governance Provisions. More details about the Governance Provisions and the Settlement as a whole are set forth in the Settlement Agreement, available at www.afm-epfsettlement.com.

- **Neutral Independent Fiduciary Trustee**: Pursuant to the Settlement, the Trustees will appoint Blakeman Crest Advisors, LLC ("BCA") to serve as a Neutral Independent Fiduciary Trustee for the Plan for 4-5 years, through its manager Andrew Irving. BCA, with Mr. Irving acting for it, was jointly selected by Plaintiffs and Defendants. In its capacity as Neutral Independent Fiduciary Trustee, BCA, through Mr. Irving, will serve as (a) a nonvoting member of the Investment Committee; and (b) an advisory resource to the voting members of the Investment Committee, including the Investment Committee Co-Chairs. BCA, through Mr. Irving, shall also have the following responsibilities: (i) work with, and provide input to, the Union- and Employer-side Co-Chairs of the Investment Committee in fulfilling their functions and responsibilities as Co-Chairs; (ii) with complete access to the information available to the Union- and Employer-side Co-Chairs of the Investment Committee, function in all respects (other than voting authority) as those Co-Chairs; (iii) participate in Investment Committee meetings, deliberations and decisions, with all the authority and responsibilities of a Trustee with respect to the Plan's investments (other than voting authority); (iv) participate in the portion of the Board meetings, deliberations and decisions, with all the authority and responsibilities of a Trustee, related to the Plan's investments (other than voting authority); (v) be responsible to state his assessment, including his reasoning for such assessment, for all matters under deliberation or subject to a decision or vote related to the Investment Committee (including asset management and allocation); (vi) make recommendations, at least annually, regarding changes (if any) in the processes pursuant to which the Investment Committee performs its responsibilities; and (vii) in coordination with the Trustees and the Outsourced Chief Investment Officer ("OCIO"), prepare a written report regarding possible changes to the Plan's Investment Policy Statement.

The parties believe that Mr. Irving has the requisite expertise to act for BCA as Neutral Independent Fiduciary Trustee in light of his experience acting as an independent fiduciary and as an advisor to pension plan fiduciaries in fulfilling their responsibilities with respect to pension investment and/or actuarial matters. You can review Mr. Irving's resume and his declaration filed with the Court at www.afm-epfsettlement.com.

- **Replacement of Meketa as OCIO Monitor:** The Trustees agreed to replace Meketa with a new OCIO monitor pursuant to a request for proposal process negotiated by Plaintiffs and Defendants. As described in the Amended Complaint, Defendants retained Meketa to serve as the Plan's investment consultant from 2010 to 2017, when the Trustees adopted the asset allocations and made the investment decisions Plaintiffs alleged were imprudent. In 2017, the Plan Trustees elected to hire Cambridge Investment Group to serve as the Plan's OCIO with discretion to make Plan investments, at which time Meketa took on the role of OCIO monitor. The Settlement requires the Neutral Independent Fiduciary Trustee to educate the OCIO monitor candidates selected about the parties' respective claims and defenses based on his review of certain lawsuit materials, including the parties' respective expert reports.

- **Website Disclosures**: As part of the Settlement, the Trustees have agreed to post on the Plan's website certain reports, including charts showing a comparison of the Plan's asset allocation to the average asset allocations of large Taft-Hartley plans plus a running cumulative

comparison of Plan's actual performance since OCIO Cambridge took over in October 2017 versus the performance of an appropriate index benchmark. These comparisons are similar to those used by the Parties' respective experts.

- **Disclosure of New Trustees:** Pursuant to the Settlement, the Trustees have agreed that, at least four weeks before the effective date of any new Trustees' appointment to serve on the Board, the Trustees will post on the Plan's website the identity of such new Trustees along with their bios and any other experience relevant to their qualifications to serve as a Trustee, except under certain circumstances where timing does not allow it. The Settlement also acknowledges that at least one employer-designated Trustee and one union-designated Trustee who are members of the Investment Committee had previously stated their intention to resign from the Board within the next 18 months. As part of the Settlement, the Parties agreed that these Trustees will be replaced by two new Trustees who were not previously members of the Board and who will serve on the Investment Committee.

9. What Am I Giving Up If the Court Approves the Settlement?

In exchange for the relief provided by the Settlement, the Parties agreed that the Plaintiffs and all Class Members would forever release the Released Claims against the Released Parties. As set out more fully in the Settlement Agreement, "Released Claims" means any and all claims that were asserted in the Complaint or Amended Complaint or that arise out of, relate in any way to, are based on, or have any connection with any of the factual or legal allegations asserted in the Complaint or Amended Complaint, including, but not limited to, those that arise out of, relate to, are based on, or have any connection with decisions made, prior to the OCIO Management Date, regarding (i) the Plan's asset allocation and the selection (including of the Plan's OCIO), retention, monitoring, oversight, compensation, fees, or performance of the Plan's investments or its investment managers; (ii) investment-related fees, costs, or expenses charged to, paid, or reimbursed by the Plan; (iii) disclosures or failures to disclose information regarding the Plan's investments and/or funding; or (iv) any alleged breach of the duty of loyalty, care, prudence, diversification, or any other fiduciary duties or prohibited transactions in connection with (i) through (iii) above. Additionally, each Class Member shall be deemed to have fully, finally, and forever settled, released, relinquished, waived, and discharged any claims against the Class Representatives or Class Counsel, that arise out of the institution, prosecution, settlement or dismissal of the Action.

The governing releases are found within the Settlement Agreement at www.afm-epfsettlement.com. The Settlement Agreement describes the Released Claims in further detail. This is only a summary of the Released Claims, and is not a binding description. Read the Settlement Agreement carefully since those releases will be binding on you as a Settlement Class Member if the Court grants final approval of the Settlement. The Settlement Agreement is available at www.afm-epfsettlement.com.

THE LAWYERS REPRESENTING YOU

10. Do I Have a Lawyer Representing Me?

The Court has appointed the following lawyers as Lead Plaintiffs' Counsel to represent you and all other members of the Settlement Class:

Steven A. Schwartz
sas@chimicles.com
Mark B. DeSanto
MBD@chimicles.com
CHIMICLES SCHWARTZ KRINER &
DONALDSON-SMITH LLP
361 West Lancaster Avenue
Haverford, PA 19041
610.642.8500

Robert J. Kriner, Jr.
RJK@chimicles.com
CHIMICLES SCHWARTZ KRINER
& DONALDSON-SMITH LLP
2711 Centerville Road, Suite 201
Wilmington, DE 19808
(302) 656-2500

You will not be charged for contacting these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

11. How Will the Lawyers Be Paid?

Plaintiffs' Counsel will ask the Court to reimburse them for the time they spent and expenses they incurred prosecuting the lawsuit. Plaintiffs' Counsel will ask the Court for attorneys' fees not to exceed one-third of the $26.85 million Settlement amount plus litigation expenses or charges not to exceed $900,000. To date, Plaintiffs' Counsel represent that they have spent over 12,500 hours prosecuting the lawsuit, and have not been paid anything for their work yet. They also represent that they have also advanced almost $900,000 in significant costs to cover the expenses necessary to pursue the lawsuit, including experts, transcripts, documents, and travel. Plaintiffs' Counsel will file with the Court a detailed Motion supporting their request for attorneys' fees and reimbursement of expenses. Plaintiffs' Counsel will file that Motion before the deadline for objections and you will be able to review it at www.afm-epfsettlement.com. Any payment to the attorneys will be subject to Court approval, and the Court may award less than the requested amount. Any Attorneys' Fees and Costs will be paid out of the Gross Settlement Payment. Defendants have reserved the right to object to such requested amounts.

12. Will Plaintiffs' Andy Snitzer and Paul Livant Seek Service Awards?

Yes. Plaintiffs' Counsel will ask the Court to award each Plaintiff $10,000 as a Service Award for their efforts and the accompanying risks they assumed in bringing this litigation. Both Plaintiffs spent significant time consulting with counsel, producing numerous documents including emails from 2010 through 2017, sitting for full-day depositions by Defendants' Counsel, participating in mediation sessions, and reviewing various court and mediation documents. Mr. Snitzer and Mr. Livant have agreed that any Service Awards will be paid out of the amount awarded by the Court to Class Counsel in Attorneys' Fees and Costs and not out of the Gross Settlement Amount. Mr. Snitzer and Mr. Livant have also each made a commitment that, if the Court approves the requested Service Awards, they will donate those awards to an organization or organizations that they believe are fighting to protect the rights of plan participants and beneficiaries. Defendants have reserved the right to object to the payment of any Service Awards that are earmarked for an outside organization.

OBJECTING TO THE SETTLEMENT

13. How Do I Object to or Comment on the Settlement?

You can ask the Court to deny approval of the Settlement by filing an objection. You can also object to the request for Attorneys' Fees and Costs or the proposed Service Awards for each of the Plaintiffs. You can't ask the Court to order a different Settlement or order different Governance Provisions; the Court can only approve or reject this Settlement. If the Court denies approval, the Plan will not receive any of the $26.85 million Settlement payment negotiated by the parties and the Trustees will not have to implement the Governance Provisions provided for by the Settlement.

Any objection to the proposed Settlement must be in writing. Any objections must be submitted to the Court either by mailing them to the United States District Court for the Southern District of New York, at Thurgood Marshall United States District Courthouse, 40 Foley Square, New York, NY, 10007 ATTN Judge Caproni, or by filing them in person with the Court, and be filed or postmarked on or before _____, 2020. If you file a timely written objection, you may, but are not required to, appear at the Fairness Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

All written objections and supporting papers must (a) clearly identify the case name and number (*Snitzer and Livant v. The Board of Trustees of the American Federation of Musicians and Employers' Pension Fund, et al.*, No. 1:17-cv-05361-VEC.), (b) your printed name, address, telephone number, and email address; (c) a statement with specificity of the grounds for the objection along with any supporting papers, materials, briefs or evidence that you wish the Court to consider when reviewing the objection; (d) your actual written signature; and (e) a statement whether you and/or your counsel intends to appear at the Fairness Hearing. If a Class Member or counsel for the Class Member who submits an objection to this Settlement has objected to a class action settlement during the past 5 years, the objection shall also disclose all cases in which the objector has filed an objection by caption, court and case number, and for each case, the disposition of the objection, including whether any payments were made to the objector or his or her counsel, and if so, what incremental benefits, if any, were achieved for the class in exchange for such payments.

Any party to the litigation may file a response to an objection before the Fairness Hearing.

If you do not comply with these procedures and timely object, you will lose any opportunity to have any objection considered at the Fairness Hearing or to otherwise contest approval of the Settlement or appeal from any order or judgment entered by the Court in connection with the Settlement.

14. Can I Opt Out of the Settlement?

No. The Court has certified this case as a class action pursuant to Federal Rule of Civil Procedure 23(b)(1), and that subsection of Rule 23 does not include provisions for class members to opt out.

THE FINAL FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement and any requests by Plaintiffs' Counsel for fees, costs, and expenses and the proposed Service Awards for the Plaintiffs. You may attend and you may ask to speak, but you do not have to do so.

15. When and Where Will the Court Decide Whether to Approve the Settlement?

The Court will hold a Final Fairness Hearing at _____. on _____, at Courtroom 443 of the United States District Court for the Southern District of New York, at Thurgood Marshall United States District Courthouse, 40 Foley Square, New York, NY, 10007. The hearing may be moved to a different date or time without additional notice, so check www.afm-epfsettlement.com or call Plaintiffs' Counsel to confirm that the date has not been changed. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections or comments, the Court will consider them at that time and will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Plaintiffs' Counsel and whether to reimburse Plaintiffs' Counsel for certain costs, and whether to pay Service Awards to the Plaintiffs. At or after the hearing, the Court will decide whether to approve the Settlement.

16. Do I Have to Attend the Hearing?

No. Plaintiffs' Counsel will answer any questions the Court may have. But you are welcome to attend at your expense. If you send an objection or comment, you do not have to come to Court to talk about it. As long as you filed or mailed your written objection on time, the Court will consider it. You may also hire your own lawyer at your own expense to attend on your behalf, but you are not required to do so.

17. May I Speak at the Hearing?

If you send an objection or comment on the Settlement, as long as your objection noted your intention to appear you or your counsel may have the right to speak at the Fairness Hearing as determined by the Court.

GET MORE INFORMATION

18. How Do I Get More Information?

This Notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at www.afm-epfsettlement.com. For more information on the Settlement, you may contact Lead Counsel identified above in Question 10. Updates about the Settlement will be posted at www.afm-epfsettlement.com. Finally, you may visit the office of the Clerk of the Court at the address above, between 8:30 a.m. and 5:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT, THE COURT CLERK'S OFFICE, OR THE FUND OFFICE TO INQUIRE ABOUT THIS SETTLEMENT.

Dated: _____

By Order of the Court, United States District Court for the Southern District of New York

EXHIBIT 3

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ANDREW SNITZER and PAUL LIVANT, individually and as representatives of a class of similarly situated persons, on behalf of the American Federation of Musicians and Employers' Pension Plan, Plaintiffs, v. THE BOARD OF TRUSTEES OF THE AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS' PENSION FUND, THE INVESTMENT COMMITTEE OF THE BOARD OF TRUSTEES OF THE AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS' PENSION FUND, RAYMOND M. HAIR, JR., AUGUSTINO GAGLIARDI, GARY MATTS, WILLIAM MORIARITY, BRIAN F. ROOD, LAURA ROSS, VINCE TROMBETTA, PHILLIP E. YAO, CHRISTOPHER J.G. BROCKMEYER, MICHAEL DEMARTINI, ELLIOT H. GREENE, ROBERT W. JOHNSON, ALAN H. RAPHAEL, JEFFREY RUTHIZER, BILL THOMAS, JOANN KESSLER, MARION PRESTON, Defendants.	No. 1:17-cv-5361 (VEC)

[PROPOSED] FINAL APPROVAL OF THE SETTLEMENT AGREEMENT; FINAL JUDGMENT; AWARD OF ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS; AND ORDER OF DISMISSAL WITH PREJUDICE

WHEREAS, Plaintiffs Andy Snitzer and Paul Livant, individually and on behalf of Class Members and the American Federation of Musicians and Employers' Pension Plan (the "Plan"), and Defendants The Board of Trustees of the American Federation of Musicians And Employers' Pension Fund (the "Board of Trustees"), The Investment Committee of The Board of Trustees of the American Federation of Musicians and Employers' Pension Fund (the "Investment Committee"), as well as Raymond M. Hair, Jr., Augustino Gagliardi, Gary Matts, William Moriarity, Brian F. Rood, Laura Ross, Vince Trombetta, Phillip E. Yao, Christopher J.G.

Brockmeyer, Michael DeMartini, Elliot H. Greene, Robert W. Johnson, Alan H. Raphael, Jeffrey Ruthizer, Bill Thomas, Marion Preston, and JoAnn Kessler (collectively, the "Defendants") (with Plaintiffs collectively referred to herein as the "Parties"), have agreed to settle the above-captioned matter (the "Action") on the terms and conditions set forth in the Settlement Agreement dated March 25, 2020 and all exhibits thereto;

WHEREAS, on March ____, 2020 (ECF #XXX), this Court entered a Preliminary Approval Order that conditionally certified pursuant to Federal Rule of Civil Procedure 23, a class consisting of:

> All participants and beneficiaries of the American Federation of Musicians and Employers' Pension Plan during the Class Period, excluding Defendants and their beneficiaries (the "Settlement Class").

WHEREAS, in the Preliminary Approval Order, the Court approved the form and content of the Notice of Proposed Class Action Settlement and Fairness Hearing ("Notice") directed to members of the Class;

WHEREAS, during the period of XXXX, 2020 through XXXX, 2020, the Plan caused the Notice to be emailed and/or mailed to members of the Class for whom Plan records included an email or mailing address, which informed members of the Class of the Settlement terms and that the Court would consider the following issues at the Fairness Hearing: (i) whether the Court should grant final approval to the Settlement; (ii) the amount of attorneys' fees, costs, and expenses to be awarded to Class Counsel; (iii) whether to approve the payment of the Service Awards to the Class Representatives and the amount of the Service Awards; and (iv) any objections by members of the Class to any of the above that were timely and properly served in accordance with the Preliminary Approval Order;

WHEREAS, in recognition that Plan records did not include either an email or mailing address for some Class Members, on XXX, 2020, the Plan caused the Notice to be published at www.afm-epfsettlement.com;

WHEREAS, Defendants provided notice to the appropriate state and federal officials under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715;

WHEREAS, on XXX, 2020, Plaintiffs moved unopposed for final approval of the Settlement Class ("Plaintiffs' Motion for Final Approval");

WHEREAS, on XXX, 2020, Class Counsel filed an application for (i) attorneys' fees and expenses and (ii) the Service Awards to Class Representatives (the "Fee Application");

WHEREAS, the Court conducted a hearing on _____ (the "Fairness Hearing") to consider, among other things, (1) whether the proposed Settlement on the terms and conditions provided for in the Agreement is fair, reasonable, adequate, and in the best interests of the Class and should be finally approved by the Court; (2) whether Class Counsel's Attorneys' Fee and Cost application is reasonable and should be approved; (3) whether Plaintiffs' request for Service Awards is reasonable and should be approved; and (4) whether this Final Approval Order should be entered dismissing with prejudice all claims asserted in the Action against Defendants; and

WHEREAS, this Court finds that the papers are detailed and sufficient to rule on Plaintiffs' Motion for Final Approval and the Fee Application on the papers; and

WHEREAS, this Court, having heard from Class Counsel on behalf of the Settlement Class, and from Defendants' Counsel, and having reviewed all other arguments and submissions

presented by all interested persons and entities with respect to the Settlement and the Fee Application; and

WHEREAS, all capitalized terms used herein have the meanings set forth and defined in the Settlement Agreement, it is hereby

ORDERED, ADJUDGED, DECREED, AND FOUND THAT:

1. This case arises out of Plaintiffs' allegations, *inter alia*, that Defendants violated the Employee Retirement Income Security Act of 1974, as amended, and breached their fiduciary duties in connection with certain investment decisions they made and the processes used by them to make those decisions from 2010-2017.

2. After extensive settlement negotiations, including a formal mediation, the Parties agreed to settle this case. This Final Approval Order and Judgment incorporates and makes a part hereof the Settlement Agreement (ECF No. __)

3. The Settlement Agreement provides substantial and meaningful relief to the Settlement Class, including the payment of at least $17 million to the Plan and the Plan Trustees' agreement to implement the Governance Provisions specified in Section 8 of the Settlement Agreement.

4. The Settlement Class as provided in the Preliminary Approval Order is unconditionally certified pursuant to Federal Rule of Civil Procedure 23(b)(1)(A) and 23(b)(1)(B). The Court finds, in the specific context of this Settlement, that the following requirements are met: (a) the number of Settlement Class Members is in the thousands and is so numerous that joinder of all Settlement Class Members is impracticable; (b) there are questions of law and fact common to the Settlement Class Members; (c) Plaintiffs' claims are typical of the claims of the Settlement Class Members they seek to represent for purposes of this Settlement; (d) Plaintiffs and Class

Counsel have fairly and adequately represented the interests of the Settlement Class and will continue to do so; (e) prosecuting separate actions would create a risk of inconsistent or varying adjudications with respect to individual Class Members that would establish incompatible standards of conduct for Defendants; (f) Defendants have acted on grounds that apply generally to the Settlement Class, so that the benefits provided in the Settlement Agreement are appropriate for the Settlement Class as a whole; (g) questions of law and fact common to the Class Members predominate over any questions affecting any individual Settlement Class Member; and (h) a class action provides a fair and efficient method for settling the controversy under the criteria set forth in Rule 23.

A. The Court also concludes that, because the Action is being settled rather than litigated, the Court need not consider manageability issues that might otherwise be presented by trial of a class action involving the issues in the Action.

B. For the purposes of Settlement only, Plaintiffs Andy Snitzer and Paul Livant are confirmed as the Class Representatives of the Settlement Class, and Steven A. Schwartz and Robert J. Kriner of Chimicles Schwartz Kriner & Donaldson-Smith LLP and their firm are confirmed as Class Counsel.

5. Notice to the members of the Settlement Class required by Federal Rule of Civil Procedure 23 has been provided as directed by this Court in the Preliminary Approval Order, and such notice having constituted the best notice practicable, including, but not limited to, the forms of notice and methods of identifying and providing notice to the members of the Settlement Class, has satisfied the requirements of the Federal Rules of Civil Procedure, the Class Action Fairness Act of 2005, and all other applicable laws.

6. Defendants have complied with the Class Action Fairness Act of 2005, 28 U.S.C. §1715, *et seq*. by timely mailing notice of the Settlement pursuant to 28 U.S.C. §1715(b), including notices to appropriate state and federal officials under the Class Action Fairness Act. The notice contains the documents and information required by 28 U.S.C. §1715(b)(1)-(8). The Court finds that Defendants have complied in all respects with the requirements of 28 U.S.C. §1715.

7. **Objections**:

8. Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, the Court hereby fully and finally approves the Settlement set forth in the Settlement Agreement in all respects, and finds that the Settlement is, in all respects, fair, reasonable, adequate, and in the best interests of the Settlement Class. Plaintiffs and Defendants are directed to promptly consummate the Settlement in accordance with the Settlement Agreement and to comply with all of its terms.

9. The Settlement shall not be deemed to constitute an admission or finding of liability or wrongdoing on the part of Defendants, Plaintiffs, the Class Members, or Released Parties.

10. The Action is hereby dismissed, with prejudice, on the merits, as against the Defendants, on the terms and conditions set forth in the Settlement Agreement, and without costs to any party except as provided herein and in the Settlement Agreement. For those defendants who were dismissed without prejudice during the pendency of the litigation, namely Maureen Kilkelly, Andrea Finkelstein, Harold Bradley, Lovie Smith-Wright, Melinda Wagner, Thomas Lee, and William Foster (*see* ECF Nos. 39, 71), the Action is dismissed with prejudice as to them as well.

11. Plaintiffs, each Settlement Class Member, and the Plan shall be deemed to have, and by operation of this Final Approval Order, shall have, fully, finally, and forever settled,

released, relinquished, waived, and discharged all Released Claims against the Released Parties in the manner(s) set forth in the Settlement Agreement.

12. Plaintiffs, each Settlement Class Member, and the Plan are permanently barred and enjoined from asserting, commencing, prosecuting, or continuing any of the Released Claims in the manner(s) set forth in the Settlement Agreement.

13. Defendants and each Settlement Class Member shall be deemed to have fully, finally, and forever settled, released, relinquished, waived, and discharged any claims against the Class Representatives or Class Counsel, that arise out of the institution, prosecution, settlement or dismissal of the Action.

14. Class Counsel are hereby awarded (i) attorneys' fees in the amount of $_____ (____% of the Gross Settlement Amount) plus (ii) reimbursement of their reasonable expenses in the amount of _____ ($_____), to be deducted from the Gross Settlement Amount. Attorneys' fees in this amount are fair and reasonable in light of the successful results achieved by Class Counsel, the monetary benefits obtained in this Action, the substantial risks associated with this Action, Class Counsel's skill and experience in class action litigation of this type, and the fee awards in comparable cases.

15. The award of attorneys' fees to Class Counsel shall be allocated among Class Counsel in a fashion that, in the opinion of Steven A. Schwartz and Robert J. Kriner of Chimicles Schwartz Kriner & Donaldson-Smith LLP fairly compensates them for their respective contributions in the prosecution of the Action.

16. Class Service Awards are awarded to the Class Representatives in the amount of $ _____ each, to be deducted from Class Counsel's Attorneys' Fees and Costs and not from the Gross Settlement Amount.

17. Defendants and the Released Parties shall not be liable for any additional fees or expenses for Class Counsel or counsel of any Plaintiffs or Class Members in connection with the Action.

18. Any appeal or challenge affecting only this Court's approval regarding any attorneys' fees, expenses, or Service Awards shall in no way disturb or affect the finality of the other provisions of this Judgment nor the Settlement Effective Date.

19. By reason of the Settlement, and approval hereof, there is no just reason for delay and this Final Approval Order and Judgment shall be deemed a final judgment pursuant to the Federal Rules of Civil Procedure.

20. Jurisdiction is reserved, without affecting the finality of this Final Approval Order and Judgment, over:

a. Effectuating and enforcing the Settlement and the terms of the Settlement Agreement including payment of the $26.85 million Gross Settlement Amount, implementation of the Governance Provisions, and the payment of Plaintiffs' counsel's attorneys' fees and reimbursement of expenses and Service Awards as ordered by the Court;

b. Determining whether, in the event an appeal is taken from any aspect of this Final Approval Order and Judgment, notice should be given at the appellants' expense to some or all Class Members apprising them of the pendency of the appeal and such other matters as the Court may order;

c. Adjudicating any disputes that arise under the Settlement Agreement; and

d. Any other matters related or ancillary to the foregoing.

21. The above-captioned Action is hereby dismissed in its entirety with prejudice.

IT IS SO ORDERED.

Dated: _____

_____
Honorable Valerie Caproni, U.S.D.J.

EXHIBIT 4

Proskauer Rose LLP Eleven Times Square New York, NY 10036-8299

March __, 2020

By First Class Mail Return Receipt Requested

Myron D. Rumeld
Member of the Firm
d +1.212.969.3021
f 212.969.2900
mrumeld@proskauer.com
www.proskauer.com

Re: *Snitzer, et al. The Board of Trustees of the American Federation of Musicians and Employers' Pension Fund, et al*., No. 17-cv-5361 (VEC)

Dear Sir/Madam

Defendants The Board of Trustees of the American Federation of Musicians And Employers' Pension Fund, The Investment Committee of The Board of Trustees of the American Federation of Musicians and Employers' Pension Fund, as well as Raymond M. Hair, Jr., Augustino Gagliardi, Gary Matts, William Moriarity, Brian F. Rood, Laura Ross, Vince Trombetta, Phillip E. Yao, Christopher J.G. Brockmeyer, Michael DeMartini, Elliot H. Greene, Robert W. Johnson, Alan H. Raphael, Jeffrey Ruthizer, Bill Thomas, Marion Preston, and JoAnn Kessler (collectively, the "Defendants"), through undersigned counsel, hereby provide this notice of a Proposed Class Action Settlement in the above-referenced matter pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715. The proposed settlement will resolve this action.

On March 25, 2020, Plaintiffs' Counsel filed a Motion for Preliminary Approval ("Motion for Preliminary Approval"), which included the Parties' Settlement Agreement. These papers are attached hereto as **Exhibit A**. The Settlement Agreement contemplates that the Court will certify a class, defined as: All participants and beneficiaries of the American Federation of Musicians and Employers' Pension Plan (the "Plan") from August 9, 2010 through the date the Court gives its Preliminary Approval to the Settlement, excluding Defendants and their beneficiaries.

In accordance with their obligations under CAFA, Defendants enclose the following:

(1) The Complaint, any materials filed with the Complaint, and any Amended Complaints.

Plaintiffs' Class Action Complaint and Amended Complaint are attached hereto as Exhibit B.

(2) Notice of any scheduled judicial hearing in the class action.

There are no judicial hearings scheduled at this time. Once the Court schedules the fairness hearing, the date of the hearing and a copy of the Court's order will be posted on www.afm-epfsettlement.com.

(3) Any proposed or final notification to class members.

The proposed Notice of Class Action Settlement submitted to the Court is enclosed as Exhibit 3 to the Settlement Agreement, which is included in Exhibit A hereto.

(4) Any proposed or final class action settlement.

The Settlement Agreement entered into by the parties and as submitted to the Court is included in Exhibit A.

(5) Any settlement or other agreement contemporaneously made between class counsel and counsel for the defendants.

There are no agreements other than the Settlement Agreement contemporaneously made between Class Counsel and counsel for the Defendants.

(6) Any final judgment or notice of dismissal.

Final judgment has not yet been entered. Once the Court issues its Final Approval Order and Judgment, a copy of the Court's order will be posted on www.afm-epfsettlement.com.

(7) A reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement

Attached as Exhibit C is a table with reasonable estimates of the number of Class Members residing in each state according to the Plan's records. The Settlement Agreement provides that the Gross Settlement Amount of $26,850,000 (minus Attorneys' Fees and Costs and any Service Awards of up to $9,850,000) will be paid into the Plan, which is a defined benefit plan and, thus, does not earmark Plan assets for any particular Participant or Beneficiary Class Member. Consequently, there is no "estimated proportionate share of the claims of such members to the entire settlement" as contemplated by CAFA.

(8) Any written judicial opinion relating to the materials described in (3) through (6).

There are no written judicial opinions relating to the materials described in sections (3) through (6) at this time.

If you have questions about this notice, the lawsuit, or the enclosed materials, please do not hesitate to contact me.

Proskauer

Very truly yours,

s/ Myron D. Rumeld

Myron D. Rumeld

Enclosures

EXHIBIT 5

AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS' PENSION FUND

INVESTMENT PERFORMANCE REPORT

CAMBRIDGE ASSOCIATES

DECEMBER 2019

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PERFORMANCE

DECEMBER 31, 2019

Returns (%)	INCEPTION DATE	MARKET VALUE AS OF DEC 2019	MONTH TO DATE	QUARTER TO DATE	FISCAL YEAR TO DATE MAR	CUMULATIVE TRAILING 1 YEAR	ANNUALIZED SINCE SEP 2017
Total Pension Plan (Net of All Fees)*	**09/30/2017**	**$1,842,938,898**	**1.7**	**4.9**	**8.5**	**16.9**	**7.1**
Interim Policy Benchmark[1]	**09/30/2017**		**1.7**	**4.3**	**8.2**	**18.1**	**6.7**
Value Add			0.0	0.6	0.4	-1.2	0.4
Global Equity*	**09/30/2017**	**$776,306,213**	**3.4**	**9.7**	**11.5**	**24.7**	**8.0**
MSCI ACWI Index (N)	09/30/2017		3.5	9.0	12.9	26.6	8.9
Value Add			-0.1	0.8	-1.4	-1.9	-0.9
U.S. Equity*	**10/17/2011**	**$134,342,999**	**1.5**	**7.7**	**14.3**	**29.8**	**12.9**
MSCI US Index (N)	10/17/2011		2.9	9.0	15.1	30.9	13.2
Value Add			-1.3	-1.3	-0.8	-1.1	-0.3
Parametric S&P 500 Futures	10/16/2017	-$27,302,795	---	---	---	---	---
Bares Mid/Large Cap	10/23/2017	$35,444,307	-1.7	1.4	-4.4	10.1	---
MSCI US Index (N)	10/23/2017		2.9	9.0	15.1	30.9	---
Value Add			-4.6	-7.6	-19.5	-20.8	---
Eagle Equity Strategy*	10/23/2017	$55,604,976	2.5	10.4	16.9	32.4	---
MSCI US Index (N)	10/23/2017		2.9	9.0	15.1	30.9	---
Value Add			-0.4	1.5	1.8	1.5	---
HS Concentrated Growth Equity*	11/07/2017	$40,810,493	2.0	6.7	22.2	38.3	---
MSCI US Index (N)	11/07/2017		2.9	9.0	15.1	30.9	---
Value Add			-0.8	-2.3	7.2	7.4	---
Pzena U.S. Best Ideas Fund, LP	11/30/2017	$29,786,018	3.8	12.7	15.6	30.9	---
MSCI US Index (N)	11/30/2017		2.9	9.0	15.1	30.9	---
Value Add			0.9	3.7	0.5	0.0	---

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Rows marked with " * " contain preliminary data.

PERFORMANCE CONTINUED

DECEMBER 31, 2019

Returns (%)	INCEPTION DATE	MARKET VALUE AS OF DEC 2019	MONTH TO DATE	QUARTER TO DATE	FISCAL YEAR TO DATE MAR	CUMULATIVE TRAILING 1 YEAR	ANNUALIZED SINCE SEP 2017
Total Pension Plan (Net of All Fees)*	**09/30/2017**	**$1,842,938,898**	**1.7**	**4.9**	**8.5**	**16.9**	**7.1**
Interim Policy Benchmark[1]	**09/30/2017**		**1.7**	**4.3**	**8.2**	**18.1**	**6.7**
Developed ex. U.S. Equity*	**09/01/2012**	**$224,662,698**	**4.0**	**9.1**	**11.9**	**22.4**	**4.8**
MSCI World ex US Index (N)	09/01/2012		3.2	7.9	10.9	22.5	4.2
Value Add			0.8	1.2	1.0	-0.1	0.6
GQG International Equity Fund*	01/01/2017	$37,228,514	3.6	7.6	16.0	29.1	11.2
MSCI ACWI ex US Index (N)	01/01/2017		4.3	8.9	10.2	21.5	4.1
Value Add			-0.7	-1.3	5.8	7.6	7.1
Parametric MSCI EAFE Futures	10/16/2017	$23,419,750	---	---	---	---	---
Cevian Capital II, Ltd.	10/31/2017	$25,763,848	3.4	10.1	11.6	18.5	---
MSCI EAFE Index (N)	10/31/2017		3.2	8.2	10.9	22.0	---
Value Add			0.2	1.9	0.7	-3.5	---
Marathon-London International Equity Strategy	10/31/2017	$42,127,175	3.9	10.0	12.2	23.1	---
MSCI EAFE Index (N)	10/31/2017		3.2	8.2	10.9	22.0	---
Value Add			0.6	1.8	1.2	1.1	---
Arrowstreet ACWI ex US*	11/15/2017	$52,577,854	4.5	10.1	11.3	22.9	---
MSCI ACWI ex US Index (N)	11/15/2017		4.3	8.9	10.2	21.5	---
Value Add			0.1	1.1	1.1	1.4	---
Artisan International Value Fund*	07/19/2019	$43,545,557	4.9	9.2	---	---	---
MSCI EAFE Index (N)	07/19/2019		3.2	8.2	---	---	---
Value Add			1.6	1.0	---	---	---
Emerging Markets Equity*	**08/06/2010**	**$120,357,449**	**6.6**	**12.3**	**10.0**	**20.1**	**3.4**
MSCI Emerging Markets Index (N)	08/06/2010		7.5	11.8	7.7	18.4	3.8
Value Add			-0.9	0.5	2.3	1.6	-0.4

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Rows marked with " * " contain preliminary data.

PERFORMANCE CONTINUED

DECEMBER 31, 2019

Returns (%)	INCEPTION DATE	MARKET VALUE AS OF DEC 2019	MONTH TO DATE	QUARTER TO DATE	FISCAL YEAR TO DATE MAR	CUMULATIVE TRAILING 1 YEAR	ANNUALIZED SINCE SEP 2017
Total Pension Plan (Net of All Fees)*	**09/30/2017**	**$1,842,938,898**	**1.7**	**4.9**	**8.5**	**16.9**	**7.1**
Interim Policy Benchmark[1]	**09/30/2017**		**1.7**	**4.3**	**8.2**	**18.1**	**6.7**
Parametric MSCI Emerging Markets Futures	10/16/2017	-$12,434,220	---	---	---	---	---
Buena Vista Asian Opp. Fund, Ltd.*	11/30/2017	$28,544,371	4.7	14.4	11.1	21.1	---
MSCI AC Asia Pacific ex JP (N)	11/30/2017		5.8	10.5	6.9	19.2	---
Value Add			-1.1	3.9	4.2	1.9	---
Constellation Fund, SPC	11/30/2017	$9,973,932	13.0	16.3	34.3	47.2	---
Brazil Bovespa Stock Index	11/30/2017		12.3	14.3	17.3	26.8	---
Value Add			0.7	2.0	17.0	20.4	---
INCA Latin American Fund, L.P. – Ex-Brazil	11/30/2017	$3,892,681	4.7	2.0	4.3	15.3	---
MSCI EM Latin America ex Brazil Index (N)	11/30/2017		6.7	4.0	-3.4	3.7	---
Value Add			-2.0	-2.0	7.7	11.7	---
iShares MSCI South Africa ETF*	11/30/2017	$3,663,250	8.9	13.7	5.7	9.6	---
MSCI South Africa Index (N)	11/30/2017		9.7	13.1	5.4	10.0	---
Value Add			-0.8	0.6	0.3	-0.4	---
Quantum India*	12/08/2017	$4,656,686	0.8	3.5	-6.7	-3.2	---
S&P BSE (SENSEX) 30 Sensitive	12/08/2017		1.6	6.0	4.5	13.1	---
Value Add			-0.8	-2.5	-11.2	-16.3	---
Acadian Emerging Markets Equity Fund	04/30/2018	$46,655,408	8.2	11.8	7.7	17.4	---
MSCI Emerging Markets Index (N)	04/30/2018		7.5	11.8	7.7	18.4	---
Value Add			0.7	0.0	-0.1	-1.1	---
Russian Prosperity Fund*	06/28/2018	$4,198,221	7.2	15.9	31.8	43.4	---
Russian Trading System Index (Net)	06/28/2018		8.5	17.8	37.4	54.7	---
Value Add			-1.3	-1.9	-5.6	-11.3	---

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PERFORMANCE CONTINUED

DECEMBER 31, 2019

Returns (%)	INCEPTION DATE	MARKET VALUE AS OF DEC 2019	MONTH TO DATE	QUARTER TO DATE	FISCAL YEAR TO DATE MAR	CUMULATIVE TRAILING 1 YEAR	ANNUALIZED SINCE SEP 2017
Total Pension Plan (Net of All Fees)*	**09/30/2017**	**$1,842,938,898**	**1.7**	**4.9**	**8.5**	**16.9**	**7.1**
Interim Policy Benchmark[1]	**09/30/2017**		**1.7**	**4.3**	**8.2**	**18.1**	**6.7**
The Overlook Partners Fund L.P.	04/30/2019	$31,207,120	5.3	11.9	---	---	---
MSCI AC Far East ex Japan (N)	04/30/2019		7.3	12.5	---	---	---
Value Add			-2.0	-0.7	---	---	---
Global Managers*	**10/23/2017**	**$296,943,066**	**2.6**	**10.2**	**10.8**	**26.3**	**---**
MSCI World Index (N)	10/23/2017		3.0	8.6	13.5	27.7	---
Value Add			-0.4	1.7	-2.7	-1.3	---
Orbis Institutional Global Equity LP	10/23/2017	$74,089,347	4.5	12.4	13.1	22.1	---
MSCI World Index (N)	10/23/2017		3.0	8.6	13.5	27.7	---
Value Add			1.6	3.9	-0.4	-5.5	---
Cat Rock Capital Partners, Ltd.	10/31/2017	$61,407,805	0.3	9.4	6.0	21.4	---
MSCI World Index (N)	10/31/2017		3.0	8.6	13.5	27.7	---
Value Add			-2.7	0.8	-7.5	-6.3	---
Cedar Rock	10/31/2017	$26,116,116	3.5	7.8	8.6	26.0	---
MSCI World Index (N)	10/31/2017		3.0	8.6	13.5	27.7	---
Value Add			0.5	-0.7	-4.9	-1.7	---
D.E. Shaw World Alpha Extension*	11/30/2017	$55,369,003	2.9	8.7	11.3	24.7	---
MSCI World Index (N)	11/30/2017		3.0	8.6	13.5	27.7	---
Value Add			-0.1	0.2	-2.2	-3.0	---
Tiger Global Long-Only*	11/30/2017	$37,903,660	3.0	13.3	9.3	34.5	---
MSCI ACWI Index (N)	11/30/2017		3.5	9.0	12.9	26.6	---
Value Add			-0.5	4.4	-3.6	7.9	---

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PERFORMANCE CONTINUED

DECEMBER 31, 2019

Returns (%)	INCEPTION DATE	MARKET VALUE AS OF DEC 2019	MONTH TO DATE	QUARTER TO DATE	FISCAL YEAR TO DATE MAR	CUMULATIVE TRAILING 1 YEAR	ANNUALIZED SINCE SEP 2017
Total Pension Plan (Net of All Fees)*	**09/30/2017**	**$1,842,938,898**	**1.7**	**4.9**	**8.5**	**16.9**	**7.1**
Interim Policy Benchmark[1]	**09/30/2017**		**1.7**	**4.3**	**8.2**	**18.1**	**6.7**
The Children's Investment Fund*	04/30/2018	$42,057,135	1.9	8.6	17.7	40.5	---
MSCI World Index (N)	04/30/2018		3.0	8.6	13.5	27.7	---
Value Add			-1.1	0.0	4.2	12.9	---
Hedge Funds*	**03/30/2018**	**$301,594,350**	**1.7**	**4.8**	**8.2**	**17.3**	**---**
0.3 Beta MSCI ACWI Index (N)[2]	03/30/2018		1.2	3.0	5.0	9.2	---
Value Add			0.6	1.8	3.2	8.0	---
Hedged Equity*	**03/31/2018**	**$166,285,299**	**1.1**	**5.0**	**9.0**	**21.1**	**---**
Coatue Offshore Fund, Ltd.*	03/31/2018	$16,095,142	-0.8	1.3	2.5	11.2	---
0.3 Beta MSCI ACWI Index (N)[2]	03/31/2018		1.2	3.0	5.0	9.2	---
Value Add			-1.9	-1.6	-2.5	2.0	---
Matrix Capital Management Fund (Offshore), Ltd.*	03/31/2018	$27,518,590	1.7	6.8	17.0	31.3	---
0.3 Beta MSCI ACWI Index (N)[2]	03/31/2018		1.2	3.0	5.0	9.2	---
Value Add			0.5	3.9	11.9	22.0	---
Park Presidio Capital Offshore Fund, Ltd.	03/31/2018	$22,881,086	0.4	2.6	10.3	20.7	---
0.3 Beta MSCI ACWI Index (N)[2]	03/31/2018		1.2	3.0	5.0	9.2	---
Value Add			-0.8	-0.3	5.3	11.5	---
Soroban Opportunities Cayman Fund Ltd	03/31/2018	$27,307,733	3.5	11.3	18.0	40.2	---
0.3 Beta MSCI ACWI Index (N)[2]	03/31/2018		1.2	3.0	5.0	9.2	---
Value Add			2.3	8.4	13.0	30.9	---
Valinor Capital Partners Offshore, Ltd.*	03/31/2018	$5,151,821	-1.3	6.7	-2.2	15.3	---
0.3 Beta MSCI ACWI Index (N)[2]	03/31/2018		1.2	3.0	5.0	9.2	---
Value Add			-2.5	3.8	-7.3	6.1	---

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PERFORMANCE CONTINUED

DECEMBER 31, 2019

Returns (%)	INCEPTION DATE	MARKET VALUE AS OF DEC 2019	MONTH TO DATE	QUARTER TO DATE	FISCAL YEAR TO DATE MAR	CUMULATIVE TRAILING 1 YEAR	ANNUALIZED SINCE SEP 2017
Total Pension Plan (Net of All Fees)*	**09/30/2017**	**$1,842,938,898**	**1.7**	**4.9**	**8.5**	**16.9**	**7.1**
Interim Policy Benchmark[1]	**09/30/2017**		**1.7**	**4.3**	**8.2**	**18.1**	**6.7**
Lakewood Capital Offshore Fund, Ltd.	06/30/2018	$30,130,792	1.3	6.2	10.5	24.5	---
0.3 Beta MSCI ACWI Index (N)[2]	06/30/2018		1.2	3.0	5.0	9.2	---
Value Add			0.2	3.3	5.4	15.2	---
Junto Offshore Fund Ltd.*	08/31/2018	$37,200,136	0.5	1.1	4.7	8.3	---
0.3 Beta MSCI ACWI Index (N)[2]	08/31/2018		1.2	3.0	5.0	9.2	---
Value Add			-0.7	-1.9	-0.3	-0.9	---
Absolute Return*	**03/30/2018**	**$135,309,052**	**2.6**	**4.6**	**7.3**	**12.7**	**---**
FORT Global Offshore Fund, SPC	03/30/2018	$13,368,405	-0.7	-1.8	6.2	16.1	---
0.3 Beta MSCI ACWI Index (N)[2]	03/30/2018		1.2	3.0	5.0	9.2	---
Value Add			-1.9	-4.7	1.2	6.9	---
HBK Multi-Strategy Offshore Fund Ltd.*	03/31/2018	$29,252,775	1.3	1.3	2.6	4.1	---
0.3 Beta MSCI ACWI Index (N)[2]	03/31/2018		1.2	3.0	5.0	9.2	---
Value Add			0.2	-1.7	-2.4	-5.2	---
Indaba Capital Partners (Cayman), L.P.*	03/31/2018	$32,534,177	3.5	7.0	9.4	19.9	---
0.3 Beta MSCI ACWI Index (N)[2]	03/31/2018		1.2	3.0	5.0	9.2	---
Value Add			2.3	4.1	4.3	10.7	---
Senator Global Opportunity Offshore Fund II Ltd	03/31/2018	$23,300,882	2.1	4.2	11.2	20.3	---
0.3 Beta MSCI ACWI Index (N)[2]	03/31/2018		1.2	3.0	5.0	9.2	---
Value Add			0.9	1.2	6.2	11.1	---
Lyxor Bridgewater Fund, Ltd.*	10/02/2018	$27,376,876	3.4	7.2	4.1	-1.4	---
0.3 Beta MSCI ACWI Index (N)[2]	10/02/2018		1.2	3.0	5.0	9.2	---
Value Add			2.2	4.3	-0.9	-10.7	---

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PERFORMANCE CONTINUED

DECEMBER 31, 2019

Returns (%)	INCEPTION DATE	MARKET VALUE AS OF DEC 2019	MONTH TO DATE	QUARTER TO DATE	FISCAL YEAR TO DATE MAR	CUMULATIVE TRAILING 1 YEAR	ANNUALIZED SINCE SEP 2017
Total Pension Plan (Net of All Fees)*	**09/30/2017**	**$1,842,938,898**	**1.7**	**4.9**	**8.5**	**16.9**	**7.1**
Interim Policy Benchmark[1]	**09/30/2017**		**1.7**	**4.3**	**8.2**	**18.1**	**6.7**
Castle Hook Offshore Fund Ltd.*	10/31/2018	$7,588,337	8.4	11.4	-2.8	3.0	---
0.3 Beta MSCI ACWI Index (N)[2]	10/31/2018		1.2	3.0	5.0	9.2	---
Value Add			7.3	8.4	-7.8	-6.2	---
Elliott International Limited	12/31/2019	$1,887,600	---	---	---	---	---
0.3 Beta MSCI ACWI Index (N)[2]	12/31/2019		---	---	---	---	---
Value Add			---	---	---	---	---
Private Equity*[3,4]	**08/15/2011**	**$325,547,635**	---	---	---	---	---
Private Real Estate*[4]	**09/30/2017**	**$5,227,376**	---	---	---	---	---
Private Credit*[3,4]	**02/14/2014**	**$122,218,766**	---	---	---	---	---
Fixed Income*	**09/30/2017**	**$268,161,437**	**-0.2**	**0.0**	**4.3**	**6.8**	**3.1**
BBG Barc Aggregate Bond Index	09/30/2017		-0.1	0.2	5.6	8.7	4.0
Value Add			-0.1	-0.2	-1.3	-2.0	-0.9
Parametric Fixed Income Futures	10/16/2017	$49,003,001	---	---	---	---	---
PIMCO Total Return*	10/23/2017	$122,374,215	0.0	0.4	5.2	8.5	---
BBG Barc Aggregate Bond Index	10/23/2017		-0.1	0.2	5.6	8.7	---
Value Add			0.0	0.2	-0.4	-0.2	---
DoubleLine Total Return Mandate	11/08/2017	$96,784,222	-0.2	0.0	4.0	6.1	---
BBG Barc Aggregate Bond Index	11/08/2017		-0.1	0.2	5.6	8.7	---
Value Add			-0.1	-0.2	-1.6	-2.6	---
Cash and Cash Equivalents*[5]	**09/30/2017**	**$76,568,856**	---	---	---	---	---
Synthetic Cash[6]	**10/16/2017**	**-$32,685,736**	---	---	---	---	---

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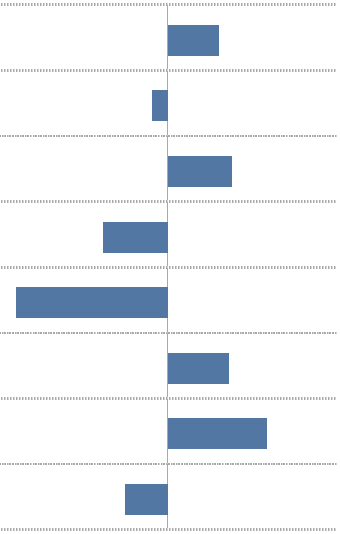
TARGET VARIANCE (%)

DECEMBER 31, 2019

Total Pension Plan (Net of All Fees) $1,842,938,898	MARKET VALUE AS OF DEC 2019 ($M)	CURRENT ALLOCATION	SHORT TERM TARGET	SHORT TERM TARGET VARIANCE	LONG TERM TARGET	LONG TERM TARGET VARIANCE
Global Equity*	$776.3	42.1	43.2	-1.1	40.0	2.1
Hedge Funds*	$301.6	16.4	17.0	-0.6	17.0	-0.6
Private Equity*[3,4]	$325.5	17.7	17.7	0.0	15.0	2.7
Private Real Estate*[4]	$5.2	0.3	0.3	0.0	3.0	-2.7
Private Credit*[3,4]	$122.2	6.6	6.6	0.0	13.0	-6.4
Fixed Income*	$268.2	14.6	15.2	-0.6	12.0	2.6
Cash and Cash Equivalents*[5]	$76.6	4.2	0.0	4.2	0.0	4.2
Synthetic Cash[6]	-$32.7	-1.8	0.0	-1.8	0.0	-1.8



Rows marked with " * " contain preliminary data.

ALLOCATION (%)

DECEMBER 31, 2019

	CURRENT MARKET VALUE	ALLOCATION AS OF AUG 2019	ALLOCATION AS OF SEP 2019	ALLOCATION AS OF OCT 2019	ALLOCATION AS OF NOV 2019	CURRENT ALLOCATION
Total Pension Plan (Net of All Fees)*	$1,842,938,898	100.0	100.0	100.0	100.0	100.0
Global Equity*	$776,306,213	42.8	42.2	42.5	42.3	42.1
U.S. Equity*	$134,342,999	7.9	8.0	8.0	7.6	7.3
Developed ex. U.S. Equity*	$224,662,698	12.5	12.4	12.4	12.1	12.2
Emerging Markets Equity*	$120,357,449	6.2	6.4	6.4	6.2	6.5
Global Managers*	$296,943,066	16.2	15.4	15.8	16.3	16.1
Hedge Funds*	$301,594,350	16.7	16.3	16.3	16.6	16.4
Hedged Equity*	$166,285,299	9.5	9.1	9.1	9.3	9.0
Absolute Return*	$135,309,052	7.2	7.2	7.2	7.2	7.3
Private Equity*[3,4]	$325,547,635	17.4	17.7	17.9	18.0	17.7
Private Real Estate*[4]	$5,227,376	0.4	0.4	0.4	0.3	0.3
Private Credit*[3,4]	$122,218,766	6.6	6.6	6.7	6.7	6.6
Fixed Income*	$268,161,437	14.8	15.2	14.8	14.9	14.6
Cash and Cash Equivalents*[5]	$76,568,856	4.0	5.5	3.6	3.5	4.2
Synthetic Cash[6]	-$32,685,736	-2.8	-3.9	-2.2	-2.3	-1.8

Rows marked with " * " contain preliminary data.

END NOTES

Due to the nature of Exchange Traded Funds (ETFs), passive index funds, and futures, options and other derivatives, these investments/contracts are not subject to the same monitoring or due diligence requirement as active managers. A list of investments in this portfolio that are excluded from monitoring can be provided upon request.

1. Please refer to the Benchmark End Notes document for additional details.

2. Benchmark is a blend of 30% MSCI All Country World Index and 70% 91-Day Treasury Bill Index.

3. On July 1st 2019, the following list of legacy Hamilton Lane Private Equity Funds were re-classified from Private Equity to Private Credit: Ascribe Opportunities Fund III, Castlelake Aviation III Stable Yield, Castlelake III, Castlelake IV, Catalyst Fund Limited Partnership V, Highbridge Principal Strategies Mezzanine Partners III, Landmark Acquisition Fund VIII, Secondary Investment SPV-6, and TPG Opportunities Partners III.

4. Market values are as of 09/30/19 plus contributions and less distributions made through the current reporting period, with the exception of Abraaj Global Growth Markets Strategic Fund (B) and Penn Square Global Real Estate Fund II whose respective market values are as of 09/30/18 and 06/30/19, respectively, plus contributions and less distributions made through the current reporting period.

5. Cash and Equivalents includes the partial redemptions from Cat Rock Capital Partners, PIMCO, Senator Global Opp. Fund and Valinor Capital Partners Offshore; funding for capital calls for Blackstone Energy Partners II, Thompson Street Capital Partners V, Kelso Investments Associates IX and American Securities VII; a distribution from iShares South Africa ETF, and the holdback from Proxima Capital Offshore.

6. Synthetic Cash reflects the offsetting value for the Parametric derivative exposure.

BENCHMARK END NOTES

DECEMBER 31, 2019

Interim Policy Benchmark

10/01/17 to 03/31/18: *	52.7%	MSCI All Country World Index (N)
	2.0%	S&P Global Natural Resources Index
	12.3%	MSCI All Country World Index (N) (Lagged)
	13.0%	FTSE® EPRA/NAREIT Developed Real Estate Index (Net) (Lagged)
	4.0%	Bloomberg Barclays U.S. TIPS Index
	4.0%	Bloomberg Barclays U.S. Corporate High Yield Index
	2.0%	J.P. Morgan Emerging Markets Bond Index Global Diversified
	10.0%	Bloomberg Barclays Aggregate Bond Index
04/01/18 to 05/31/18: *	64.9%	MSCI All Country World Index (N)
	7.0%	0.3-Beta MSCI All Country World Index (N)
	14.1%	MSCI All Country World Index (N) (Lagged)
	4.0%	FTSE® EPRA/NAREIT Developed Real Estate Index (Net) (Lagged)
	0.0%	BofA Merrill Lynch U.S. High Yield Master II Index (Lagged)
	10.0%	Bloomberg Barclays Aggregate Bond Index
06/01/18 to Present: *	41.0%	MSCI All Country World Index (N)
	17.0%	0.3-Beta MSCI All Country World Index (N)
	16.2%	MSCI All Country World Index (N) (Lagged)
	7.3%	FTSE® EPRA/NAREIT Developed Real Estate Index (Net) (Lagged)
	0.0%	BofA Merrill Lynch U.S. High Yield Master II Index (Lagged)
	18.5%	Bloomberg Barclays Aggregate Bond Index

* For the purpose of the Interim Policy Benchmark calculation, any Private Equity and Private Real Assets over or underweights versus their Long-Term targets are re-allocated to Global Equity. In addition, any Private Credit over or underweight versus the Long-Term target is allocated 50% to Global Equity and 50% to Aggregate Fixed Income. As a result, the Interim Policy Benchmark's weightings may change over time as the Portfolio's asset weights change.

Cambridge Associates LLC (CA) has established a proprietary database to monitor a client's portfolio across managers, asset classes, and at the total assets level. Users of the analysis may find the following description of the data sources, classification of investments, and the calculation techniques helpful in their interpretation of information that may be presented in the Investment Performance Report. Please note that certain data and calculation methodologies have evolved over time and may be time boxed to specific periods using a methodology wall specific to each client.

1. Investment manager statements are the primary source of information concerning client market values, returns, and cash flow transactions. In cases where managers are unable to provide data or where CA is otherwise instructed, other data sources may be substituted including, but not limited to custodian and/or client provided data. CA may also make use of third party data vendors to source fund-level returns.

2. Investment manager inception dates represent the initial funding dates unless otherwise indicated. Tracked performance begins on the first day after the manager inception date unless otherwise instructed.

3. All performance figures are shown on a total return basis and in U.S. Dollars unless otherwise indicated. All return time periods over one year are annualized unless otherwise indicated. Annualized returns follow an actual month/12 convention with the exception of the annualized since inception return, which follows an actual day/365 convention to account for non-month-end inception dates.

4. All returns presented in marketable performance reports are time-weighted unless otherwise indicated. A time-weighted return (TWR) measures the return of a single dollar invested continuously for a specific time period. TWRs provide equal weight to each time period, thereby neutralizing the impact of external cash flows. In contrast to money-weighted returns, TWRs are not influenced by withdrawals or contributions to the portfolio. Due to most long-only and hedge fund managers' lack of direct influence over the timing of investor cash flows, a TWR allows for more appropriate performance evaluation for marketable investments.

5. Preliminary Data is used in cases when the final performance figures for the period have not been supplied by a manager or custodian at the time the report is produced. To arrive at preliminary figures, CA may utilize one of the following approaches:
   - CA may report preliminary performance figures as provided by a manager or custodian when available.
   - CA may calculate performance using the previous period ending market value, cash flows that occurred during the period, and current period ending market value, as reported by a manager or custodian. If there are no cash flows, CA will use the 0% return that results from the calculation. For any situations that CA rolls forward performance using cash flows that are in a currency other than the reporting currency, CA applies the exchange rate at the end of the period to the preliminary market value at the end of the period.
   - CA may use proxy return information to estimate a preliminary market value. A proxy might be an investment vehicle offered the same manager with a similar strategy, but using a different fund structure, e.g. a mutual fund version in place of a separate account. A proxy could also be an index that has been set by the investment team that closely mirrors the investment goals of the investment, potentially the same index as the benchmark for the investment.

   For information on the specific approach used, please reach out to your performance analyst or team.

6. Marketable investment manager returns are tracked through CA's proprietary performance database system on a monthly basis. If monthly returns are unavailable, quarterly returns may be substituted. All returns for periods longer than one month are calculated by geometrically linking the monthly returns. All returns are net of management fees unless otherwise indicated.

7. In some cases, performance figures reported by a manager are gross of fees. CA will attempt to convert gross returns to returns net of fees to allow for a more fair comparison across managers. CA may utilize one of the following approaches for handling performance received as gross:
   - CA may leave the reported performance figure as a gross return and footnote that the performance is gross.
   - CA may calculate the return by revising the reported ending market value based on cash flow information from the custodian or manager that is specifically for fees.
   - CA may calculate the return using the reported fee structure of the investment.

   For information on the specific approach used, please reach out to your performance analyst or team.

8. In cases where CA is instructed to report a return net of CA fees, the quarterly fee paid by the client is divided into equal monthly tranches. Each monthly tranche is divided by the respective average capital base and multiplied by 100 to be additive with the time weighted return. For more information on adjusting performance for CA fees, please reach out to your performance analyst or investment team.

9. Hedge Fund (HF) manager returns are presented net of both management and incentive fees unless otherwise labeled. Detailed analysis of HF returns, long/short positions, and strategy exposures are available in a separate HF Performance Report for HF Performance Reporting subscribers.

10. For periods prior to the methodology wall, returns for Private Investments (PI) included in marketable reports are quarterly Internal Rates of Return (IRR's) calculated by CA's proprietary PI database. The IRR (Net to Limited Partner) reflects the client's return on its investment in the partnership net of fees, expenses, and carried interest received by the general partners. In order to transform the quarterly money-weighted return (IRR) series into a monthly time-weighted series for use in marketable reporting, CA follows the following convention: 0% return (first month), quarterly IRR (second month), 0% return (third month). Aggregated PI cash flows are stored on the quarterly mid-point. For periods after the methodology wall, PI returns included in marketable reports are calculated monthly using Modified Dietz. PI cash flows are tracked daily on the specific dates they occur. Since PI valuations are typically reported quarterly, market values in the first and second months of the quarter will be reported using the last known quarterly valuation adjusted for interim cash flows. As a result, the primary performance impact of PI will be realized in the third month of the quarter, consistent with the reporting date of most PI funds. Due to the timing of information availability from private investment managers, PI returns are reported on a one-quarter lag. See section 11 below to understand how performance is calculated for current periods given the lag in PI reporting. Detailed analysis of PI money-weighted returns, commitments, and strategy exposures are available in a separate PI Performance Report for PI Performance Reporting subscribers.

11. Given the majority of Private Investment managers provide performance on a quarter lag and will not typically report a preliminary number, CA may utilize one of the following approaches:
    - CA may carry forward the ending market value of the previous period resulting in a 0% return (excluding any currency effects).
    - CA may roll forward the market value from the previous period using cash flows as reported to a custodian. For any situations that CA rolls forward performance using cash flows that are in a currency other than the reporting currency, CA applies the exchange rate at the end of the period to the preliminary market value at the end of the period.
    - CA may use a public index as a proxy return for a private investment.

    For information on the specific approach used, please reach out to your performance analyst or team.

12. CA utilizes trade date accounting, with purchases or sales recognized on the date of purchase or sale and not the settlement date. Additionally, CA utilizes an end-of-day cash flow methodology, with all cash flows assumed to occur after the close of business for calculation purposes. It is possible that CA's cash flow dates may deviate from the dates reported from other sources due to differences in methodology, timing, intended consumer, etc.

13. Composites (synonymous with sleeves) represent a collective value for a grouping of similar investments as if their underlying assets were pooled into one "master portfolio". Investments are assigned to a particular composite according to the classification of their investments and the specific objectives of the client. For periods prior to the methodology wall, composite performance is calculated by asset-weighting individual investment-level returns by each investment's average capital base (ACB) as a percentage of the total composite ACB. The ACB consists of an investment's beginning market value adjusted for the daily-weighted cash flows during the period. Due to the daily weighting methodology, cash flows occurring earlier (later) in the period will have a greater (lesser) weight in the ACB calculation. For periods after the methodology wall, composite performance is calculated using Modified Dietz. Modified Dietz involves pooling the market values and cash flows of the underlying investments and calculating a return based on the net profit or loss of the composite divided by the composite's ACB. If a composite experiences a large intra-month cash flow (defined as a net cash flow of greater than 20% of the composite's beginning market value), the composite will be revalued and divided into one or more sub-periods that will be geometrically linked to calculate the monthly return.

14. The CA Manager statistics, consisting of Medians, Universe Size, and Percentile Ranking are derived from CA's proprietary database covering investment managers and exclude managers that exclude cash from their reported total returns. For calculations including any years from 1998 to the present, those managers with less than $50 million in product assets are excluded. Returns for inactive (discontinued) managers are included if performance is available for the entire performance period measured. The Medians will not include simulated performance series provided by managers.

15. CA Manager Medians are compiled at each quarter end. CA Percentile Rankings are based upon a scale of 0 to 100, where 0 represents the best performing and 100 the worst. Returns in place for less than the full quarterly period are not ranked.

16. As a result of CA's methodology, it is incorrect to link quarterly medians to come up with a median over an extended time period. The compounded median that would result from such a calculation would be different from the 50th percentile manager ranking for the complete time under consideration.

17. The CA Preliminary Peer Medians are populated from CA's Client base, the majority of which are tracked by the Performance Reporting department. All Taxable Clients are excluded from the universe. The CA Preliminary Peer Medians are compiled on a quarterly basis and Median returns are available approximately starting four weeks after quarter end. As CA's Client base reports in, the universe size will grow accordingly. A minimum of 15 Clients must be present for the CA Preliminary Peer Medians to be generated for the given time period. Approximately six weeks to eight weeks after quarter end, the CA Preliminary Peer Medians have the capability to be filtered by asset size and institution type. The Preliminary Peer Medians return and percentile rankings within the universe reported in any given Performance Report will be dependent on the available universe of similar institutions at the time the report is prepared.

18. Index returns are reported on the same basis as investment manager returns. Performance is shown on a total return basis, where tracked performance begins first day after investment manager inception unless otherwise stated. If an index is unavailable for the current period or a partial period, CA will use an assumption-based method, including but not limited to, a 0% return, the trailing twelve month average for the index, or a constant daily return derived from the monthly return in the case of partial periods. Please see Index Vendor list for source disclosure.

INDEX SOURCES AND DISCLAIMERS

DECEMBER 31, 2019

The Investment Performance Report was prepared using a subset of the listed Index Data providers below:

Barclay Trading Group
Barclays
BARRA
Barron's
Bloomberg L.P.
BofA Merrill Lynch
British Bankers' Association
Cambridge Associates LLC
Chase Manhattan Bank
Commodity Research Bureau
Common-Stock Indexes (Cowles Commission)
Credit Lyonnais Securities Asia
Credit Suisse
CS First Boston Corp.
CS First Boston High-Yield Market Research Group
Deutsche Bank
Dow Jones Indexes
Edward I. Altman - NYU Salomon Center
Eurekahedge
European Public Real Estate Association
FactSet Research Systems, Inc.
FBC High Yield Research
Federal Reserve
Frank Russell Company
FTSE Fixed Income LLC
FTSE International Limited
Goldman, Sachs & Co.
Grantham, Mayo, Van Otterloo & Company
Hambrecht & Quist
Hedge Fund Research, Inc.
Hoare Govett Corporate Finance Ltd.
HSBC
ING Barings
International Finance Corporation
J.P. Morgan Securities, Inc.
JPMorgan H&Q
Kinder, Lydenberg, Domini & Co., Inc.
Lipper Inc.
MSCI Inc.
Morgan Stanley Dean Witter
National Association of Real Estate Investment Trusts
National Council of Real Estate Investment Fiduciaries
OECD
Property & Portfolio Research, Inc.
Price Group
Prudential Real Estate Investors
Salomon Smith Barney
Standard & Poor's
Standard & Poor's Compustat
SWX Swiss Exchange
Thomson Reuters Datastream
UBS Global Asset Management
U.S. Dept of Labor - Bureau of Labor Statistics
The Wall Street Journal
Wilshire Associates, Inc.
WM Company

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Note: The 91-Day Treasury Bill Index sources the BofA Merrill Lynch 91-Day Treasury Bills Index from Jan 1978 to present.

Pre-1978 data represents returns calculated by Cambridge Associates using yields from the Federal Reserve.

Total returns for MSCI Emerging Markets and All Country indices are gross of dividend taxes unless specifically noted with (NET). Total returns for MSCI developed markets indices are net of dividend taxes.

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The primary data source for CA reporting is the investment manager and/or fund administrator, as such; data may not match to custodial or other client records due to differences in data sourcing, methodology, valuation practices, etc. Estimated values may include prior quarter end data adjusted by a proxy benchmark or by subsequent cash flows. In some instances, data may be sourced directly from a client and/or prior advisors or service providers. CA makes no representations that data reported by unaffiliated parties is accurate, and reporting services provided do not include reconciliation services between manager, custodian, and client records. The nature of performance measurement is such that it is a best estimate of performance. As such, performance is displayed to a one decimal place level of precision, accommodating up to nine basis points (0.09%) of imprecision in reported returns. There are multiple methodologies available for use in the calculation of portfolio performance, each correct on their own merits, each with their own unique challenges, and each may yield different results. Differences in both data inputs and calculation methodologies can lead to different calculation results.

As part of the reporting process, errors can and do occur. For the purpose of CA reports, an error represents any component of the performance report that is missing or inaccurate, including, but not limited to, composite returns and market values, manager returns and market values, benchmark returns, risk and other statistical measures, holdings and exposures. Errors can be a result of incorrect aspects of data, calculations, setup, and software or may be a result of an omission, incorrect value, incorrect systematic computation, incorrect report production, and other similar reasons. For classification as an error, the item in question must be objectively incorrect according to the standard policies, procedures, and methodologies utilized by CA. Differences due to changes in methodology over time, the difference between preliminary and final data and other related changes do not constitute errors, but rather normal course of business for the reporting process. Though CA makes reasonable efforts to discover inaccuracies in the input data used in the performance report, CA cannot guarantee the accuracy and are ultimately not liable for inaccurate information provided by external sources. Clients should compare the values shown on our performance reports with the statements sent directly from their custodians, administrators or investment managers.

In the event that an error is discovered, CA will correct the error and maintain the most accurate information possible. In the event of a material error, CA will disclose the error to the report recipient along with an updated version of the report from the most recent period.

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AFM-EPF

Monthly Report as of December 31,2019

Guidelines Compliance

Asset Allocation:	Assets	Current Weights	Interim Target[1]	Long-Term Target	Long -Term Range	# of Managers[2]	Constraint
	$M	%	%	%	%		
Global Equities	776.3	42	43	40	25 - 65	*25*	>4
Hedge Funds	301.6	16	17	17	0- 25	*14*	>8
Private Equity[3]	325.5	18	18	15	0 - 25	*20*	>8
Private Real Estate	5.2	0	0	3	0- 10	*2*	>4
Private Credit[3]	122.2	7	7	13	0- 20	*7*	>4
Agg. Fixed Income	268.2	15	15	12	0 - 25	*2*	>=2
Cash and Equivalents	43.9	2	0	0	0 - 10		

Portfolio Liquidity:	Current ($M)		Constraint
Within One Month	702.9	38%	----
One Month to One Year	452.7	25%	----
Greater than One Year	687.3	37%	----

Investment Constraints:	Current ($M)		Constraint
Largest fund/account position ex FI	74.1	4%	<10%
Largest fund/account position (FI)	122.4	7%	<10%
Gross notional derivatives exposure	112.2	6%	<10%
Portfolio leverage	0.0	0%	<5%

[1] As of October 2017 the Interim Policy Benchmark reflects the Interim Policy Benchmark as defined in the Investment Policy Statement approved September 2017 and amended in March 2018 and May 2018. The Interim benchmark uses the actual weight of the Private Equity and Private Real Assets composites, and redistributes the difference between the actual and target weights to the Global Equity benchmark component, and uses the actual weight of the Private Credit composite, and redistributes the difference between the actual Private Credit weight and target weight 50% each to the Global Equity and Fixed Income components. Prior to Oct. 2017 the benchmark reflects the Meketa Custom Benchmark.
[2] "Number of Managers" constraint for Private Equity and Private Real Estate in effect once the portfolio is mature. Number of Private Equity and Private Credit managers is since CA inception.
[3] On July 1st 2019, the following list of legacy Hamilton Lane Private Equity Funds were re-classified from Private Equity to Private Credit: Ascribe Opportunities Fund III, Castlelake Aviation III Stable Yield, Castlelake III, Castlelake IV, Catalyst Fund Limited Partnership V, Highbridge Principal Strategies Mezzanine Partners III, Landmark Acquisition Fund VIII, Secondary Investment SPV-6, and TPG Opportunities Partners III.

All numbers shown are preliminary and subject to change based on final reported values. Numbers may not sum due to rounding.

CAMBRIDGE ASSOCIATES

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The primary data source for information is the investment manager and/or fund administrator, therefore data may not match custodial or other client records due to differences in data sourcing, methodology, valuation practices, etc. Estimated values may include prior quarter end data adjusted by a proxy benchmark or by subsequent cash flows. In some instances, data may be sourced directly from a client and/or prior advisors or service providers. CA makes no representations that data reported by unaffiliated parties is accurate, and the information contained herein is not reconciled with manager, custodian, and/or client records. There are multiple methodologies available for use in the calculation of portfolio performance, and each may yield different results. Differences in both data inputs and calculation methodologies can lead to different calculation results. Expected return, efficient frontier analysis and methodology may include equilibrium asset class assumptions derived from CA's Capital Markets Group, and such assumptions are available upon request.

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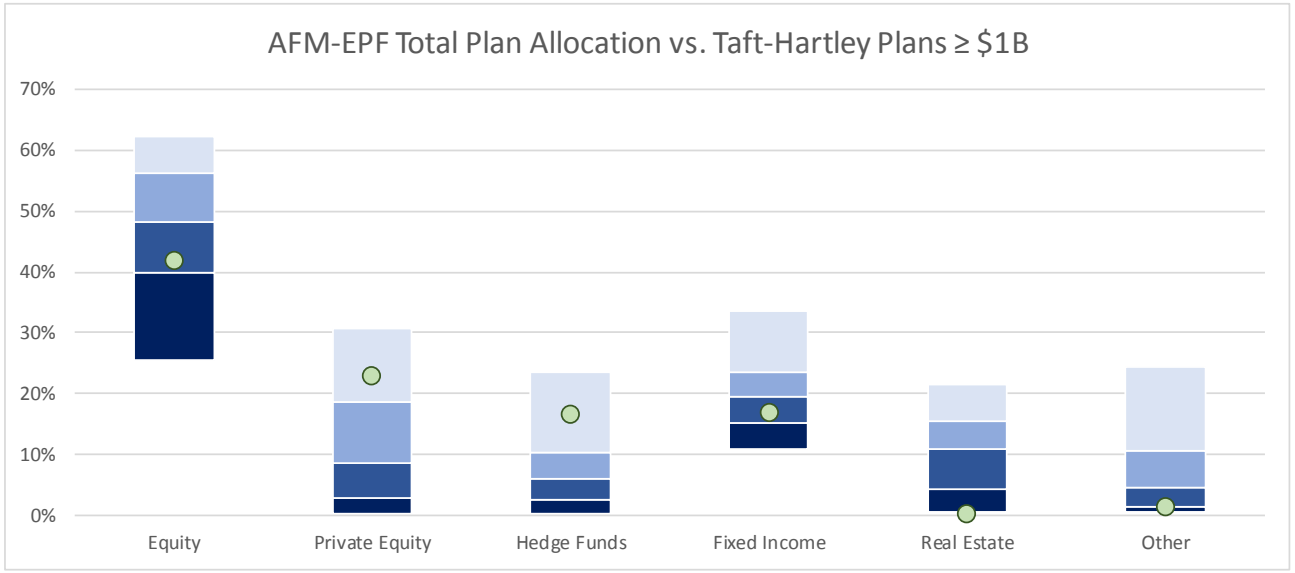
InvestorForce Asset Allocation Summary

Taft-Hartley Plans ≥ $1B



	Equity	Private Equity	Hedge Funds	Fixed Income	Real Estate	Other
AFM-EPF	41.8%	22.9%	16.6%	16.9%	0.4%	1.5%
95th Percentile	62.1%	30.6%	23.4%	33.6%	21.5%	24.4%
75th Percentile	56.3%	18.6%	10.5%	23.7%	15.5%	10.6%
Median	48.3%	8.7%	5.9%	19.7%	11.0%	4.7%
25th Percentile	40.0%	3.0%	2.7%	15.2%	4.3%	1.6%
5th Percentile	25.4%	0.2%	0.2%	10.9%	0.5%	0.5%

Notes:

All data is as of 6/30/2019 and there were 45 Taft-Hartley plans ≥ $1b reporting returns as of 6/30/2019.

Of those, 36 reported asset allocation data - 7 have no data and 2 have data that is obviously incomplete.

Private Equity also includes Venture Capital and *Other* includes multi asset, balanced and GTA allocations, and Cash.

Different funds may report allocations and classify investments inconsistently.

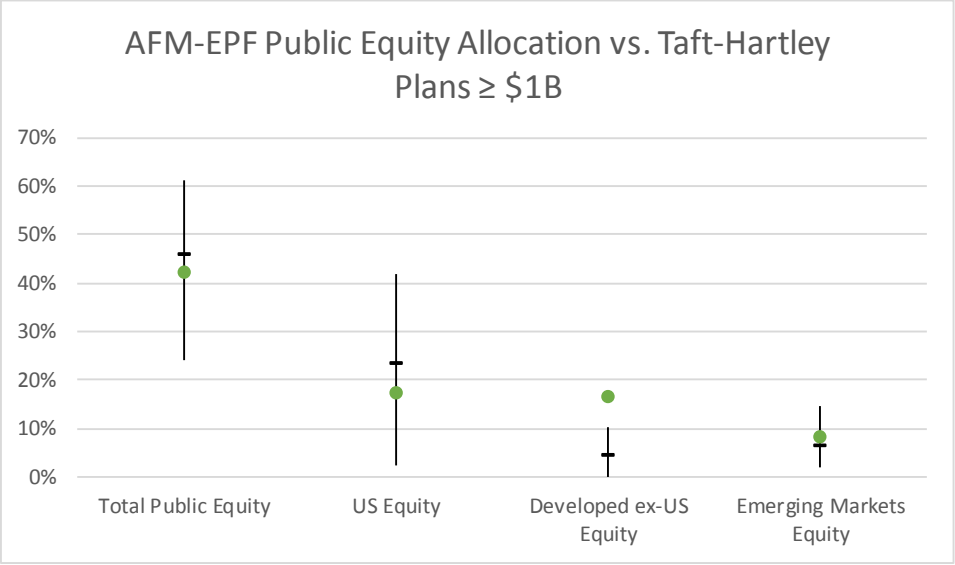
Disclaimer: While this is provided for informational purposes, the utility of this comparative information is limited. The investment allocation of any plan, including AFM-EPF, is developed based on a variety of factors unique to the plan, such as investment goals and philosophy, funding levels, risk tolerance and time horizon. Accordingly, this comparison, standing alone, does not indicate the appropriateness of any particular allocation.

Sources: AFM-EPF data from Cambridge Associates and comparative data from InvestorForce

InvestorForce Public Equity Summary

Taft-Hartley Plans ≥ $1B; data as of 6/30/19

Disclaimer: While this is provided for informational purposes, the utility of this comparative information is limited. The investment allocation of any plan, including AFM-EPF, is developed based on a variety of factors unique to the plan, such as investment goals and philosophy, funding levels, risk tolerance and time horizon. Accordingly, this comparison, standing alone, does not indicate the appropriateness of any particular allocation.



	Total Public Equity	US Equity	Developed ex-US Equity	Emerging Markets Equity
AFM-EPF	42.2%	17.5%	16.6%	8.1%
Maximum	61.3%	41.9%	10.1%	14.6%
Average	45.6%	23.4%	4.4%	6.3%
Minimum	24.1%	2.4%	0.2%	2.1%

Notes:

All data is as of 6/30/2019 and there were 45 Taft-Hartley plans ≥ $1b reporting returns as of 6/30/2019.

Of those, 12 reported public equity classifications consistent with AFM-EPF's classifications.

For all 12 plans, the sum of the equity sub-asset classes did not equal the total equity percentage for the plan. We cannot account for this.

AFM-EPF's Global Equity managers are apportioned to the 3 categories above based on their benchmark composition, and AFM-EPF is not included in the 12 reported plans.

Different funds may report allocations and classify investments inconsistently.

C|A

Sources: AFM-EPF data from Cambridge Associates and comparative data from InvestorForce

CAMBRIDGE ASSOCIATES

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EXHIBIT 6

OCIO Monitor RFP Procedure

A request for proposal will be sent to at least four of the following firms, selected by the Investment Committee, with input from the independent fiduciary.

- New England Pension Consultants
- Segal Marco
- Marquette
- Opus Advisors
- AllanBiller
- Clearbrook

Request for proposal will explain scope of work, which will include periodic review of the OCIO performance and establishment of asset allocation targets (subject to instructions from Trustees on investment risk and return objectives and the Trustees' right to veto proposed targets).

Request for proposal will ask questions in the following categories:

- Organizational background
- Proposed service team
- Fiduciary status and conflicts of interest
- Governmental investigations and litigation
- Methodology
- Qualifications, including Taft-Hartley experience
- Reporting
- Fees
- Representative clients/references
- Distinguishing characteristics of consultant

As part of the RFP process, the Neutral Independent Fiduciary Trustee will be responsible for advising the RFP candidates of the claims that were asserted in the Action relating to asset allocation and the use of actively managed funds based on the Neutral Independent Fiduciary Trustee's review of certain lawsuit materials including the parties' respective expert reports.

Responses to proposal will be summarized in comparative format for Trustees/ Neutral Independent Fiduciary Trustee review.

Investment Committee will review and, with input from the independent fiduciary, select at least two finalists for interviews.

Investment Committee and the Neutral Independent Fiduciary Trustee will recommend a candidate to the Board for approval. To the extent there is any disagreement regarding the recommendation, the Board minutes will include the Neutral Independent Fiduciary Trustee's written description of his or her reasons for such disagreement and the Neutral Independent Fiduciary Trustee shall be permitted to review and comment on the full description of the relevant discussion in the relevant portion of the minutes.

EXHIBIT 7

Process for Selecting a Replacement Neutral Independent Fiduciary Trustee

Should the Neutral Independent Fiduciary Trustee become unable to perform his or her functions due to resignation, death, or inability to serve, or if the Neutral Independent Fiduciary Trustee should be discharged for the "good cause" referenced in the Settlement Agreement (i.e., a failure to adequately perform the responsibilities and functions set forth in the Settlement Agreement but not for making recommendations adverse to the decisions of the Trustees) after vote, on the record, of a majority of the Employer-side Trustees and Union-side Trustees, the Trustees shall replace the Neutral Independent Fiduciary Trustee for the remainder of the required term, and the replacement shall have the authority and responsibility as contemplated by the Settlement Agreement for the Neutral Independent Fiduciary Trustee.

Before selecting the replacement, the Trustees and Fund Counsel shall meet with and evaluate at least two (2) replacement candidates. The Trustees and/or Fund Counsel shall also provide written notice to Class Counsel regarding the reasons for replacing the Neutral Independent Fiduciary Trustee and the candidate ultimately selected to serve as a replacement. If competent to do so, the Neutral Independent Fiduciary Trustee shall also provide Class Counsel with written notice of his or her views regarding the propriety of his or her discharge. The candidate selected as the Replacement Neutral Independent Fiduciary Trustee shall be a person or entity with experience acting as an independent fiduciary or otherwise as a fiduciary or advisor to pension plan fiduciaries in fulfilling their responsibilities with respect to pension investment and/or actuarial matters.

The candidate selected shall be alerted to the claims advanced in the Action and be provided the Settlement Agreement, the parties' respective expert reports, and the responsibilities of the Neutral Independent Fiduciary Trustee.

The identity of the Replacement Neutral Independent Fiduciary Trustee shall be disclosed on the Plan's website, along with a bio and any other experience relevant to the Replacement Neutral Independent Fiduciary Trustee's qualifications to serve as an independent fiduciary, along with the written notices provided to Class Counsel referenced above. Any disputes regarding replacement of the Neutral Independent Fiduciary Trustee shall be submitted to the Court.

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ANDREW SNITZER and PAUL LIVANT, individually and as representatives of a class of similarly situated persons, on behalf of the American Federation of Musicians and Employers' Pension Plan,

Plaintiffs,

v.

THE BOARD OF TRUSTEES OF THE AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS' PENSION FUND, THE INVESTMENT COMMITTEE OF THE BOARD OF TRUSTEES OF THE AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS' PENSION FUND, RAYMOND M. HAIR, JR., AUGUSTINO GAGLIARDI, GARY MATTS, WILLIAM MORIARITY, BRIAN F. ROOD, LAURA ROSS, VINCE TROMBETTA, PHILLIP E. YAO, CHRISTOPHER J.G. BROCKMEYER, MICHAEL DEMARTINI, ELLIOT H. GREENE, ROBERT W. JOHNSON, ALAN H. RAPHAEL, JEFFREY RUTHIZER, BILL THOMAS, JOANN KESSLER, MARION PRESTON,

Defendants.

No. 1:17-cv-5361 (VEC)

DECLARATION OF ANDREW IRVING

Andrew Irving declares under penalty of perjury the following:

1. I am submitting this Declaration to explain my qualifications to serve as an independent non-voting Trustee of the American Federation of Musicians and Employers' Pension Plan (the "Plan").

2. As appears from my résumé, a copy of which is attached as Exhibit A, I am an attorney and investment consultant with more than forty years' experience providing legal and investment advice to jointly-trusteed, multiemployer Taft-Hartley pension plans such as the Plan, as well as making decisions for such plans as an independent fiduciary. Throughout my career, I have focused on interpreting, explaining and applying the demanding standard of fiduciary responsibility that the Employee Retirement Income Security Act of 1974, as amended ("ERISA") imposes on the trustees of such plans.

3. I have no business, professional or personal relationships with any of the Plan's trustees or any of the defendants in the *Snitzer* litigation. I have become familiar with the issues raised in that litigation by reading key court documents and expert reports. I have also reviewed the Plan's Investment Policy Statement, recent reports from Cambridge Associates and Meketa Investment Group, and minutes of meetings of the Plan's Investment Committee. I am aware that the Plan is in "critical and declining status" as defined in the Multiemployer Pension Reform Act, and that the Plan has applied to the Secretary of the Treasury for approval of a benefit suspension that would reduce benefits to certain of the Plan's participants and beneficiaries in order to avoid insolvency.

4. Throughout my career, I have assisted multiemployer pension fund trustees, including trustees of funds in "critical and declining" status, with gathering and critically evaluating financial, legal, investment and actuarial analysis germane to their investment decisions, and then using what they have learned to make prudent decisions. Issues I have worked on with trustees have included the formulation and modification of investment policy statements, deciding on asset allocation and overall fund portfolio structure, monitoring investment performance against relevant benchmarks, and the hiring and firing of investment managers and other service providers.

5. I have also developed in-depth familiarity with a broad range of investment issues that plan trustees regularly face. These include, for example:

    - The differences in risk and return characteristics of various asset classes such as U.S., developed international market and emerging market equity and fixed income investments; real estate; hedge funds; commodities and others.
    - Within the universe of equity investments, the distinctions between growth and value investments, large-cap and small and mid-cap companies, and active and passive strategies.
    - The opportunities and challenges associated with private equity and private debt investments.

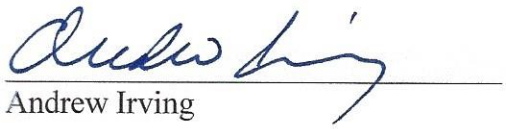
6. I have also served as an independent fiduciary with authority to make decisions for Taft-Hartley plans and other benefit plans subject to ERISA in lieu of the plans' board of trustees or decision-makers due to their real or perceived conflicts of interest, regulatory requirements or other circumstances. I have therefore literally "walked in the shoes" of plan trustees to decide whether, when and on what terms to acquire, hold or dispose of a broad range of investment assets, including publicly traded stocks and bonds, private equity investments, and real estate.

7. I am therefore confident that, as independent non-voting trustee, I can add value to the Plan's trustees' investment decision-making and will do so in an unbiased and independent fashion. I know how to ask questions about investment issues and follow up as needed to assure that the answers received are responsive and illuminating. I know how to synthesize the views and input of the combination of legal, actuarial and financial professionals available to the trustees. I am sensitive to the importance of understanding the potential risks and rewards of alternative courses of conduct that are under

consideration, and the need to be sure that additional alternatives are considered as needed. Having worked bull and bear markets, financial crises and other challenging environments, I know that trustees need to respond prudently to changing circumstances without overreacting to short-term developments. And I recognize that, in the area of investments, there is rarely only one possible prudent answer, and that it is up to the trustees to make an informed judgment based on their prudent analysis of the information available to them at the time. If there are differences among the trustees as to what course of conduct to pursue in a particular instance, I believe that I can help the trustees develop a consensus by drawing on my extensive experience working with Taft-Hartley plans.

8. I look forward to the opportunity to serve as the Plan's independent non-voting Trustee.

Executed in New York, New York on March 22, 2020



Andrew Irving

Andrew Irving, Esq.

New York, New York

Over 40 years' experience as attorney and independent fiduciary, with focus on serving multi-employer, single-employer, and public-sector benefit plans subject to ERISA and similar fiduciary regimes.

PROFESSIONAL EXPERIENCE

Present

Blakeman Crest Advisors, LLC
Founder and Manager
Gallagher Fiduciary Advisors, LLC
Senior Independent Fiduciary Consultant

2003-2018

Gallagher Fiduciary Advisors, LLC
Area Senior Vice President and Area Counsel (2011-2018)
and its predecessor firm
Independent Fiduciary Services, Inc.
Senior Vice President and General Counsel (2003-2011)

- Overall leadership of independent fiduciary decision-making services to ERISA-regulated benefit plans and other institutional investors subject to ERISA and similar fiduciary regimes, including marketing and project performance on matters including, for example:
  - Prohibited transaction exemption applications
  - In-kind contributions of employer securities and real property
  - Negotiation of leasing, purchase, sale and services arrangements between plans and sponsoring unions, employers and other parties in interest
  - Acquisition, management and disposition of public and private fixed income and equity securities
  - Fiduciary oversight of real estate transactions and development projects
  - Oversight and management of litigation on behalf of benefit plans
  - Determination of multiemployer plan withdrawal liability claims
  - Review of class action securities and ERISA litigation settlements on behalf of benefit plans as class members
- Studied and recommended enhancements of compliance, governance, and administrative systems at public- and private-sector benefit plans.
- Managed multi-disciplinary teams of legal, financial, real estate and investment professionals.
- Team leader and relationship manager for investment consulting services to selected multiemployer benefit plan clients
  - Monitoring asset management services by third party investment managers and sponsors of alternative investment vehicles
  - Selection and replacement of investment managers
  - Advice on asset allocation and risk management

1978–2003 **Bryan Cave, LLP, and its predecessor firm Robinson Silverman Pearce Aronsohn & Berman, LLP**
Partner (1985-2003), Associate (1978-1985)
- Representation of public- and private-sector employee benefit plans as outside general counsel and in contested/litigated matters arising under ERISA, corresponding local laws, and Internal Revenue Code.
- Civil litigation in state and federal trial and appellate courts, and before state and federal administrative agencies.
- Representation of employers and labor organizations in labor relations and collective bargaining matters.
- Service as court-appointed receiver of disgorgement funds and financial institutions in SEC enforcement litigation.
- Representation of telecommunications and energy companies in regulatory matters and mergers and acquisitions.

1977-1978 **Eugene H. Nickerson, U.S. District Judge, Eastern District of New York**
Law Clerk

1976-1977 **Murray A. Gordon, P.C.**
Associate
- Representation of public and private sector labor organizations.
- Representation of public sector employees in civil service matters.
- Civil litigation in state and federal courts.

PUBLIC AND PROFESSIONAL SERVICE

2005-2017 **New York City Conflicts of Interest Board**
Member
- Appointed by Mayor Michael Bloomberg, confirmed by New York City Council
- Recipient, Powell Pierpoint Award for Outstanding Service to the Board

2017-present **American College of Employee Benefits Counsel**
Fellow

2004-present **American Bar Association, Employee Benefits Committee, Section on Labor and Employment Law**

EDUCATION

1973-1976 **Columbia Law School**
Juris Doctor
- Member, *Columbia Law Review*
- Harlan Fiske Stone Scholar

1968-1972 **Yale College**
Bachelor of Arts, cum laude

EXHIBIT 3

From: Musicians for Pension Security <info@musiciansforpensionsecurity.com>
Date: August 2, 2017 at 5:49:28 PM EDT
To: <Paul.livant@[redacted]>
Subject: MPS response to lawsuit
Reply-To: Musicians for Pension Security <info@musiciansforpensionsecurity.com>

8e27c317-41b7-4eee-811c-e0845901ffac.png ¬ MPS response to the lawsuit filed against the AFM-EPF trustees and Fund AdministratorDear Plan Participants,

A class action lawsuit was recently filed against the trustees of the AFM- EPF. The central allegation is that Fund trustees failed to properly oversee the investment functions of our plan. In particular, it claims they directed too much plan money into emerging market stocks, and as a result, the investment returns were lower than if they were invested in US stocks.
Musicians for Pension Security did not file this lawsuit. It was initiated by two AFM-EPF members who are not affiliated with our organization. MPS applauds any effort to hold plan trustees accountable for their performance and transparency failures. However, the litigation process could take years to unfold, and during this time the trustees will be deciding the fate of our plan. In the next few years, they will **determine** if the plan will move into critical and declining status, and whether or not to file an application to the US Treasury for cuts to our pension benefits. We cannot let the lawsuit distract us from the key task of protecting our pension benefits.

MPS believes that the lawsuit, if successful, would only recover approximately 1% of plan assets. In all likelihood our trustees have an insurance policy insulating them from possible litigation, and in general, these policies provide somewhere between $20-$40 million of protection. After deducting attorneys' fees, we believe that at most only approximately $20 million could be recovered. This equates to less than 1% of plan assets, or about $400 per participant.

While holding AFM-EPF trustees accountable is laudable, MPS remains focused on how plan participants can have a greater influence right now. We have retained our own independent actuary to provide a second opinion concerning the finances of our fund. MPS will continue to engage with policymakers in Washington to find solutions in plan participants' best interests. Through grassroots efforts, we can unite and work together to protect the pension benefits of all plan participants.

Sincerely,
Musicians for Pension Security
Adam Krauthamer, Marilyn Coyne, Jon Kantor, Anja Wood, Pete Donovan, Elise Frawley, Sylvia D'Avanzo and Carol Zeavin

Read the full complaint here.
Articles about the lawsuit online:

Suit Filed Against Musicians' Union Board of Trustee
http://www.nashvillescene.com/news/pith-in-the-wind/article/20966928/american-federation-of-musicians-lawsuit-pensions
Lawsuit Claims Mismanagement Of Musicians Union's Troubled Pension Plan
http://deadline.com/2017/07/afm-lawsuit-claims-mismanagement-of-troubled-pension-plan-american-federation-musicians-1202135150/

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