

## **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, May 18, 2020, 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](http://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. The Plan will receive at least \$17 million of the total Settlement. The balance is being sought by Plaintiffs for Attorneys' Fees and Costs and Service Awards. The Court will determine how much to award in Attorneys' Fees and Costs and Service Awards.
- 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 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	
<b>DO NOTHING</b>	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.
<b>OBJECT TO THE SETTLEMENT</b>	If you object 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.
<b>GO TO THE HEARING</b>	Ask to speak in Court about your objection to 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?

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

Throughout the litigation and in the Settlement Agreement, Defendants have denied 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’ 2019 decision to seek approval for benefit cuts under

the Multiemployer Pension Reform Act of 2014 (“MPRA”). The proposed Settlement does not have an impact on 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. 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) were a Plan Participant 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](http://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 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 apply 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, those amounts will 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 agreed to as part of the Settlement. 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](http://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. Mr. Irving 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) to 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, to function in all respects (other than voting authority) as those Co-Chairs; (iii) to 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) to 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) to state his assessment, including his reasoning for such assessment, of all matters under deliberation or subject to a decision or vote related to the Investment Committee (including asset management and allocation); (vi) to 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”), to 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. Mr. Irving’s resume and his declaration filed with the Court are available at [www.afm-epfsettlement.com](http://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, Meketa served as the Plan’s investment consultant from 2010 to 2017, during which time the Trustees adopted the asset allocations and made the investment decisions Plaintiffs allege 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 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 the Plan’s actual performance since Cambridge became the Plan’s OCIO 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, except under certain circumstances where timing does not permit, the Trustees have agreed that, at least four weeks before the effective date of any new Trustee's appointment to serve on the Board, the Trustees will post on the Plan's website the identity of the new Trustee along with his or her bio and any other experience relevant to his or her qualifications to serve as a Trustee. The Settlement also acknowledges that at least one employer-designated Trustee and one union-designated Trustee who are members of the Investment Committee have previously stated their intention to resign from the Board within the next 18 months. As part of the Settlement, the Parties agreed that those Trustees will be replaced by 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.

The governing releases are found within the Settlement Agreement at [www.afm-epfsettlement.com](http://www.afm-epfsettlement.com). The Settlement Agreement describes the Released Claims in further detail. This is only a summary of the Released Claims, and it is not a binding description. Read the Settlement Agreement carefully because 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](http://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](mailto:SAS@chimicles.com)  
Mark B. DeSanto  
[MBD@chimicles.com](mailto:MBD@chimicles.com)

Robert J. Kriner, Jr.  
[RJK@chimicles.com](mailto:RJK@chimicles.com)  
CHIMICLES SCHWARTZ KRINER &  
DONALDSON-SMITH LLP

CHIMICLES SCHWARTZ KRINER &  
DONALDSON-SMITH LLP  
361 West Lancaster Avenue  
Haverford, PA 19041  
(610) 642-8500

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 pay them for the time they spent and reimburse them for the 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 they have not been paid anything for their work yet. They also represent that they have advanced almost \$900,000 in 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](http://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. What Will Plaintiffs' Andy Snitzer and Paul Livant Receive Out of the Settlement?**

Plaintiffs' Counsel will ask the Court to award each Plaintiff \$10,000 as a Service Award for his efforts and the accompanying risks each assumed in bringing this litigation. Both Plaintiffs spent significant time consulting with counsel, produced numerous documents including emails from 2010 through 2017, sat for full-day depositions by Defendants' Counsel, participated in mediation sessions, and reviewed various court and mediation documents. Class Counsel have agreed that any Service Awards will be paid out of the amount awarded by the Court for Attorneys' Fees and Costs. Messrs. Snitzer and Livant have each committed to donate any Service Award 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.

In addition, Plaintiffs' Counsel will request that the Court approve the provisions in Sections 5.1(f) and 9.1 of the Settlement Agreement. Pursuant to those sections, each Class Member shall fully, finally, and forever settle, release, relinquish, waive, and discharge any claims he or she may have against Messrs. Snitzer and Livant that arise out of the institution, prosecution, settlement or dismissal of the Action.

## OBJECTING TO THE SETTLEMENT

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

You can ask the Court not to approve the Settlement by filing an objection. You can also object to the request for Attorneys' Fees and Costs, the proposed Service Awards for each of the Plaintiffs, or Plaintiffs' request that Class Members release any and all claim(s) against the Class Representatives. 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 does not approve, the Plan will not receive any of the \$26.85 million Settlement payment negotiated by the parties and the Trustees will not be required to implement the Governance Provisions provided for by the Settlement.

Any objection to the proposed Settlement must be in writing. Any objection must be submitted to the Court either by mailing it to the United States District Court for the Southern District of New York, Thurgood Marshall United States Courthouse, 40 Foley Square, New York, NY, 10007 ATTN Judge Caproni, or by filing them in person with the Court. Any objection must be filed or postmarked on or before July 27, 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 include (a) 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 name, address, telephone number, and email address; (c) the specific grounds for your objection along with any supporting papers, materials, briefs or evidence that you wish the Court to consider when reviewing the objection; (d) your signature; and (e) a statement whether you or your attorney intends to appear at the Fairness Hearing. If you or your attorney has objected to a class action settlement during the past 5 years, the objection must also disclose all cases in which you or your attorney 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, the incremental benefits, if any, that 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 your objection considered at the Fairness Hearing or to otherwise contest approval of the Settlement or to 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 10:00 A.M. on August 26, 2020, at Courtroom 443 of the United States District Court for the Southern District of New York, at Thurgood Marshall United States 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](http://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 wish. 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](http://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](http://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 and the period during which the Court is not open to the public due to COVID-19.

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

Dated: May 18, 2020

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