UNITED STATES DISTRICT COURT
FOR THE DISTRICTOF MINNESOTA

JUDY LARSON, et al.,	)	
Plaintiffs,	)	Case No. 17-cv-03835 (SRN/TNL)
v.	)	Honorable Susan Richard Nelson, United States District Judge
ALLINA HEALTH SYSTEM, *et al.*	)	Honorable Tony N. Leung, United States Magistrate Judge
Defendants.	)	

UNOPPOSED MOTION OF FOR LEAVE TO FILE REPLY BRIEF IN SUPPORT OF [103] MOTION TO LEAVE TO FILE AMICUS BRIEF BY SHIYANG HUANG

Shiyang Huang respectfully submits unopposed motion for leave to file attached reply brief in support of docket [103] Motion for Leave to File Amicus Brief for neither party. "Except with the court's prior permission, a party must not file a reply memorandum in support of a nondispositive motion." L.R. 7-1(b)(3). Movant raised the need to examine constitutional issues as a reason to GRANT motion to leave. *Doc.* 103. This instant motion for leave to file reply brief should be GRANTED as well for Movant to provide a rebuttal to Parties' inconsistent and unavailing arguments that attempts to derail the merits of movant's prior motion.

Parties have informed Movant that they will take no position on this motion. (quoting Jan. 28, 2020 email from Mark Gyandoh, on behalf of Plaintiffs: "You

can represent that plaintiffs take no position on your request."; Jan 28, 2020 email from Nicholas Bullard, on behalf of Defendants: "You may represent that defendants take no position on your request.")

Date: January 29, 2020

Respectfully Submitted,

_____

Shiyang Huang (*Pro Se*)
defectivesettlement@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2020, I mailed a copy of this motion to this Court, and all counsels on record will be notified by Court's CM/ECF system.

Clerk of the Court
United States District Court, District of Minnesota
Warren E. Burger Federal Building & United States Courthouse
316 North Robert Street, Suite 100
St. Paul, MN 55101

CERTIFICATE OF COMPLIANCE

I certify that this brief is prepared under L.R. 7.1. I also certify I called both Judge Nelson and Leung's chambers and received permissions to file this instant motion for consideration. I expressly waive any request for hearing on this motion.

I certify I requested meet-and-confer with opposing parties prior to filing this motion, and parties take no position on this motion. I certify this entire motion, with footnotes and attached amicus curiae brief, contains 1,811 words. This brief was prepared in Times New Roman 14-point font, double-spaced spacing.

Date: January 29, 2020

/s/ _____
Shiyang Huang (*pro se)* [1]

[1] As a non-ECF filer, I expressly waive physical mail responses, as long as any service of process is completed via email.

UNITED STATES DISTRICT COURT
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JUDY LARSON, et al.,	)	
Plaintiffs,	)	Case No. 17-cv-03835 (SRN/TNL)
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ALLINA HEALTH SYSTEM, *et al.*	)	United States District Judge
Defendants.	)	

REPLY BRIEF IN SUPPORT OF [103] MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF BY SHIYANG HUANG FOR NEITHER PARTY

Movant Shiyang Huang filed a motion for leave to file amicus curiae brief. *Doc.* 103. Surely as the *amicus curiae* was intended to not support either party, Plaintiffs and Defendants filed briefs in opposition of that motion. *Doc.* 107, 108. With the substantial distortions of movant's meritful briefing, drafted solely to help absent class members, movant seeks permission to reply in support of [Doc. 103].

Movant believes that the ultimate decision on Motion to Leave rests with the sound discretion of the trial court, and movant's amicus curiae brief *will* be helpful for the Court to apply "heightened attention" in settlement-class proposals. *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 849 (1999) (A strong rebuke to improper use of no-opt-out class-action, *e.g.* *"trust"* without a "limited fund", *Id.* at 858)

I. ARTICLE III STANDING AND DUE PROCESS SATISFACTION NEEDS COURT SCRUTINY ANYWAY

Movant only raised Constitutional defects, which are issues that this Court needs to examine to determine its own jurisdiction anyway. *Cf. Ariz. Christian School Tuition Org. v. Winn*, 131 S.Ct. 1436, 1454 (2011). ("[E]very federal court has an independent obligation to consider [Article III] standing"); *Arizonans for Official English v. Ariz.*, 520 US 43, 73 (1997). (Article III Standing must be examined "even though the parties are prepared to concede it.") *AT&T Mobility LLC v. Concepcion*, 131 S.Ct. 1740, 1751 (2011) ("For a ***class-action money judgment*** to bind absentees in litigation… absent members must be afforded…***a right to opt out of the class***.") (emphasized); *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2558 (2011) ("[W]e think it clear that individualized monetary claims belong in Rule 23(b)(3)."). *Also see Elizabeth v. Montenez*, 458 F.3d 779, 768 n.3 (8th Cir. 2006) (same).

While both parties oppose the entry of *amicus curiae* on mostly procedural rebuttals, the substances of *amicus* flagged unavoidable Constitutional problems.

II. DEFENDANTS' ARGUMENTS ON "RULE 11 SIGNER" MISCONSTRUE DISCRETIONS OF TRIAL COURT

"In this case … class counsel and class representatives reached the settlement with [Defendants] before class certification, so [Defendants] lost its incentive to challenge the adequacy of class representation." *In re Sw. Airlines*

Voucher Litig., 799 F.3d 701, 714 (7th Cir. 2015). Defendants first purported to oppose the motion for leave to file *amicus curiae* on procedural ground around *dicta* on "signing of pleadings" (quoting some *dicta* in Fed. R. Civ. P. 11(a)). *Doc.* 108 at 1-2. But *1983 Advisory Committee Notes* for Rule 11 defeated their intent in two seconds, as "the court has sufficient discretion to take account of the special circumstances that often arise in *pro se* situations", "[a]lthough the standard is the same for unrepresented parties, who are obliged themselves to sign the pleadings" *1983 Advisory Committee Notes on Rule 11*. (citing *Haines v. Kerner*, 404 U.S. 519 (1972) (emphasis original)). Even without the advisory committee notes, it is undisputable that Fed. R. Civ. P. "were designed in large part to get away from some of the old procedural booby traps which common-law pleaders could set to prevent unsophisticated litigants from ever having their day in court." *Surowitz v. Hilton Hotels Corp.*, 383 US 363, 373 (1966). Rules are *not* created to make non-lawyers' solely public-interest work harder than Defendants wished for.

Next, Defendants cited in *Doc.* 108, *Ginter v. Southern*, 611 F.2d 1226, 1227 n.1 (1982), but the criticism was for some of *pro se* litigants who did not sign their papers, as "courts have dismissed the appeals of those pro se appellants who failed to sign the notice of appeal." *Ibid.* Obviously, *Movant's signed all motions*.

Defendants also misread *Bishop v. Jesson*, 2016 U.S. Dist. LEXIS 31142 *64-67 (D. Minn. Feb. 12, 2016), but the distortions are also obviously unavailing.

Doc. 108. Judge Rau recommended denial of the amicus in *Bishop* because of reasons inapplicable to *Doc.* 103 in this case. The denied amicus in *Bishop* was "repetitive" as to parties "Second Amended Complaint or the parties memoranda", *Ibid.*, which obviously is *contrary* to movant's [104] proposed *amicus curiae* brief.

For the [103] motion and [104] proposed amicus brief, simply, neither Plaintiffs or Defendants raised Article III standing or due-process deficiencies, and they're more focused on shoveling a settlement through this Court, not to protect the rights of absent class members—which the nonparty movant are trying to protect, and to help this Court to see the same. *Cf. Standard Fire Ins. Co. v. Knowles*, 133 S.Ct. 1345, 1349 (2013) ("A nonnamed class member is not a party to the class-action litigation before the class is certified."(cleaned up); *In re Wireless Tele. Fed. Cost Recovery Fees Lit.*, 396 F.3d 922, 932 (8th Cir. 2005) ("Under Federal Rule of Civil Procedure 23(e), the district court acts as a fiduciary, serving as a guardian of the rights of absent class members." (citation omitted).

In summary, Defendants' refusal on merits, under hopeless procedural grounds that rests within sound discretions of the district court, was "taken out of context" and quite unavailing with citations in daylight, which "illustrates the regrettable tendency of some lawyers to substitute citations for analysis." *Harzewski v. Guidant Corp.*, 489 F.3d 799, 806 (7th Cir. 2007) (Posner. J.).

III. PLAINTIFFS' ARGUMENTS ARE ALSO SPECULATIVE AND NOT USEFUL FOR THIS COURT'S CONSIDERATION

Fairly speaking, Plaintiffs' opposition did not distort case law and citations as Defendants did, but their weaker arguments cited fewer cases. *Doc.* 107.

First, Plaintiffs attack movant's credibility. Clearly movant read through the motion to dismiss of this Court, *Doc.* 104 at 2 (quoting sections of *Doc.* 71), as well as the preliminary approval papers. *Id.* (quoting *Doc.* 99). Second, no matter the case, it is abundantly clear that every claim of Plaintiffs relies on ERISA 502(a)(2) and/or 502(a)(3) provisions to allege misconducts against the fiduciaries that maintain these *already individually segregated* ERISA employee accounts.

While the claims may be different between cases, it is unshakeable to have *all* claims on ERISA 502(a)(2) or 502(a)(3). And case-in-point, *Doc.* 48-1 (Apr. 30, 2018), Plaintiffs supplied supplemental authorities including the *Schultz v. Edward Jones* case in the district court (the same case movant briefed on appeal, and knows that that case twice motion-to-dismiss changed nothing. *Cf. Schultz v. Edward D. Jones & Co., L.P.*, 2018 WL 1508906 (E.D. Mo. Mar. 27, 2018). Plaintiffs' own citation of *Schultz* before settlement proves that these two cases are highly related.

Plaintiffs' central speculation is that movant wants "to gain leverage over counsel in [*Schultz v.*] *Huang*". *Id.* at 3. But a cat is good when rats are caught, not because the fur's color is white or black. "There is no rule, however, that amici must be totally disinterested." *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982)

(affirming the *amicus curiae* on behalf of United States). *No matter what*, the restoration of constitutional opt-out rights for monetary damages, *AT&T* and *Wal-Mart Stores, supra*, is a benefit to the class, and no actual benefit to *amicus* besides public interest gains. Same for Article III standing, where a federal court must satisfy standing for "each claim he seeks to press" and "for each form of relief'" *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006) (emphasized). And for a putative class counsel to be willing to deprive opt-out rights of the class members to form a settlement-class, Rule 23(a)(4) adequacy is also a huge question mark. *Cf. Amchem Prods. v. Windsor*, 521 U.S. 591, 626 n.20 (1997) ("The adequacy heading also factors in competency and conflicts of class counsel."). It would be newsflash for an "adequate" class counsel to actively undermine the Constitutional rights of its clients, not putting class interests ahead of its own, as fiduciaries must.

IV. CONCLUSION

The motion for leave to file amicus brief [Doc. 103] should be GRANTED as helpful for the Court to consider [Doc. 104] and problems in Article III standing and due-process opt-out rights raised in that *amicus curiae* brief.

Date: January 29, 2020

Respectfully Submitted,

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