

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

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CLERK, U.S. DISTRICT COURT
ST. PAUL, MN

JUDY LARSON, et al.,

Plaintiffs,

v.

ALLINA HEALTH SYSTEM, et al.

Defendants.

)
)
)
)
) Case No. 17-cv-03835 (SRN/TNL)
)
)
) Honorable Susan Richard Nelson,
) United States District Judge
)
) Honorable Tony N. Leung,
) United States Magistrate Judge

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

“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). Shiyang Huang respectfully submits *unopposed* motion for leave to file attached reply brief in support of [Doc. 103] Motion for Leave to File Amicus Brief for neither party.

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 rebut parties arguments when this intent to appear as *amicus curiae* is for neither party—but for class members.

Plaintiffs and Defendants indicated that they will take no position on this motion. (quoting Jan. 28, 2020 email from Mark Gyandoh, on behalf of Plaintiffs:


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“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.”)

This Motion for Leave to File Reply Brief should be GRANTED to help this Court examine its own jurisdiction with the *amicus curiae* brief [Doc. 104], as well as the in personam jurisdictions under constitutional due process.

Date: January 29, 2020

Respectfully Submitted,



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

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

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ST. PAUL, MN

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

**REPLY BRIEF IN SUPPORT OF [DOC. 103] MOTION FOR LEAVE TO
FILE *AMICUS CURIAE* BRIEF [DOC. 104] BY SHIYANG HUANG**

Movant Shiyang Huang filed a motion for leave to file *amicus curiae* brief.

Doc. 103. As amicus intended to support neither party, Plaintiffs and Defendants both disliked it, and both parties opposed movant's motion in sync. *Doc. 107, 108.* Parties distorted movant's meritorious briefing, which was drafted solely to help this Court and class members. The reply brief seeks to dispel parties' meritless attacks.

Whatever parties' united opposition is, this Court has the discretion to grant Motion to Leave, and movant's *amicus curiae* brief *will be* helpful for the Court to apply "heightened attention" on settlement-class deals with *Constitutional defects*. *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 849 (1999) (blasted hideous proposals of no-opt-out class-action, *e.g. anything* without an *ex ante* "limited fund", *Id.* at 858)

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**I. DEFENDANTS' ARGUMENTS ON RULE 11 *DICTA*
MISCONSTRUE DISCRETIONS OF THE COURT**

Plaintiffs settled before fight for certification of a litigation class, “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 wanted to strike *amicus curiae* by taking issue of the signer. *Doc.* 108 at 1-2. But Rule 11’s Advisory Committee would squarely disagree. “Although the standard is the same for unrepresented parties, who are obliged themselves to sign the pleadings, the court has sufficient discretion to take account of the special circumstances that often arise in *pro se* situations.” *Notes of Advisory Committee on Rules—1983 Amendment* at ¶9. (citing *Haines v. Kerner*, 404 U.S. 519 (1972)). Courts know 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 U.S. 363, 373 (1966). Defendants’ Rule 11 attacks failed.

Next, Defendants confused criticisms in *Ginter v. Southern*, 611 F.2d 1226, 1227 n.1 (1982), where some of *pro se* litigants who *did not sign* their filings, as “courts have dismissed the appeals of those *pro se* appellants who ***failed to sign*** the notice of appeal.” *Id.* (emphasized). Contrarily, Movant *did sign* all the pleadings.

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.* 104 in this case. Judge Rau suggested denial in *Bishop* because that individual was essentially repeating parties' "Second Amended Complaint or the parties memoranda", *Id.*, which added nothing new to grant leave.

Distinguishably, [Doc. 104] **proposed brief flagged Article III standing and Due Process violation for the Court, but neither Plaintiffs nor Defendants raised it at all.** Parties stipulated to focus on securing jurisdiction of this Court to settle quickly, not to protect the rights of absent class members—*cf. 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' hopeless refusal to engage on merits, disguised under procedural attacks that invades discretionary territory of this court, is badly mistaken with case citations "taken out of context", 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.).

II. 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 rely on mere speculations. *Doc.* 107.

“[E]very federal court has an independent obligation to consider [Article III] standing”, *Ariz. Christian Sch. Tuition Org. v. Winn*, 131 S.Ct. 1436, 1454 (2011), “even though the parties are prepared to concede it”, *Arizonans for Official English v. Ariz.*, 520 US 43, 73 (1997), for “each claim he seeks to press” and “for each form of relief”, *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006), and circuit law requires “a class cannot be certified if it contains members who lack standing.” *Avritt v. Reliastar Life Ins. Co.*, 615 F.3d 1023, 1034 (8th Cir. 2010).

Likewise, return of constitutional class opt-out rights for monetary damages is a benefit for the class. *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.”) *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) (“The Supreme Court has cautioned against “adventurous application of Rule 23(b)(1)(B).””) (quoting *Ortiz*, 527 U.S. at 845).

In arguments, Plaintiffs doubt movant’s credibility. But clearly movant has read decisions of this Court, *Doc. 104* at 2 (quoting sections of *Doc. 71*), as well as the preliminary approval papers. *Ibid.* (quoting *Doc. 99*). Second, it is abundantly clear that every claim of Plaintiffs relies on ERISA 502(a)(2) and/or 502(a)(3) provisions to allege misconducts in *individually segregated* ERISA accounts.

While surviving claims may be different between cases, all claims invokes ERISA statues 502(a)(2) or 502(a)(3). More illustratively, in *Doc. 48-1* (Apr. 30, 2018), Plaintiffs supplied supplemental authorities with *Schultz v. Edward Jones* case that movant knows well to brief fully on appeal. Plaintiffs' own reliance of *Schultz* before settlement proves the ERISA statue overlaps, if not 100% identical.

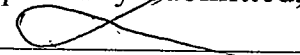
Plaintiffs' last straw worries that this Court may help amicus "gain leverage over counsel in [*Schultz v. Huang*]", *Id.* at 3, as reason that class members do not deserve their **constitutional rights of due process**. "There is no rule, however, that amici must be totally disinterested." *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982). But ("[t]he adequacy heading also factors in competency and conflicts of class counsel."). *Amchem Prods. v. Windsor*, 521 U.S. 591, 626 n.20 (1997), and it would be hypocritical for "class counsels" to actively oppose the Constitutional rights of its clients, not putting class interests ahead of its own, as fiduciaries must.

III. CONCLUSION

The motion for leave [Doc. 103] should be GRANTED for Court to review amicus brief [Doc. 104] and failures of **Constitutional standing** and **due-process**.

Date: January 29, 2020

Respectfully Submitted,


Shiyang Huang (*Pro Se*)

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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.

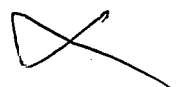
Clerk of the Court
United States District Court, District of Minnesota
Warren E. Burger Federal Building & United States Courthouse
316 North Robert Street, Suite 100
St. Paul, MN 55101

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 instructions to file this instant motion for Court's consideration. I expressly waive request for hearing.

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 reply brief, contains 1,631 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
defectivesettlement@gmail.com

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

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