

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Judy Larson, Janelle Mausolf, and Karen Reese, individually and on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

Allina Health System; the Allina Health System Board of Directors; the Allina Health System Retirement Committee; the Allina Health System Chief Administrative Officer; the Allina Health System Chief Human Resources Officer; Clay Ahrens; John I. Allen; Jennifer Alstad; Gary Bhojwani; Barbara Butts-Williams; John R. Church; Laura Gillund; Joseph Goswitz; Greg Heinemann; David Kuplic; Hugh T. Nierengarten; Sahra Noor; Brian Rosenberg; Debra L. Schoneman; Thomas S. Schreier, Jr.; Abir Sen, Sally J. Smith; Darrell Tukua; Penny Wheeler; Duncan Gallagher; Christine Webster Moore; Kristyn Mullin; Steve Wallner; John T. Knight; and John Does 1–20,

Defendants.

Civil Action No.: 17-3835-SRN-SER

**PLAINTIFFS' OPPOSITION TO
NON-PARTY SHIYANG HUANG'S
MOTION FOR LEAVE TO FILE
AMICUS CURIAE IN SUPPORT OF
NEITHER PARTY**

Plaintiffs Judy Larson, Janelle Mausolf, and Karen Reese (collectively, "Plaintiffs"), by and through their undersigned counsel, respectfully submit this opposition to non-party Shiyang Huang's Motion For Leave To File Amicus Curiae In Support off Neither Party [ECF No. 103].

Argument

“A determination on a request to participate as amicus curiae is discretionary, and ‘the court ... may grant or refuse leave according[ly] as it deems the proffered information timely, useful, or otherwise.’” *Murphy et al. v. Piper*, 2018 WL 2088302 (D. Minn. May 4, 2018) (citations omitted). It appears Mr. Huang (with no relevant expertise or first-hand knowledge of relevant facts) wishes to advise the Court on how to adjudicate Plaintiffs’ yet unfiled motion for final approval of the settlement in this matter. To be clear, Mr. Huang is neither a participant in the Plans¹ nor a settlement class member in this litigation, and he does not claim to be. Nor is the information (or misinformation as the case may be) Mr. Huang proffers, timely, useful, or otherwise helpful to the Court. Accordingly, his motion should be denied.

First, Mr. Huang’s motion is premature as there is no pending motion for final approval of settlement. Plaintiffs’ motion for final approval of settlement is due on March 16, 2020. *See* Preliminary Approval Order at par. 9 [ECF 99]. The motion will set forth the facts and legal basis supporting final approval of the settlement in this matter. Accordingly, there is no pending decision for which the Court needs amicus curiae briefs to help resolve. Mr. Huang’s motion should be denied on this basis alone.

Second, even if a motion for final approval was pending, Mr. Huang is a non-Plan participant with no personal knowledge of facts relevant to this case. He lacks the

¹ “Plans” or “Plan” refer collectively to the Allina 401(k) Retirement Savings Plan (the “401(k) Plan”) and Allina 403(b) Retirement Savings Plan (the “403(b) Plan”).

“knowledge, experience, and perspective related to the matters in this case that would assist the Court” in rendering a decision on the motion for final approval. *United Fire & Cas. Co. v. Titan Contractors Service, Inc.*, 2012 WL 3065517 (E.D. Mo. 2012). Further, Mr. Huang’s proposed amicus brief relies on inapplicable case law and makes dubious legal arguments with no credible support. Permitting the filing would only confuse matters.

Third, the request to stay a decision on Plaintiffs’ forthcoming motion for final approval of settlement pending a decision in *Schultz et al. v. Huang et al.*, 19-2158 (8th Cir.) lacks merit. Other than baldly stating that this case and *Schultz* are identical, Mr. Huang makes no effort to illustrate that the two cases are identical. Of course, factually the two cases are not identical because each dealt with different companies with different fiduciaries that employed different methods of selecting and evaluating investment options in their respective retirement plans. With regard to application of the law, the relevant issues in this matter are similar — not identical — to those in the dozens of ERISA breach of fiduciary duty cases now pending or at the settlement phase across the country, including within the Eighth Circuit. By filing only in this matter, where Plaintiffs’ counsel overlap with class counsel in *Huang*, Plaintiffs are left to believe Mr. Huang’s motivation for filing is to gain leverage over counsel in *Huang*.

For the foregoing reasons Mr. Huang’s motion should be denied *in toto*. However, should the Court allow the filing of the amicus brief, plaintiff intends to consider the brief as an objection to the settlement (*albeit* improper since Mr. Huang lacks standing) and will address the issues raised in the brief by March 30, 2020, the due date for responding to objections to the settlement.

Dated: January 24, 2020

Respectfully submitted,

CAPOZZI ADLER, P.C.

By: s/ Mark K. Gyandoh

Mark K. Gyandoh (admitted *pro hac vice*)
2933 North Front Street
Harrisburg, PA 17110
717-233-4101
Email: markg@capozziadler.com

**KESSLER TOPAZ MELTZER &
CHECK, LLP**

Donna Siegel Moffa (*pro hac vice
forthcoming*)
280 King of Prussia Road
Radnor, PA 19087
Tel: (610) 667-7706
Fax: (610) 667-7056
Email: dmoffa@ktmc.com

BAILEY GLASSER LLP

Gregory Y. Porter
(admitted *pro hac vice*)
Mark G. Boyko
(admitted *pro hac vice*)
8012 Bonhomme Avenue, Suite 300
Clayton, MO 63105
Telephone: (314) 863-5446
Facsimile: (314) 863-5483
gporter@baileyglasser.com
mboyko@baileyglasser.com

IZARD KINDALL & RAABE LLP

Robert A. Izard
(admitted *pro hac vice*)
Mark P. Kindall
(admitted *pro hac vice*)
Douglas Needham
(admitted *pro hac vice*)
29 South Main Street, Suite 305
West Hartford, CT 06107

Telephone: (860) 493-6292
Facsimile: (860) 493-6290
rizard@ikrlaw.com
mkindall@ikrlaw.com
dneedham@ikrlaw.com

Interim Class Counsel

NICHOLS KASTER PLLP

Kai H. Richter, MN Bar No. 0296545
Carl F. Engstrom, MN Bar No. 0396298
4600 IDS Center
80 S 8th Street
Minneapolis, MN 55402
Telephone: (612) 256-3200
Facsimile: (612) 338-4878
krichter@nka.com
cengstrom@nka.com

Interim Liaison Class Counsel

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of January 2020, I electronically filed a copy of the foregoing with the Clerk of Court using the CM/ECF system which will send a notification to all counsel of record in this Action.

/s/ Mark K. Gyandoh

Mark K. Gyandoh