



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

July 14, 2020

**By ECF**

The Honorable Valerie E. Caproni  
United States District Judge  
Southern District of New York  
40 Foley Square, Room 240  
New York, New York 10007  
Email: CaproniNYSChambers@nysd.uscourts.gov

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DOCUMENT  
ELECTRONICALLY FILED  
DOC #: \_\_\_\_\_  
DATE FILED: 07/15/2020

Myron D. Rumeld  
Member of the Firm  
d 212.969.3021  
f 212.969.2900  
mrumeld@proskauer.com  
www.proskauer.com

**MEMO ENDORSED**

Re: *Snitzer and Livant v. The Board of Trustees of the American Federation of Musicians and Employers' Pension Fund, et al.*, 17-cv-5361 (VEC)

Dear Judge Caproni:

We are counsel for Defendants in the above-referenced matter. We write, with Class Counsel's consent, regarding Your Honor's Order dated July 13 instructing the parties to post on the Settlement Website the depositions of two defendants and four Plan service providers, including Plan counsel, by July 15.

As Your Honor knows, the depositions in question were all designated Confidential – Subjective to Protective Order, including because the documents shown to the witnesses during their depositions, and the testimony elicited, addressed communications that are covered by the attorney-client privilege. The documents were produced, and the witnesses' testimony permitted, because of ERISA's fiduciary exception to the attorney-client privilege, which permits disclosure to participants (in this case, Plaintiffs) of certain privileged communications relating to Plan administration. Persons or entities who are not participants may not invoke the fiduciary exception; the communications remain privileged as to them.

Your Honor's direction that the deposition transcripts be included on the Settlement Website would effectively put into the public record a large quantity of testimony regarding such privileged communications. At this juncture, and in light of Your Honor's ruling, Defendants are not looking to prevent such communications from being included in the disclosure, but respectfully request that the Court issue an instruction on the docket that the public posting shall not be deemed a general waiver of privilege, and that any waiver be limited to the transcribed testimony in question.

The Parties are still discussing other redactions, including of testimony revealing confidential information of other plans and clients, but hope to have any disputes resolved by the July 15 deadline. Alternatively, they have agreed to post the transcripts with the confidential information redacted pending resolution by the Court.



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We thank the Court for its consideration and its assistance.

Respectfully,

A handwritten signature in black ink that reads "Myron D. Rumeld".

Myron D. Rumeld

cc: All Counsel of Record (via ECF)

Application GRANTED. The public posting shall not be deemed a general waiver of privilege, and any waiver shall be limited to the transcribed testimony in question.

SO ORDERED.

Date: 07/15/2020

A handwritten signature in blue ink that reads "Valerie Caproni".

HON. VALERIE CAPRONI  
UNITED STATES DISTRICT JUDGE