

1 SPRENGER & LANG, PLLC
Paul C. Sprenger (DC Bar No. 412029)
2 Steven M. Sprenger (DC Bar No. 418736)
Michael D. Lieder (DC Bar No. 444273)
3 1400 Eye Street, N.W., Suite 500
Washington, D.C. 20005
4 Telephone: (202) 265-8010 - Facsimile: (202) 332-6652

5 SCHWARTZ, STEINSAPIR, DOHRMANN & SOMMERS LLP
Dolly M. Gee (CA Bar No. 114493)
6 6300 Wilshire Boulevard, Suite 2000
Los Angeles, California 90048-5268
7 Telephone: (323) 655-4700 - Facsimile: (323) 655-4488

8 KATOR, PARKS & WEISER, PLLC
Maia Caplan (DC Bar No. 422798)
9 1200 18th Street, N.W., Suite 1000
Washington, D.C. 20036
10 Telephone: (202) 898-4800 - Facsimile: (202) 289-1389

11 AARP FOUNDATION LITIGATION
Thomas W. Osborne (DC Bar No. 428164)
12 Barbara Jones (CA Bar No. 88448)
601 E Street, N.W.
13 Washington, D.C. 20049
Telephone: (202) 434-2060 - Facsimile: (202) 434-6424

14 KATZ, MARSHALL & BANKS, LLP
Daniel B. Edelman (DC Bar No. 075101)
15 1718 Connecticut Avenue N.W., Sixth Floor
Washington, D.C. 20009
16 Telephone: (202) 299-1140 - Facsimile: (202) 299-1148

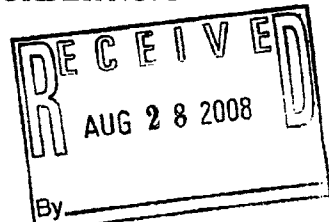
17 Attorneys for Plaintiffs

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **FOR THE COUNTY OF LOS ANGELES - CENTRAL CIVIL WEST**

20
21
22 IN RE: TV WRITERS CASES
23 THIS DOCUMENT RELATES TO:
24 *EDWARDS, et al. v. INTERNATIONAL*
CREATIVE MANAGEMENT, INC., -
25 *BC 268846; and*
26 *MINTZ, et al. v. BRODER KURLAND*
WEBB AGENCY, INC., - BC 268850
27
28

Case Nos. BC 268836 (and related cases)
[Assigned to Hon. Emilie H. Elias for all purposes]

ADMINISTRATIVE
ORDER NO. 1



ORIGINAL FILED

SEP 04 2008

**LOS ANGELES
SUPERIOR COURT**

1 This Court has preliminarily approved a Consent Decree resolving the age discrimination
2 claims asserted in the above-captioned cases (the "Litigation"). Under the terms of the Consent
3 Decree, Defendants ICM and BKW ("Defendants") shall cause to be paid the sum of Four and
4 One-Half Million Dollars (\$4,500,000.00) into a Settlement Fund. Accordingly, this
5 Administrative Order No. 1 is entered before the Court determines whether finally to approve the
6 Consent Decree in order to specify the purposes, terms, funding, operation, and administration of
7 the Settlement Fund, as delineated in the Consent Decree, to appoint the Trustees of the
8 Settlement Fund, and to establish and define their duties, authority, responsibilities and
9 obligations. Any and all terms defined in the Consent Decree and utilized within this
10 Administrative Order No. 1 shall be given the meanings provided for within Section III of the
11 Consent Decree.

12 **I. ESTABLISHMENT OF THE SETTLEMENT FUND.**

13 **A. Name, Purpose, Funding, Status, and Trustees and Settlement**
14 **Administrators of the Settlement Fund.**

15 **1. Name and Status as a Trust.** The common fund agreed to by the parties
16 in the Consent Decree is hereby established and shall be known as the TV Writers Age
17 Discrimination Settlement Fund (the "Settlement Fund"). The Settlement Fund shall be an
18 irrevocable trust under the laws of the State of California and a Qualified Settlement Fund under
19 Section 468B of the Internal Revenue Code and regulations thereunder.

20 **2. Purpose of the Settlement Fund.** The Settlement Fund is established
21 exclusively for the purposes of: (a) making distributions from the Class Claims Portion to
22 Eligible Claimants pursuant to the claims process described in the Consent Decree (and any other
23 consent decrees entered in the TV Writers Cases); (b) making payments from the Legal &
24 Administrative Expense Portion of the Settlement Fund as specified in the Consent Decree (and
25 any other consent decrees entered in the TV Writers Cases) to Class Counsel and to third-parties
26 engaged by the Trustees; and (c) paying employment, withholding, income and other applicable
27 taxes, if any, all in accordance with the terms of the Consent Decree (and any other consent
28 decrees entered in the TV Writers Cases) and this Administrative Order No. 1 (and any other

1 administrative orders). No distribution shall be made from the Settlement Fund and/or any
2 Portion of the Settlement Fund until after the Effective Date of the Consent Decree.

3 **3. Funding of the Settlement Fund.** Defendants shall cause to be paid by
4 wire transfer to the Depository Bank the sum of Four and One-Half Million Dollars
5 \$4,500,000.00 to an account to be designated by Class Counsel pursuant to the wire transfer
6 instructions provided by Class Counsel. The payment schedule is set forth in Section XII.A. of
7 the Consent Decree. The Settlement Fund also shall consist of any and all income that accrues
8 on the above-referenced deposits. The Trustees shall furnish a copy of this Order to the
9 Depository Bank.

10 **4. Settlement Fund Portions.** Subject to the Court's approval of Class
11 Counsel's fee petition, the Settlement Fund will consist of the two portions described below.

12 **a. Class Claims Portion.** The Class Claims Portion shall be used to
13 pay Eligible Claimants pursuant to the Consent Decree and for taxes to the extent set forth
14 below. The Class Claims Portion shall initially consist of (i) \$2,700,000.00, and (ii) any income
15 earned by the money in the Class Claims Portion thereafter. The Class Claims Portion shall be
16 administered for the benefit of Eligible Claimants as a group and not for the benefit of individual
17 Eligible Claimants, except insofar as they receive awards from the Settlement Fund.

18 The Trustees shall determine which portion of each award to Eligible Claimants shall be
19 treated as wages and which portion shall be treated as interest.

20 **b. Legal & Administrative Expense Portion.** The Legal &
21 Administrative Expense Portion shall be used to pay an award of attorneys' fees and expenses
22 pursuant to the Consent Decree, and to pay fees, costs and expenses related to the issuance of
23 class notice, the claims administration and monitoring. It shall initially consist of (i)
24 \$1,800,000.00, and (ii) any income earned by the money in the Legal & Administrative Expense
25 Portion thereafter.

26 **5. Qualified Settlement Fund.** The Settlement Fund, including all portions
27 and the income thereon, shall be a single qualified settlement fund within the meaning of Treas.
28 Reg. Sections 1.468B-1, et seq. The division of the qualified settlement fund into portions is for

1 accounting and bookkeeping purposes only. The Defendants shall timely furnish a statement to
2 the Trustees that complies with Treasury Regulation § 1.468B-3(e) and shall attach a copy of the
3 statement to its federal income tax return that is filed for the taxable year in which the
4 Defendants make the required payment to the Settlement Fund. The Parties shall cooperate to
5 ensure such treatment and shall not take a position in any filing or before any tax authorities
6 inconsistent with such treatment.

7 The Defendants shall have no withholding, reporting or any other tax reporting or
8 payment responsibilities with regard to the Settlement Fund or its distribution to Eligible
9 Claimants.

10 Moreover, the Defendants shall have no liability, obligation, or responsibility for
11 administration of the Settlement Fund, the determination of any formulas for disbursement, or
12 the disbursement of any monies from the Settlement Fund except for: (1) their obligation to
13 cause the settlement amount to be paid; and (2) their agreement to cooperate in providing
14 information that is necessary for settlement administration set forth in the Consent Decree.

15 **6. Trustees and Claims Administrator.** The oversight of the Settlement
16 Fund shall be the responsibility of the Trustees who shall be Steven M. Sprenger and Maia
17 Caplan. The Trustees may, at their discretion, act as the Claims Administrators or hire a third-
18 party to serve as the Claims Administrator. The status and powers of the Trustees and Claims
19 Administrator shall be as defined by this Administrative Order No. 1.

20 **B. Other Settlement Fund Characteristics.**

21 The entire amount caused to be paid by the Defendants into the Settlement Fund pursuant
22 to the Consent Decree, and all income generated by that amount, shall be in custodia legis and
23 immune from attachment, execution, assignment, hypothecation, transfer or similar process by
24 any third party or Claimant. Once the Settlement Fund vests after the Final Approval Date, it is
25 irrevocable during its term and the Defendants have divested themselves of all right, title or
26 interest, whether legal or equitable, in the Settlement Fund, if any. The Trustees may make
27 disbursements out of the Settlement Fund only in accordance with this Administrative Order No.
28 1 or any additional Administrative Orders issued by the Court.

1 **C. Expiration/Termination of Settlement Fund.**

2 The Settlement Fund shall not terminate until its liability for any and all government fees,
3 fines, taxes, charges and excises of any kind, including income taxes, and any interest, penalties
4 or additions to such amounts, are, in the Trustees' sole discretion, finally determined and all such
5 amounts have been paid by the Settlement Fund.

6 **D. Alteration or Amendment of the Settlement Fund.**

7 The Trustees may apply to the Court to alter or amend this Administrative Order No. 1 at
8 any time, or from time to time; provided, however, that no such amendment or modification shall
9 in any way affect: (a) the purposes of the Settlement Fund; (b) the Court's jurisdiction over the
10 Parties; (c) the powers, duties and liabilities of the Trustees and Claims Administrator under this
11 Order; (d) the total amount of money the Defendants are required to cause to be paid into the
12 Settlement Fund; (e) the qualification of the Settlement Fund as a "qualified settlement fund"
13 under Section 468B of the Internal Revenue Code and regulations thereunder; or (f) the terms of
14 the Consent Decree or any of its Exhibits and/or attachments.

15 **II. ADMINISTRATION OF THE SETTLEMENT FUND.**

16 **A. Awards to Eligible Claimants.**

17 All decisions concerning the awards from the Class Claims Portion to Eligible Claimants
18 are the sole responsibility of the Claims Administrator, subject to approval by the Court, the
19 terms of the Consent Decree, and the provisions of this Administrative Order No. 1. All awards
20 to Eligible Claimants are confidential, and shall not be disclosed except upon order of the Court
21 other than to the Claims Administrator, the Court, the awardee, and such legal and accounting
22 personnel and other administration personnel as are required by the Claims Administrator to
23 know as part of the allocation and distribution process and the persons set forth in the Consent
24 Decree.

25 **1. Award Elements.** Each distribution from the Class Claims Portion to an

26 Eligible Claimant may consist of various elements, including prejudgment interest and back pay.
27 The percentage of these elements will be presented by the Claims Administrator to the Court

28 //

1 prior to distribution, based on the tax advice the Claims Administrator receives from a tax
2 consultant.

3 **2. Award Allocations.** The Claims Portion, less any amounts held in
4 reserve as set forth below, shall be allocated among all Eligible Claimants under the distribution
5 procedures, including a Distribution Formula. The Claims Administrator, together with Class
6 Counsel, will recommend the Distribution Formula to the Court for approval as soon as
7 practicable following the expiration of the claims filing period, along with a list of recommended
8 awards calculated by applying the Distribution Formula and a list of Claimants whom the Claims
9 Administrator recommends that the Court determine to be ineligible to receive any award and the
10 reason(s) for such recommendation. Before making such recommendations, the Claims
11 Administrator shall review Claim Forms submitted by Eligible Claimants and make a
12 determination concerning the point values to assign to various claims and the evidence in support
13 of those claims. The Claims Administrator shall award no points under the Distribution Formula
14 with respect to any factor for which a Claimant has not provided requested information prior to
15 the last date for submission of Claim Forms. The Court may alter or amend the Distribution
16 Formula as it sees fit before ordering the Claims Administrator to implement it, and may alter or
17 amend the list of Claimants whom the Claims Administrator recommends be deemed ineligible.
18 If the Court does alter the Distribution Formula or the list of Claimants deemed ineligible, the
19 Claims Administrator shall resubmit a revised list of awards for judicial approval.

20 **3. Distributions.** The Claims Administrator shall send a Notice of Award to
21 each Eligible Claimant of the gross and net amounts of that Eligible Claimant's award within ten
22 (10) days after the Court approves an Eligible Claimant's receipt of such monetary award.
23 Accompanying the notification shall be blank forms of the Release and Indemnification in the
24 form of Exhibit F to the Consent Decree and any applicable tax withholding and/or income
25 reporting forms. The Claims Administrator shall not pay any award to any Eligible Claimant
26 prior to the receipt by the Claims Administrator of the fully completed and executed releases and
27 other applicable forms. Furthermore, the Claims Administrator shall not pay any award to any
28 Eligible Claimant until after the Effective Date of the Consent Decree.

1 **4. Validity of Distribution Checks.** All distribution checks to Eligible
2 Claimants shall be void (and bear such an inscription) if not negotiated within one-hundred
3 eighty (180) days after issuance. All claims of Eligible Claimants shall be deemed null and void
4 if distribution checks are not claimed for any reason within one (1) year after issuance of such
5 awards and such funds shall become part of the reserves that shall be distributed in accordance
6 with paragraph D below.

7 **5. Provision of Claimant Releases to the Defendants.** The Claims
8 Administrator will provide counsel for the Defendants with the original of each Eligible
9 Claimant's Release within seven days of receipt and will retain a copy for the Claims
10 Administrators' records.

11 **B. Payments from the Legal & Administrative Expense Portion.**

12 The Trustees shall pay Class Counsel out of the Legal & Administrative Expense Portion;
13 provided, however, the Trustees shall pay all expenses of administering the Consent Decree and
14 this Administrative Order No. 1 from the Legal & Administrative Expense Portion or directly
15 themselves in the event there is not sufficient funding in the Legal & Administrative Expense
16 Portion, as those expenses are incurred. The Trustees shall pay Class Counsel from the Legal &
17 Administrative Expense Portion the amount awarded by the Court pursuant to Class Counsel's
18 Petition for an Award of Attorneys' Fees and Expenses plus interest and income earned thereon
19 within five days after the Effective Date of the Consent Decree.

20 **C. Withholding, Payment and Reporting of Taxes.**

21 The Court and the Trustees recognize that there may be tax payments, withholding and/or
22 reporting requirements in connection with the administration of the Settlement Fund. This
23 Administrative Order No. 1 and the Consent Decree set out the responsibilities, liabilities and
24 obligations of the Trustees with respect to any such withholding, payment and/or reporting
25 requirements.

26 **1. Definitions.** For purposes of this Administrative Order No. 1, the term
27 "income taxes" shall mean taxes imposed or measured by taxable income, and shall be withheld
28 by the Trustees at a rate consistent with the rate of the Internal Revenue Code with respect to

1 federal tax and, for claimants who are residents of states for which withholding is required, the
2 highest applicable tax rate for that state. The term "employment taxes" shall mean federal and
3 state unemployment taxes, the employee and employer portions of Federal Insurance
4 Contribution Act ("FICA") taxes, and any other federal or state taxes imposed on employees and
5 employers on or with respect to wages. The term "state" shall include the state and the political
6 subdivisions of any state.

7 **2. Trustees' Responsibilities.** The Trustees shall administer the Settlement
8 Fund, make recommendations to the Court of any formula for distribution of the Settlement
9 Fund, and disburse any monies from the Settlement Fund and administer and comply with the
10 provisions of the Consent Decree. The Trustees shall, pursuant to the Consent Decree; (a)
11 determine, withhold, and pay over to the appropriate taxing authorities from the Class Claims
12 Portion any income taxes due with respect to any distribution to an Eligible Award Claimant
13 from that Portion; and (b) and make and file with the appropriate taxing authorities any reports or
14 returns due with respect to any distributions to an Eligible Claimant, including IRS forms W-2
15 and 1099. The Trustees also shall determine and pay any income taxes owing with respect to the
16 income earned by the Settlement Fund, and allocate such payments appropriately among the
17 Class Claims Portion and the Legal & Administrative Expense Portion. Additionally, the
18 Trustees shall file returns and reports with the appropriate taxing authorities with respect to the
19 payment and withholding of employment and income taxes.

20 **3. Tax Reserves.** The Trustees, if they deem appropriate, may request
21 expedited review and decision by the IRS and/or the applicable state or local taxing authorities,
22 with regard to the correctness of the returns filed for the Settlement Fund and shall establish the
23 following reserves to assure the availability of sufficient funds to meet the obligations of the
24 Settlement Fund itself and the Trustees as fiduciaries of the Settlement Fund.

25 **a. Tax on Settlement Fund Income.** In order to attempt to assure
26 the availability of sufficient funds for the Trustees to pay the taxes, if any, on the income of the
27 Class Claims Portion, the Trustees may reserve sufficient monies from the Class Claims Portion

28 //

