

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
CENTRAL CIVIL WEST

IN RE: TV WRITERS CASES

THIS DOCUMENT RELATES TO:

Edwards, et al. v. International Creative Management, Inc., BC 268846

Mintz, et al. v. Broder Kurland Webb Agency, Inc., BC 268850

DECLARATION OF PAUL SPRENGER IN SUPPORT OF PRELIMINARY
AND FINAL APPROVAL OF PROPOSED CONSENT DECREE
CLASS SETTLEMENT AND ORDER DIRECTING NOTICE

Paul C. Sprenger, hereby declares and states:

1. I am Lead Counsel for Plaintiffs in the Television Writers Cases and submit this declaration in support of Preliminary and Final Approval and Notice of Settlement in *Edwards, et al. v. International Creative Management, Inc.*, BC 268846 ("*Edwards*") and *Mintz, et al. v. Broder Kurland Webb Agency, Inc.*, BC 268850 ("*Mintz*"). The opinions I express here about the notice and settlement are based on my experience in employment and class action litigation, and personal knowledge of the facts, all of which are set out below and in attachments, Exhibit A "Qualifications and Experience of Lead Counsel, Paul Sprenger," and Exhibit B "History of the Litigation and Negotiation of ICM Settlement". I have personal knowledge of the litigation history, claims and defenses, and record in all the Television Writers Cases, including the competing legal theories and facts supporting each, which served as the bases for the extensive negotiations and mediated compromise reached by the parties and counsel.

2. In my opinion, the proposed Consent Decree is a fair, adequate and reasonable compromise of plaintiffs' class claims alleged in the relevant complaints in *Edwards* and *Mintz*. I reached my opinions on the fairness of the settlement and adequacy of notice after assessing (a)

1 the damages exposure of the entire industry and ICM individually; and (b) the risks of loss to
2 both sides. I applied my judgment accumulated over decades of experience in serving as class
3 counsel in several hundred litigations, including class actions and trials of employment liability
4 and damages claims.

5 3. The settlement offers significant benefits to the 10,000 members of the class as a
6 whole, and each should be given Notice and an opportunity to accept that offer as it applies to
7 him or her by filing a claim for monetary and/or a job opportunity. Notice will also offer the
8 class members the chance to: (a) express their views by commenting on the offer, either in favor
9 or not; (b) opt out of the settlement to pursue their individual claims against these defendants, if
10 any; or (c) object to the settlement offer to the class as a whole.

11 4. The basic terms of settlement provide that: (a) ICM, which acquired Broder after
12 the original complaints were filed in 2002, and their insurers, will pay \$4.5 million into a
13 Qualified Settlement Fund ("QSF") against which eligible class members can make claims for
14 either or both monetary awards and job opportunities; and (b) ICM will institute innovative
15 programmatic steps designed to enhance the job opportunities for members of the class over the
16 five year term of the Decree and afterwards. Those steps include: (i) participating in a multi-
17 disciplinary Task Force as part of an ongoing mediation, leading to expert recommendations for
18 new and/or modified practices and policies at ICM addressing industry-wide hiring,
19 representation and referral practices; (ii) facilitating placement of eligible job claimant-class
20 members into writing and/or creative positions based on an assessment of work product matched
21 to current and future programming in specific genres; (iii) anti-ageism training of agents and
22 other employees involved in representation, referral, materials purchase, script coverage and/or
23 packaging to employers; (iv) demographic recordkeeping; (v) monitoring of Decree compliance;
24 and (vi) communicating ICM policy and its general prohibition of ageism in all its workplaces
25 and practices.

26 5. It is also my opinion that the three forms of Notice by publication and mailing
27 will reach and fully and fairly inform 100% of class members of the settlement provisions and
28 their rights. The proposed forms of notice and schedule for publication are attached to the

1 proposed Order granting preliminary approval and directing notice. The class consists of about
2 10,000 current and former members of the Writers Guild of America ("WGA"), concentrated in
3 Los Angeles (WGA West) and New York (WGA East); most of their current addresses are on
4 WGA electronic databases. For purposes of advising the Court on this settlement, WGA West
5 provided me with headcounts of its membership by category and age. As of July, 2008, the data
6 show 9,845 current employed members of WGA West, of whom 2,381 are over 40 (about 10%
7 chose not to provide age information to WGA West). In discussions with counsel for WGA
8 East, I learned that the class membership and address information is likewise ascertainable with
9 reasonable completeness and certainty from its electronic data bases, although the number of
10 class members in the East division is about 35% of that in the West division. However, because
11 accurate current addresses and/or dates of birth for up to 12% of class members may be missing
12 or are unknown to WGA, its databases would not be sufficient to assure that mailed notice alone
13 would reach all of the class; mailed notice will therefore be supplemented by published notice
14 designed to reach all class members in the most practical and cost effective means.

15 6. I have obtained the agreement of WGA counsel, both West and East, to provide
16 mailing addresses for class members as directed by the Court. To the extent current address
17 information is available, WGA has agreed to retain a mailing service to affix class member
18 names/addresses to envelopes containing notice and mail them to class members identified by
19 plaintiffs' counsel, showing the return address of the Court. Plaintiffs will bear the expense of
20 this process.

21 7. The notice informs class members of the names and roles of the attorneys who
22 have represented plaintiffs since 2000 and the contingent nature of the fees they will seek, based
23 on verified statements of the hours they expended to prosecute the litigation and their hourly
24 rates. These rates, the notice explains, are those that they actually charged to and collected or
25 were awarded by courts for similar work in other cases. The expenses sought to be reimbursed,
26 which I personally know to be in excess of \$1 million in the TV Writers Cases overall, will
27 likewise be verified by Sprenger & Lang which has advanced all expenses of the cases. It is the
28 firm's responsibility, by agreement of all counsel, to consolidate the fee and expense

1 reimbursement requests into one verified petition. Counsel have also agreed that the combined
2 total of attorneys' fees and out-of-pocket expense reimbursement shall not exceed forty percent
3 (40%) of the settlement amount.

4 **Summary of Professional Experience and Qualifications**

5 8. My full professional biography is set forth in Exhibit A which I summarize here.
6 I am admitted to practice law before the United States Supreme Court and in the District of
7 Columbia and Minnesota. I am a member of the Bars of the United States Courts of Appeal for
8 the District of Columbia, First, Third, Fourth, Sixth, Seventh, Eighth, and Tenth Circuits. I
9 have been a trial lawyer for 43 years. My experience and qualifications in the field of
10 employment and class action litigation span four decades, beginning in 1968 when the class
11 action rules were initially applied to private enforcement of our state and federal employment
12 discrimination laws by the courts.

13 9. Jane Lang and I established the firm of Sprenger & Lang on January 1, 1989. The
14 predecessor firms' employment class action representation goes back to the 1970's, as detailed in
15 Exhibit A. I have served as plaintiffs' lead counsel or liaison counsel in several federal multi-
16 district proceedings, involving collectively more than 250 class actions, and as lead counsel in
17 about two dozen consolidated employment class action litigations, including 17 landmark
18 decisions or settlements listed in Exhibit A. No defendant has ever challenged my adequacy as
19 counsel to a class, a requirement that must be satisfied in any class action. To the contrary, I
20 have assumed representation of certified employment classes midway through litigation when
21 the court determined the predecessor counsel could not adequately represent the class. Over the
22 past 30 years, I have spoken regularly at national, state and local continuing legal education
23 courses across the country and prepared articles concerning trial of employment class actions and
24 related topics.

25 **Case Background**

26 10. The full history of this litigation is detailed in Exhibit B to this Declaration. It
27 began in the Spring of 2000, when class counsel undertook an investigation of industry-wide
28 allegations of age discrimination with respect to the hiring of television writers. In connection

1 with the investigation, class counsel reviewed WGA-commissioned reports on the demographic
2 composition of television writers and researched publicly reported ageist statements made by
3 television executives and agents. In addition, class counsel interviewed by telephone and in
4 person numerous television writers to determine the manner in which television writers were
5 generally hired and whether there was anecdotal support for the allegations of age
6 discrimination. Based on this investigation, beginning in May, 2000, I represented more than 50
7 plaintiffs who filed charges of age discrimination with the Equal Employment Opportunity
8 Commission and the California Department of Fair Employment and Housing alleging that the
9 television networks, studios and talent agencies engaged in a pattern and practice of age
10 discrimination in the hiring of television writers and, as to agencies, in representation and referral
11 for work. Eventually, all charging parties received notices of right to sue from the EEOC and
12 DFEH.

13 11. I was aware of the huge scope of the contemplated industry-wide class litigation
14 and assembled a skilled litigation team of co-counsel and created a steering committee to assist
15 in prosecuting the litigation. My steering committee initially included Maia Caplan, Steven
16 Sprenger, Michael Lieder and Daniel Wolf. Dolly Gee and Thomas Osborne and his AARP
17 Foundation Legal later joined the steering committee.

18 12. The subsequent tortuous history of the litigation, from the filing of the initial class
19 action in the United States District Court for the Central District of California in 2000, through
20 producing almost 150,000 pages of documents and answering approximately 450,000
21 interrogatories collectively, is set forth in Exhibit B to this Declaration.

22 **Settlement History**

23 13. Recognizing the complexity and uniqueness of this litigation, as well as the time
24 and expense it entails, Plaintiffs' counsel and most of the Defendants, separately or in groups,
25 have engaged in settlement discussions over the past year or more. ICM and plaintiffs agreed
26 upon and hired Linda Singer, Esq., to assist us in reaching this Consent Decree settlement. Ms.
27 Singer of JAMS/ADR is a nationally known and highly sought after mediator, especially in
28 complex litigation. Ms. Singer has resolved thousands of matters in all types of civil litigation,

1 with over 30 years of national and international dispute resolution experience. She is currently
2 on the faculty of Harvard Law School's program on negotiation, and has taught mediation as a
3 faculty member at Stanford, UCLA, Georgetown, George Washington, New Mexico and
4 American University law schools. She has taught federal and state court judges the skills of
5 mediation and written extensively on the subject. She has been appointed Special Master and
6 mediator by numerous federal and state courts. See www.JAMSADR.com. The parties agree
7 she is also without question qualified to serve as Special Master in the dispute resolution
8 procedures established by this proposed Consent Decree.

9 14. Plaintiffs' designated, negotiation team (Maia Caplan, Steven Sprenger and I) met
10 face-to-face with ICM General Counsel, Richard Levy, and outside counsel Jeffrey Webb, for six
11 formal mediation sessions over the past eight months. During this period, the parties discussed
12 and debated the results of their respective statistical analyses, anecdotal evidence and potential
13 changes in policies likely to enhance equal opportunity for older television writers. In March
14 2008, the parties were within striking distance of a settlement on both monetary and
15 programmatic relief. Thereafter, we exchanged numerous draft consent decrees and related
16 documents and negotiated the language of a settlement. Numerous telephone conferences and
17 informal meetings also occurred during this period of intense, arms-length negotiation, until the
18 terms of the proposed Consent Decree were finalized in July 2008.

19 15. During these negotiations, Plaintiffs' settlement team regularly consulted with the
20 six class representatives on its Plaintiffs' Liaison Committee. The mission of the Committee is
21 to assist counsel in assessing programmatic changes and understanding nuances of the TV
22 writers' workplace so a resolution which benefits the class as a whole, as opposed to any
23 particular sub-set, can be reached. The Committee is composed of six lead named plaintiffs from
24 the TV Writers Cases, including lead named plaintiff Larry Mintz in the *Broder* case, Stephen
25 Geller, Ron Friedman, Art Eisenson, Bob Shayne and Allan Leicht.

26 Evaluation of Settlement Amount

27 16. In my opinion, these cases meet the rigorous legal standards to be maintained as
28 class actions for trial, as well as for settlement purposes.

1 a. Numerosity. Under any standard of joinder, the class members are too
2 numerous to be joined as parties in one action, making a single class action appropriate. The
3 class is composed of about 10,000 members with about 7,500 in and around Los Angeles and
4 2,500 in and around New York City, all of whom can be ascertained with virtual certainty from
5 records of their membership in the Writers Guild of America, West and East.

6 b. Community of Interest (Common Questions/Typicality). Common legal
7 and factual questions abound in both cases. One of plaintiffs' legal theories is that there is a
8 disparate impact on the class and/or subclasses of writers 40 to 49, and 50 and more years of age,
9 respectfully. Proof of that common legal claim is based on the same body of facts for all persons
10 in those age ranges: essentially a statistical compilation of age data of those represented, based
11 in part on the expert opinion of a labor economist describing the available pool of older writers,
12 that underlies an opinion on the existence of age bias in the hiring and/or representation
13 processes at ICM.

14 There are myriad common questions arising from the other primary legal theory of
15 plaintiffs: that defendants engaged in a pattern or practice of disparate treatment. The proof is
16 the same body of statistical evidence for all in the class, as well as corroborative factual
17 anecdotes from plaintiffs and others, and the admissions of ICM and Broder agents and
18 managers to the effect that age bias permeates their practices in offering representation to writers
19 and referring them to studios for work. There is also substantial evidence from public statements
20 and other public information that could form the basis for a favorable jury verdict for the class as
21 a whole in one trial leading to one classwide fluid damages award.

22 The factual and legal questions common to the core issue of age discrimination presented
23 by all class members necessarily give rise to claims that are typical of each of them. Thus, in
24 these cases, the two requirements, and the ability of the class to satisfy them, merge.

25 c. Adequacy of representation. My qualifications to represent a class in a
26 discrimination or any other category of class action has never been questioned by any defendant.
27 I've done so in more employment discrimination class actions than any other plaintiffs' lawyer
28 of whom I am aware. Likewise, there are no conflicts among class members and/or within the

1 class. In fact, executives with hiring authority were excluded from the class definition for this
2 reason.

3 17. In my opinion, the \$4.5 million settlement amount fairly and accurately reflects
4 *ICM* and *Broder* exposure, after discounts for: (a) risk of loss; (b) avoidance of further delay and
5 lost income opportunities for the class; (c) an "early out" model for innovative future injunctive
6 relief; and (d) savings of human and other resources, which would necessarily be expended in
7 prosecuting these cases into the future. I believe that proceeding through a class action trial
8 against these two defendants would require an additional expenditure of at least 2,000 attorney
9 hours and \$750,000 in out-of-pocket expenses primarily for pretrial expert statistical analysis and
10 testimony; discovery depositions; *ICM* document production review and analysis; and
11 development of trial testimony establishing that *ICM* and *Broder* have statutory "joint and
12 several liability" for "aiding and abetting" the production studios and networks to whom it failed
13 to refer qualified members of the class.

14 18. To arrive at a fair, adequate and reasonable monetary settlement, I created a
15 liability and allocation formula with the input and advice of experienced employment statistical
16 experts, including Janice Madden of Philadelphia, PA, and Richard Drogin and Richard Kakigi
17 of Berkeley, CA. These experts analyzed available demographic data and materials, including
18 that contained in the most recent *2007 Hollywood Report* authored by Dr. Darnell Hunt and
19 contracted by WGA West. I used their expert analyses, first, to estimate the industry-wide
20 shortfall resulting from the studios' failure to hire qualified older TV writers. This estimate was
21 based on the statistical prediction of the number of older writers, that one would one would
22 expect to be hired, with a high degree of certainty, considering their availability. I used the
23 measure of writer years of full-time prime time work. (A series of 22 episodes was defined as
24 "full-time"). Second, I multiplied this shortfall by an average salary in 2008 dollars to determine
25 the total current value of the classwide loss in economic terms. This is the way class damages
26 are typically projected in a hiring discrimination class action; it is the method I have used, and
27 received court approval, in settling virtually all of the employment cases listed in Exhibit A.
28 However, because of the complexity of this industry and this litigation, I added a third step to

