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

20 IN RE: TV WRITERS CASES

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

21
22 THIS DOCUMENT RELATES TO:

23 ***EDWARDS, et al. v. INTERNATIONAL***
CREATIVE MANAGEMENT, INC., -
24 ***BC 268846; and***

25 ***MINTZ, et al. v. BRODER KURLAND***
26 ***WEBB AGENCY, INC., - BC 268850***

**PLAINTIFFS' MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
APPROVAL OF CONSENT DECREE
AND DIRECTING NOTICE TO CLASS
MEMBERS AND ADMINISTRATIVE
ORDER NO. 1; DECLARATION OF
PAUL SPRENGER**

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1 Plaintiffs file this memorandum in support of the parties' joint motion for preliminary
2 approval of a negotiated class settlement that will provide class members with substantial
3 injunctive and monetary relief. Under all applicable standards the proposed settlement is fair and
4 reasonable. It is the product of hard bargaining and material compromise by both sides, and the
5 parties hope represents the first of several settlements resolving many of the television writers'
6 age discrimination class action lawsuits. The Court should therefore grant preliminary approval
7 and appropriate notice should follow. It also should enter the accompanying Administrative
8 Order No. 1, which will govern the monetary distribution process if the settlement is finally
9 approved.

10 **I. HISTORY OF THE CASES**

11 On February 25, 2002, over 150 members of the Writers Guild of America, East and west
12 ("WGA"), filed 23 class action suits in this court against numerous networks, studios and talent
13 agencies. In their suits, Plaintiffs claim that defendants maintain a pattern or practice of failing
14 to represent, and/or hire, writers 40 years of age, or older, respectively, in violation of the Fair
15 Employment and Housing Act ("FEHA"), Cal. Gov't Code §§ 12920 *et seq.*, the Unruh Civil
16 Rights Act, Cal. Civ. Code § 51 and § 51.5 of the California Civil Code, and the Unfair
17 Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200 *et seq.* Plaintiffs also claim that
18 the practices of the Defendants have a disparate impact on older writers. The history of these
19 actions is largely set forth in *Alch v. Superior Court* (2004) 122 Cal. App. 4th 339, with the
20 supplementation that privacy disputes between the parties and certain objectors are pending
21 before the Court of Appeal.

22 The two suits subject to the proposed settlement are against International Creative
23 Management ("ICM") and Broder, Kurland, Webb, Agency, Inc. ("Broder"), which has been
24 purchased by ICM, for failure to represent older television writers. ICM and Broder deny
25 Plaintiffs' allegations.

26 Prompted by their more than eight (8) years of protracted litigation, Plaintiffs, ICM and
27 Broder, collectively engaged a skilled mediator, Linda Singer, Esq., of JAMS, in November
28 2007. (Declaration of Paul Sprenger ("Sprenger"), ¶ 13.) With Ms. Singer's assistance, the

1 parties negotiated a process under which ICM produced to Plaintiffs information sufficient to
2 estimate ICM and Broder's proportionate share of overall industry losses to use in settlement
3 negotiations.

4 The mediation sessions consisted of intensive, arms-length negotiations. The parties
5 engaged in approximately six in-person negotiation sessions in Los Angeles and Washington,
6 and multiple telephone conferences. Ms. Singer facilitated all of the in-person sessions and
7 many of the telephone conferences.

8 On July 17, 2008, the parties agreed to and shortly thereafter executed a Consent Decree
9 and certain other documents (together the "Settlement"). This Settlement is currently before the
10 Court and the parties seek preliminary approval.

11 **II. SUMMARY OF THE TERMS**

12 If approved, the Settlement will provide a wide range of injunctive relief, summarized
13 below, which addresses writer representation issues that would have been litigated in this case.
14 While triggered by claims of age discrimination, many of these measures are intended to benefit
15 all writers by promoting fairness, consistency and objectivity in the representation practice of
16 ICM and others in the industry. No quotas are provided and no one will be displaced from his or
17 her job as a result of any provision of the Settlement.

18 **A. General Terms.**

19 The term of the Settlement is five years, which may be shortened as provided in the
20 Consent Decree. During its term, Class Counsel will receive semi-annual reports and monitor
21 ICM's compliance with Settlement obligations. Disputes, if any, will largely be resolved
22 according to a Dispute Resolution Process using a mediator as Special Master.

23 The Settlement Class is defined as:

24 All current and former members of the WGA who were employed by any
25 defendant production studio or network in the Television Writers Cases in a
26 television writing position covered by the Minimum Basic Agreement ("MBA")
27 and who were 40 years of age, or older, respectively, at any time since October
28 23, 1996, except for persons who at any time during the liability period were
either (1) employed by any defendant in the Television Writers Cases as an
executive, manager, or talent agent, with authority or significant input into
decisions to hire, retain, purchase material from, place, and/or package, writers for

1 television writing opportunities at any production studio and/or network
2 defendant in the Television Writers Cases; or (2) executives and/or principals of
3 entities signatory to the MBA.

4 The Settlement would bar all claims of the members of the class based on events that give
5 rise to, or could give rise to, age discrimination claims through the date of preliminary approval
6 of the Settlement. In addition, all class members who receive a monetary award under the
7 Settlement would individually release all claims that arise out of the allegations giving rise to
8 this lawsuit, and such factual allegations. Class members may opt out of the monetary portion of
9 the Settlement by filing a notice with the Court within the prescribed period.

10 **B. Monetary Relief for Plaintiffs and Class Members.**

11 The Settlement provides that ICM and Broder, either directly or through their insurers,
12 will pay Four Million Five Hundred Thousand Dollars (\$4,500,000.00) into a Settlement Fund to
13 pay the claims of class members, including Plaintiffs, attorneys' fees and litigation expenses.¹
14 Four Million Three Hundred and Twenty-Five Thousand Dollars (\$4,325,000.00) will be paid
15 within two weeks of execution by the parties of the Consent Decree. ICM will pay the additional
16 \$175,000.000 plus interest by the earlier of the date the awards are distributed to eligible class
17 member claimants or July 1, 2009. The fund will be established as a Qualified Settlement Fund
18 under Section 468B of the Internal Revenue Code into which any awards paid by any Defendants
19 will be deposited and administered under the Court's supervision.

20 A portion of the fund plus allocable interest and earnings, will be devoted to the
21 settlement of the claims of Plaintiffs and class members and will be called the "Class Claims
22 Portion." A "Legal & Administrative Expense Portion," comprising up to 40% of the fund plus
23 allocable interest and earnings, will be established to pay attorneys' fees of Class, Local and
24 National Counsel, and reimburse litigation expenses through the date of final approval of the
25 Settlement as well as for administration of the class process, including the tax reporting and
26 withholding obligations of the Settlement Fund, attorneys' fees associated with monitoring and
27

28 ¹ Funds necessary to effect programmatic relief (and any other enumerated costs in the Settlement) are
exclusive of this.

1 Awards will be paid to eligible class members who timely submit valid claim forms. The
2 allocation of awards from the Class Claims Portion among eligible class members, including
3 Plaintiffs, shall be based on a formula that Class Counsel intends will take into account factors
4 such as each class member's age, prior employment as a television writer, highest position
5 achieved, awards earned, genres in which member has earned prior credits, years since last
6 employment if not employed as a television or film writer during the liability period, preparation
7 of spec scripts during the liability period, representation by a talent agency during the liability
8 period, and contributions to the litigation. The formula will be proposed by Class Counsel and
9 approved by the Court before implemented.

10 Based on the allocation formula and the information provided by claimants or obtained
11 by Class Counsel or a third party Settlement Administrator hired by Class Counsel, Class
12 Counsel will recommend and submit final awards to the Court for approval. No awards shall be
13 paid until after final approval of the Settlement and approval of those awards.

14 **C. Injunctive Relief Measures.**

15 One of the key components of the injunctive relief measures is the creation of a multi-
16 expert task force, composed of a lawyer, an HR expert, and a labor economist, to be
17 compensated for their time by ICM and any other participants in the task force process. ICM's
18 required payments are capped at \$50,000, and up to \$25,000 may be contributed at the discretion
19 of Class Counsel from the Settlement Fund (the Legal & Administrative Expense Portion). The
20 task force would be required to evaluate ICM's representation and referral policies and practices
21 and, if they are not deemed fair and equitable to writers age 40 or older, respectively, to
22 recommend improvements. To fulfill these functions, the task force will have reasonable access
23 to ICM's key personnel and non-privileged records. It is anticipated, though not required, that
24 other defendants in the Television Writers Cases will also participate in the work of the task
25 force.

26 Another key component of programmatic relief is the anticipated creation along with
27 others defendants of a facilitation process designed to expand access of older television writers to
28 both talent representation and employment. Features include an application process, review by

