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 Joint Policy Committee On Broadcast  
 Talent Relations

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

SCREEN ACTORS GUILD, INC.,

Plaintiff,

vs.

ANA-AAAA JOINT POLICY  
 COMMITTEE ON BROADCAST  
 TALENT RELATIONS,

Defendants.

Case No. CV 08-05346 PA VBKx

**ANA-AAAA JOINT POLICY  
 COMMITTEE ON BROADCAST  
 TALENT RELATION'S COUNTER-  
 CLAIM AGAINST SCREEN  
 ACTOR'S GUILD, INC. FOR  
 CONFIRMATION OF  
 ARBITRATION AWARD OF  
 JUNE 11, 2008**

Complaint Filed: August 14, 2008  
 Trial Date: TBD  
 Disc. Cut-Off: TBD

Honorable Percy Anderson

ANA-AAAA JOINT POLICY  
 COMMITTEE ON BROADCAST  
 TALENT RELATIONS,

Defendant and Counter-Claimant,

vs.

SCREEN ACTORS GUILD, INC.,

Plaintiff and Counter-Defendant

Defendant ANA-AAAA Joint Policy Committee On Broadcast Talent  
 Relations ("JPC" or "Defendant/Counter-Claimant") hereby brings this Counter-  
 Claim asserting causes of action arising out of the same series of occurrences as the

1 causes of action alleged by Plaintiff Screen Actors Guild, Inc. (“SAG” or  
2 “Plaintiff/Counter-Defendant”) in the Complaint on file in this action (the “Action”).  
3 By this Counter-Claim, Defendant and Counter-Claimant JPC hereby alleges:

4 **THE PARTIES**

5 1. Defendant/Counter-Claimant JPC is an unincorporated organization  
6 funded and supported by the two major trade associations in the advertising industry –  
7 the Association of National Advertisers and the American Association of Advertising  
8 Agencies. The JPC is a committee comprised of representatives of advertisers and  
9 advertising agencies who represent the interests of the advertising industry. The JPC  
10 acts as the multi-employer bargaining unit with regard to the advertising industry’s  
11 relationships with actors, models, athletes, and other individuals who may be hired to  
12 participate in television, radio and other broadcast media commercial campaigns and  
13 with the unions, such as SAG, to which they may belong.

14 2. Plaintiff/Counter-Defendant SAG is a labor union that represents over  
15 120,000 actors who work in film, television, commercials video games, music videos  
16 and other media.

17 **JURISDICTION AND VENUE**

18 3. This Court has original jurisdiction over this action pursuant to 28 U.S.C.  
19 § 1331 and 28 U.S.C. § 1337 and 29 U.S.C. § 185.

20 4. Venue is proper in this district based on the location of SAG’s principal  
21 office which Counter-Claimant is informed and believes to be located at 5757  
22 Wilshire Blvd., Los Angeles, CA 90036, which is within the Central District. The  
23 Association of National Advertisers and the American Association of Advertising  
24 Agencies, which fund and support JPC, conduct business in Los Angeles, and JPC has  
25 also conducted meetings in this District. The arbitration hearing at issue was  
26 conducted in this District at 10901 Avenue of the Stars, Los Angeles, CA 90067 based  
27 on mutual agreement of the parties.  
28

**THE COLLECTIVE BARGAINING AGREEMENT**

5. JPC and SAG have had a bargaining relationship for over forty years. On or about October 30, 2003, JPC and SAG renegotiated the collective bargaining agreement “CBA”) that was to expire on October 29, 2006. In or about October 2006, the parties entered into an extension agreement that extended the terms of the CBA, with modifications, through October 29, 2008. It is common for advertisers (known as “Producers” under the CBA) to hire celebrities as spokespersons or personalities in their advertising, for services “covered” by the CBA (e.g., the production of television, radio and other electronic commercials) and for services “uncovered” by the CBA (e.g., print advertising). Such contracts that allow for both covered and uncovered services are commonly referred to as “multi-services contracts.” In those contracts, the CBA requires that the advertiser allocate the compensation paid between those services that are covered and those that are not covered. Only the compensation allocated to covered services is subject to contributions required under the CBA to SAG’s Pension & Health Plans, administered by the Board of Trustees, Screen Actors Guild – Producers Pension and Health Plans (the “Trustees”).

6. The JPC is the representative of all of the Producers, i.e., the individual companies bound to the CBA through their authorization granted to the JPC as the multiemployer bargaining unit.

7. Section 46 of the CBA details the terms to be followed with respect to allocations and contributions to SAG’s pension and health plans. The relevant portions of Section 46 provide in pertinent part:

“A. . . . Producers shall contribute an amount equal to 14.30% of all gross compensation paid to principal performers as herein defined with respect to television commercials produced on and after October 30, 2003.

...

1 E. Where producer borrows acting services from a signatory  
2 loan-out company, or enters into a contract with a principal  
3 performer under which covered services and noncovered services  
4 are to be provided, the following shall apply:

5 1. There will be a separate provision in principal  
6 performer's agreement or loan-out agreement covering only acting  
7 services. Where other services are involved and there is a dispute  
8 over the portion of the compensation allocated to acting services,  
9 the principal performer's 'customary salary' shall be given  
10 substantial consideration in resolving such dispute.

11 2. Contributions shall be payable on the amount  
12 allocated to covered services." [Emphasis added.]

13 A true and correct copy of Section 46 of the CBA is attached hereto as Exhibit 1 and  
14 incorporated herein by reference. The contribution rate was raised to 14.80% pursuant  
15 to the October 2006 Extension Agreement.

16 8. The arbitration provision at Section 57 of the CBA provides in pertinent  
17 part:

18 **"All disputes an controversies of every kind and nature whatsoever**  
19 **between any Producer and the Union or between any Producer and any**  
20 **principal performer and extra performer ("performer") arising out of or in**  
21 **connection with this Contract, and any contract or engagement...in the**  
22 **field covered by this Contract as to the existence, validity, construction,**  
23 **meaning, interpretation, performance, nonperformance, enforcement,**  
24 **operation, breach, continuance, or termination of the Contract and/or**  
25 **such contract or engagement, shall be submitted to arbitration[.]"**

26 [Emphasis added.]

27 A true and correct copy of Section 57 of the CBA is attached hereto as Exhibit 2 and  
28 incorporated herein by reference. The plain language of the CBA thus mandates that

1 any disputes or controversies over the amount allocated to covered service shall be  
2 submitted to arbitration. As a signatory to the CBA, JPC has standing to initiate the  
3 arbitration of disputes with SAG pursuant to this provision of the CBA.

#### 4 **THE DISPUTE AND ARBITRATION**

5 9. By memorandum dated July 23, 2007, the Board of Trustees, Screen  
6 Actors Guild – Producers Pension and Health Plans (the “Trustees”) issued to all  
7 signatory producers to the CBA new multi-service commercial allocation guidelines  
8 (the “Guidelines”). The Guidelines set an arbitrary floor for the percentage of a  
9 contract fee that must be allocated to covered acting services – something that should  
10 properly be determined between signatories to the CBA pursuant to Section 46 of the  
11 CBA.

12 10. Immediately upon becoming aware of the Guidelines, Douglas J. Wood,  
13 Esq., the lead negotiator on behalf of the advertising industry with respect to the  
14 advertising industry’s CBA with SAG, contacted appropriate members of SAG and  
15 the Screen Actors Guild-Producers Pension and Health Plans to express JPC’s opinion  
16 that the Trustees did not have the power to issue the Guidelines and that SAG has an  
17 obligation to negotiate with signatories over proper allocation amounts to covered  
18 services pursuant to the CBA. JPC’s attempts to resolve this dispute short of  
19 arbitration failed.

20 11. On or about August 17, 2007, JPC filed a demand for arbitration under  
21 the CBA against SAG before the American Arbitration Association.

22 12. In accordance with the rules of the American Arbitration Association, the  
23 parties selected Jack Tillem as the arbitrator to hear their dispute. The arbitration took  
24 place on March 28, 2008.

25 13. In its Pre-Arbitration Statement, JPC framed the issue to be arbitrated as  
26 follows:

27 “This arbitration revolves around the question of what is the  
28 proper vehicle for resolving disputes between parties to the CBA

1 regarding appropriate pension and health allocation amounts to be  
2 made on covered services provided for in a multi-service talent  
3 contract. Multi-service talent contracts engage an actor, model,  
4 athlete, etc. to perform a number of different services for an  
5 advertiser, some of which may fall under the jurisdiction of the  
6 CBA and others of which may not. Accordingly, with each multi-  
7 service contract, a determination must be made as to what portion  
8 of the services to be provided constitute ‘covered services’  
9 pursuant to the CBA and in turn what amount of money must be  
10 allocated to ‘covered services’ for the purpose of calculating  
11 appropriate pension and health contributions .

12 “When disputes arise with signatory advertisers and/or  
13 advertising agencies over appropriate pension and health fund  
14 allocation amounts to covered services, rather than attempting to  
15 negotiate and then filing for arbitration pursuant to Section 57 of  
16 the CBA if need be, SAG is refusing to negotiate and participate in  
17 the arbitration process. SAG is allowing its pension and health  
18 funds, a non-party to the CBA, to determine unilaterally what the  
19 proper allocation amount on covered services in a given contract  
20 should be and is further allowing its pension and health funds to  
21 threaten a federal ERISA action against any advertiser and/or  
22 agency that disputes the allocation amount demanded. The JPC  
23 contends that SAG’s practice runs afoul of the CBA and that SAG  
24 should be directed to negotiate over, and arbitrate if necessary, any  
25 and all disputes over amounts allocated to covered services arising  
26 out of the provisions set forth in Section 46 of the CBA.”

27 A true and correct copy of JPC’s Pre-Arbitration Statement is attached hereto as  
28 Exhibit 3 and incorporated herein by reference.



1           14. At the Arbitration, SAG asserted for the first time that JPC did not have  
2 standing to bring a demand for arbitration because it is not a Producer under the CBA.

3           15. In its Post-Hearing Brief, JPC asserted that it had standing to demand to  
4 arbitrate based on the preamble to the CBA, which provides in pertinent part:

5                   “AGREEMENT made by and between SCREEN ACTORS GUILD,  
6 INC. . . . , herein called the “UNION” and the ANA-AAAA JOINT  
7 POLICY COMMITTEE ON BROADCAST TALENT UNION  
8 RELATIONS, hereinafter called the “JOINT POLICY COMMITTEE”,  
9 acting on behalf of advertisers and advertising agencies who have  
10 authorized said Committee to act on their behalf . . . hereinafter  
11 individually referred to as “Producer.”

12 JPC also asserted in its Post-Hearing Brief that “[t]he language in the preamble of the  
13 CBA can lead to only two conclusions: (1) the JPC is a party to the CBA or (2) the  
14 JPC is deemed a party to the CBA when acting on behalf of its constituent Producers  
15 who are indisputably parties to the CBA. Either conclusion results in the JPC having  
16 standing to file for arbitration under Section 57 of the CBA.” A true and correct copy  
17 of JPC’s Post-Hearing Brief is attached hereto as Exhibit 4 and incorporated herein by  
18 reference.

19                   **THE ARBITRATION AWARD**

20           16. After considering the briefing, testimony and evidence submitted by JPC  
21 and SAG on the disputed issue, on June 11, 2008, Arbitrator Tillem issued a twenty  
22 page Opinion and Award (the “Award”) correctly sustaining JPC’s claim as follows:

23                   “The claim of the JPC is sustained as follows: (1) Disputes over the  
24 determinations regarding amounts allocated to covered services for  
25 performers in commercials governed by Section 46 of the CBA must be  
26 bargained over between SAG and the relevant producer. (2) In the event  
27 that the producer and SAG cannot agree on an allocation amount, such a  
28 dispute is subject to arbitration pursuant to Section 57 of the CBA.”

1 A true and correct copy of the Award is attached hereto as Exhibit 5 and incorporated  
2 herein by reference.

3 17. In reaching his conclusion, Arbitrator Tillem expressly stated:

4 “Suffice it for our purposes to state at this juncture – more on *Schneider*  
5 later – that **JPC, the party that negotiated and entered into the CBA,**  
6 **has standing to arbitrate this dispute in accordance with Section 57**  
7 which clearly provides that to be the proper vehicle with reference to ‘all  
8 disputes and controversies of every kind and nature in connection with  
9 the contract.’ [Emphasis added.]

10 18. Arbitrator Tillem made the Award in accordance and compliance with  
11 the terms and provisions of the CBA. The Award draws its essence from the CBA,  
12 and it is proper in all respects.

13 19. SAG has refused to abide by or accept the Award. Instead, on  
14 August 14, 2008, SAG commenced a civil action in the United States District Court  
15 for the Central District of California challenging the lawfulness and propriety of the  
16 Award and seeking to have it vacated.

17 20. JPC has no adequate remedy at law to confirm the Award, other than the  
18 filing of this Counter-Claim, and has otherwise exhausted all of its available  
19 administrative remedies.

20 21. The Court has the authority to confirm the Award pursuant to 29 U.S.C.  
21 § 185.

22 22. This Counter-Claim is timely in that it has been filed not later than four  
23 years after the date of service of the signed copy of the Award on JPC and SAG.

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WHEREFORE, JPC prays for judgment against Plaintiff as follows:

1. That an Order issue confirming the Arbitration Award of June 11, 2008;
2. That judgment be entered in favor of JPC;
3. That JPC be awarded its costs and attorney fees according to proof; and
4. Such further and other relief as the Court deems just and proper.

DATED: September 12, 2008

REED SMITH LLP

By   
 John P. Zaimes  
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 Attorneys for Defendant ANA-AAAA Joint  
 Policy Committee On Broadcast Talent  
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