RUSSELL NAYMARK, California State Bar No. 196956
(RNaymark@sag.org)
SCREEN ACTORS GUILD, INC.
5757 Wilshire Blvd., 7th Floor
Los Angeles, California 90036
Telephone: (323) 549-6629
Facsimile: (323) 549-6624

Attorney for Plaintiff
Screen Actors Guild, Inc.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SCREEN ACTORS GUILD, INC.

Plaintiff,

v.

ANA-AAAA JOINT POLICY COMMITTEE ON BROADCAST TALENT RELATIONS,

Defendant.

Case No.: CV08-05346 PA VBKx

COMPLAINT TO VACATE ARBITRATION AWARD

(29 U.S.C. §185(a))

Trial: None Set
Motion Cut-Off: By Statute
Discovery Cut-Off: By Statute

Plaintiff Screen Actors Guild, Inc. ("SAG") alleges as follows:

The Parties, Jurisdiction and Venue

1. This is an action to vacate an arbitration award pursuant to the Labor Management Relations Act ("LMRA"), 29 U.S.C. §151, et seq. and in particular Section §301(a) of that statute, 29 U.S.C. §185(a) [hereinafter "LMRA Section 301(a)"].

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

3. Plaintiff SAG is a labor organization within the meaning of Section 301(c) of the LMRA, 29 U.S.C. §185(c), and represents employees in an industry affecting commerce. SAG has its principal office at 5757 Wilshire Blvd., Los Angeles, CA 90036, which is in the Central District of California.

4. Defendant ANA-AAAA Joint Policy Committee on Broadcast Talent Relations ("JPC") is a committee authorized to negotiate a collective bargaining agreement with SAG on behalf of a group of advertisers and advertising agencies.

5. Venue is based on the location of SAG's principal office, which is in the Central District of California. Additionally, the arbitration hearing in question was conducted at: 1901 Avenue of the Stars, Los Angeles, CA 90067, which is in the Central District of California. In addition, Plaintiff is informed and believes, and on that basis alleges, that Defendant JPC was, at all times pertinent hereto, doing business in this judicial district.

The Commercials Contract

6. Plaintiff SAG is a party to a collective bargaining agreement with numerous producers of commercials that is referred to as the Commercials Contract ("CBA" or "Commercials Contract"). That Commercials Contract is a contract between an employer and a labor organization within the meaning of 29 U.S.C. §185. This matter involves an arbitration award allegedly rendered pursuant to the Commercials Contract.

7. Article 57 of this Commercials Contract establishes a grievance and arbitration procedure. A true and correct copy of Article 57 is attached hereto as Exhibit A and incorporated herein by reference. Paragraph A of Article 57 states that a demand for arbitration may be made by "[t]he Union, acting on its own behalf or on behalf of any person employed under this Contract, or the Producer concerned. . ." The JPC is not a "Producer" as that term is defined in the Commercials Contract.

8. Article 57(f) of the CBA limits the authority of the Arbitrator as follows:

> "Nothing herein contained shall be deemed to give the arbitrator(s) the authority, power or right to alter, amend, change, modify, add to or subtract from any of the provisions of this Contract."

The Obligation to Pay Contributions to the Screen Actors Guild – Producers Pension and Health Plans

9. The Screen Actors Guild – Producers Pension and Health Plans ("Plans") are multiemployer pension and health plans established in accordance with Section 302 of the Taft Hartley Act, 29 U.S.C. §186, and maintained in accordance with the requirements of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§1001-1461. As required by those statutes, the Plans are governed by a Board of Trustees, half of whom are appointed by SAG and half of whom are appointed by employers who are signatory to collective bargaining agreements with SAG that require contributions to the Plans. The Plans are autonomous from SAG.

10. The Commercials Contract, like all major SAG collective bargaining agreements, requires contributions to the Plans based on a percentage of compensation paid by signatory employers for acting services covered by the CBA. Also, like all major SAG collective bargaining agreements, the Commercials Contract does not require that contributions be paid with regard to compensation paid for non-acting services.

11. The Commercials Contract, like all major SAG collective bargaining agreements, required during all relevant times herein that employers pay to the Plans a certain percentage (initially 14.3%, currently 14.8%) of compensation for covered acting services as contributions to the Plans. There is nothing in the Commercials Contract, or any other major SAG collective bargaining agreement, requiring SAG to bargain with any signatory producer as a condition of that employer complying with its obligation under the Commercials Contract to make these contributions to the Plans.

12. The Plans are required by ERISA to maintain an audit program to ensure that contributions are properly made to the Plans by employers that are

signatory to SAG collective bargaining agreements. Furthermore, ERISA provides statutory penalties that must be imposed by plans on employers who fail to make contributions in a timely fashion. In accordance with these statutory requirements, the Plans do maintain an audit program and do regularly require delinquent employers to pay statutorily required penalties to the Plans.

13. Among those employers who are regularly audited by the Plans are employers who are signatory to the Commercials Contract. One of the many areas that are regularly audited by the Plans are contributions by signatories to the Commercials Contracts where the employer has paid compensation to performers for both covered acting services (on which percentage contributions must be paid) and non-covered, non-acting services (on which there is no contribution obligation). In order to provide guidance to producers about the amount of compensation that should be considered payment for acting services in these kinds of situations, the Trustees of the Plans have issued "Multi-Service Commercial Allocation Guidelines" ("Guidelines") to signatory producers. Those Guidelines specifically state that they are only a starting point for discussion and that if a producer believes that the Guidelines do not properly state the compensation paid for acting services, that the Plans will review the facts of the matter with the Producer to determine the appropriate amount of compensation that will be treated as compensation for acting services.

14. The Screen Actors Guild itself is not required to audit the contributions made by producers to the Plans and, in fact, has never engaged in such an audit program. SAG makes no efforts to enforce the contributions obligations to the Plans, other than as such obligations may arise incidental to other obligations of producers, such as when a producer has failed to pay required compensation to a performer. SAG has never issued any guidelines for the payment of contributions and was not involved in any way in the adopting or formulation of the Guidelines that the Trustees have adopted.

15. The Plans do not consult with SAG regarding its audit program and SAG has no input whatsoever on the Plans' audit program or on any efforts by the Plans to collect contributions owed to the Plans by employers.

16. Article 46(F) of the Commercials Contract provides that Producers who are signatory to that Commercials Contract are deemed bound by the terms and conditions of the Plans. The terms and conditions of the Plans, as encompassed in the Trust Agreements of the Plans, specifically provide that Producers are required to make contributions to the Plans and that the Producers shall permit the Plans to audit them to ensure that those contributions are being made properly. Article 46(J) of the Commercials Contract provides that Producers must furnish to the Plans any information requested by the Plans.

The JPC Arbitration Demand and the Arbitration Award

17. By letter dated August 17, 2007, the JPC filed a demand for arbitration ("Demand for Arbitration") under the CBA against SAG before the American Arbitration Association. That letter stated that the Demand for Arbitration was filed on behalf of the JPC with regard to the following issue:

> "whether the pension and health contribution amounts, provided for in Section 46, may be raised without first engaging in collective bargaining as has effective occurred through the SAG–Producers Pension and Health Fund trustees' (the 'Trustees') recent issuance of new Multi-Service Commercial Allocation Guildelines ('the Guidelines')."

18. In accordance with the rules of the American Arbitration Association, the parties selected Jack Tillem ("Tillem") as the arbitrator to hear this matter. An arbitration hearing took place on March 28, 2008.

19. At that hearing, SAG not only contested the merits of the position of the JPC, but also asserted that the JPC did not have standing to bring a demand for arbitration because it is not a "Producer" under the Commercials Contract.

20. Arbitrator Tillem issued an opinion and award dated June 11, 2008 ("the Arbitration Award") in which the arbitrator held as follows:

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

A true and correct copy of the Arbitration Award is attached hereto as Exhibit B and is incorporated herein by reference.

21. The Arbitration Award fails to draw its essence from the Commercials Contract, constitutes the Arbitrator's own brand of industrial justice, adds new language to the Commercials Contract not bargained by the parties, manifestly disregards the law, and exceeds the Arbitrator's authority and jurisdiction under the Commercials Contract for reasons including, but not limited to, the following:

a) the Arbitration Award presumed that the JPC could demand arbitration even though the JPC is not a "Producer" as that term is used in the Commercials Contract, and only "Producers" have the right under the Commercials Contract to demand arbitration;

b) the Arbitration Award requires SAG to first negotiate with producers prior to those producers making contributions to the Plans, even though the Commercials Contract does not precondition the obligation to make contributions to the Plans on any obligation of SAG to first bargain with any signatory producer;

c) the Arbitration Award requires that SAG arbitrate disputes with Producers even though there is nothing in the Commercials Contract that requires any party to arbitrate any dispute;

d) despite the parties' submission of their respective proposed issues, the Arbitrator did not frame a final issue to be decided, and the Arbitration Award did not address the issue presented in the JPC Demand for Arbitration;

e) the Arbitration Award fails to consider the clear terms of the Commercial Agreement that provides that signatory producers are bound to the terms of the Plans, which terms include the right of the Plans to audit contributions made to the Plans and the obligation of the Producer to pay contributions to the Plans;

f) the Arbitration Award is contrary to ERISA since it conditions payment of contributions to the Plans on resolving any dispute regarding the amount of contributions in an arbitration with SAG.

Wherefore, Plaintiff SAG prays for relief from this Court as follows:

1. That the Arbitration Award be vacated; and

2. Such further and other relief as the Court deems just and proper.

DATED: August 14, 2008

SCREEN ACTORS GUILD, INC.

By: _____

RUSSELL NAYMARK
Attorney for Plaintiff
Screen Actors Guild, Inc.
RNaymark@sag.org

Exhibit A

2003
COMMERCIALS CONTRACT

SCREEN ACTORS GUILD

AND

ANA-AAAA JOINT POLICY COMMITTEE ON BROADCAST TALENT RELATIONS

ANA
Association of National Advertisers, Inc.

AAAA
American Association of Advertising Agencies

EXHIBIT A

(2)

Dear Sirs or Ms.:

We acknowledge receipt of a copy of the Screen Actors Guild 2003 Commercials Contract and we are familiar with its terms. We join in the desire to promote stability in the Industry and to maintain harmonious relations with the Screen Actors Guild and its members. To that end, we hereby become a party to and agree to abide by and conform to all of the terms and conditions of the aforementioned Commercials Contract on our own behalf and on behalf of advertisers for whom commercials are produced by or through our agency.

Without limiting the generality of the foregoing, we agree expressly for the benefit of Screen Actors Guild and all persons covered by the terms of the aforementioned Commercials Contract that we will make the payments of holding fees and use fees for commercials as provided in the aforementioned Contract, and that we will make all Social Security, withholding, unemployment insurance and disability insurance payments required by law with respect to said payments. It is further agreed that we will make all appropriate contributions to the Screen Actors Guild-Producers Pension and Health Plans required under the aforementioned Commercials Contract with respect to such payments. It is expressly understood and agreed that our right to telecast such commercials shall be subject to and conditioned upon prompt payment by us of such use fees and other payments, and the Union shall be entitled to injunctive relief in the event such payments are not made.

Very truly yours,

_____

(Advertising Agency)

By _____

Address _____

57. ARBITRATION

All disputes and controversies of every kind and nature whatsoever between any Producer and the Union or between any Producer and any principal performer and extra performer ("performer") arising out of or in connection with this Contract, and any contract or engagement (whether overscale or not and whether at the minimum terms and conditions of this Contract or better) in the field covered by this Contract as to the existence, validity, construction, meaning, interpretation, performance, nonperformance, enforcement, operation, breach, continuance, or termination of this Contract and/or such contract or engagement, shall be submitted to arbitration in accordance with the following procedure:

A. The Union, acting on its own behalf or on behalf of any person employed under this Contract, or the Producer concerned, may demand such arbitration in writing. The parties shall thereupon endeavor to agree upon a single qualified arbitrator acceptable to them both. If the parties cannot agree upon a single qualified person within 5 working days after the demand for arbitration, the party demanding arbitration shall serve upon the other a notice which shall include the name of the arbitrator appointed by the party demanding arbitration. Within 3 working days after such notice, the other party shall name its arbitrator, or in default of such appointment, such arbitrator shall be named forthwith by the Arbitration Committee of the American Arbitration Association ("AAA") and the 2 arbitrators so selected shall name a third within a period of 5 working days and in lieu of their agreement upon such third arbitrator, he/she shall be appointed by the Arbitration Committee of the AAA. Each party shall bear its own arbitration expenses.

   The parties have agreed to the use of a predetermined list of arbitrators, which list shall be maintained by the AAA. Upon receipt of written notice from a party requesting arbitration, the AAA will select, from the list, in random order, a single arbitrator to hear the case. However, if the arbitrator so selected is not available within 21 days of the date of the notice to the AAA, the AAA will make another random selection from the list. If no arbitrator on the list is available within 21 days, the AAA will select from the list that arbitrator who is available on the earliest date.

The parties shall send a joint letter to the AAA informing it of the above process and the initial panel of arbitrators agreed upon. This panel may be increased or decreased from time to time by mutual agreement of the parties. Until such time as the parties have agreed upon a panel of single arbitrators for use in any area in which the Union maintains a branch or office, the foregoing provisions shall be applicable to the selection of arbitrators.

B. The hearing shall be held on 10 working days' notice and shall be concluded within 14 days unless otherwise ordered by the arbitrator(s). The arbitration award shall be made within 7 days after the close of the submission of evidence. shall be final and binding upon all parties to the proceeding and judgment upon such award may be entered by any party in the highest court of the forum, State or Federal, having jurisdiction.

C. The word "Producer" as used in this Contract includes any third person to whom a commercial has been sold, assigned, transferred, leased or otherwise disposed of. Any Producer including such third party "Producer" may file with the Union the name and address of an available person in New York City. or in Los Angeles, upon whom service of a demand for arbitration and other notices and papers under this Section may be made. If such name and address is not on file with the Union, or if although on file the named person is not available, the Producer irrevocably appoints the Secretary of the AAA as his/her agent to accept service and receive all notices, demands for arbitration and service of process in actions on the award in any suit by the Union or Union members. Producer further agrees that such notices, demands for arbitration and other process or papers may be served on the foregoing persons by registered mail sent to their last known address with the same force and effect as if the same had been personally served.

D. The parties agree that the provisions of this Section shall be a complete defense to any suit, action or proceeding instituted in any Federal, State or local court or before any administrative tribunal with respect to any controversy or dispute which arises during the period of this Contract and which is therefore arbitrable as set forth above. The arbitration provisions of this Contract shall, with respect to such controversy or dispute, survive the termination or expiration of this Contract.

E. The Union shall be an ex-officio party to all arbitration proceedings hereunder in which any performer is involved and may do anything which a performer named in such proceeding might do. Copies of all notices, demands and other papers filed by any party in arbitration proceedings and copies of all motions, actions or proceedings in court following the award shall be promptly filed with the Union.

F. Nothing herein contained shall be deemed to give the arbitrator(s) the authority, power or right to alter, amend, change, modify, add to or subtract from any of the provisions of this Contract.

G. It is the policy of the Union not to process unduly late claims.

See Sideletter No. 2, page 151.

58. NO STRIKE CLAUSE

Part III of Schedule B hereof, entitled "Strikes", is by this reference incorporated herein and made a part hereof.

59. NOTICES

All notices which the Producer desires or is required to send to a principal performer shall be sent to not more than 2 addresses which the principal performer may designate, one of which shall be the address which principal performer designates for the sending of payments on his or her Standard Employment Contract. The Standard Employment Contract shall provide a place for inserting the address to which notices shall be sent to principal performer and to Producer.

Principal performer and Producer shall notify the other in writing of any changes in address from those specified on the Standard Employment Contract.

Exhibit B

AMERICAN ARBITRATION ASSOCIATION
CASE NO. 13300 01906 07

In the Matter of the Arbitration

-between-

OPINION
AND
AWARD

ANA-AAAA JOINT POLICY COMMITTEE
ON BROADCAST TALENT RELATIONS,
Claimant

-and-

SCREEN ACTORS GUILD,
Respondent

Re: Pension and Health Contribution Amounts

BEFORE: JACK D. TILLEM, Arbitrator

APPEARANCES:

For the Claimant:
REED SMITH LLP
By: DAVID L. WEISSMAN and
NEIL S. ROSOLINSKY, Of counsel

For the Respondent:
RUSSELL NAYMARK, Assistant General Counsel

Pursuant to the procedure for arbitration contained in the agreement between ANA-AAAA JOINT POLICY COMMITTEE ON BROADCAST TALENT RELATIONS ("JPC") and the SCREEN ACTORS GUILD ("SAG", "Guild" or "Union") the undersigned was appointed to hear and decide the claim involved herein. A hearing was held on March 28, 2008 at the offices of Reed Smith LLP, 1901 Avenue of the Stars, Los Angeles, California. After hearing the witnesses, submission of exhibits and arguments of the parties, decision was reserved. Post hearing briefs were submitted.

EXHIBIT B

(6)

The parties did not agree on the framing of the issue. The JPC proposed:

> What is the proper way to resolve disputes between the JPC and Screen Actors Guild on the appropriate pension and health allocation amounts to be made on covered services provided for in a multi-services talent contract?

SAG proposed:

1. Is this matter arbitrable?
2. If so, did SAG violate the 2003 Commercials Contract (the "CBA") between the JPC and SAG?
3. If so, what is the remedy, if any?

The JPC, a committee comprised of advertisers and advertising agencies, is the signatory to the Collective Bargaining Agreement with SAG which represents performers who act in commercials. The CBA, for our purposes, essentially deals with celebrities – actors, models, athletes – who act or perform in short advertising messages for showing on television or the internet. The advertisers, also known as the producers of these commercials, commonly hire these celebrities as spokespersons for their products not only for TV commercials but for other types of advertising.

So, for example, Vera Volley, a renowned tennis player, may enter into a contract for $3 million to do a TV commercial for a cereal and also have her picture in magazines and on the cereal box. And the fashion model Sara Stunning may sign a deal worth $2 million to do a TV commercial for a luxury car and have her picture in

EXHIBIT B

7

magazines leaning against the hood. The CBA covers only the TV commercials, the performing part, while the print ads, the non-performing part, are not covered. Therein lies the root of this controversy.

Section 46 of the CBA provides for the producers and advertisers to contribute to SAG's Pension and Health Plans (the "Plans"). It provides in pertinent part:

> A. . . . Producers shall contribute an amount equal to 14.30% of all gross compensation to principal performers as herein defined with respect to television commercials produced on and after October 30, 2003.*
>
> * * *
>
> E. Where producer borrows acting services from a signatory loan-out company, or enters into a contract with a principal performer under which covered services and non covered services are to be provided, the following shall apply:
>
> 1. There will be a separate provision in principal performer's agreement or loan-out agreement covering only acting services. Where other services are involved and there is a dispute over the portion of the compensation allocated to acting services, the principal performer's 'customary salary' shall be given substantial consideration in resolving such dispute.
>
> 2. Contributions shall be payable on the amount allocated to covered services.
>
> * * *

---

*The contribution rate was raised to 14.80% pursuant to the October 2006 Extension Agreement.

EXHIBIT B

18

G. The funds contributed to the Pension Plan and the Health Plan shall be trust funds and shall be administered under the Screen Actors Guild-Producers Pension Plan Agreement, and the Screen Actors Guild-Producers Health Plan Trust Agreement both dated February 1, 1960, which Agreements and Declarations of Trust shall become part of the collective bargaining contract.

Returning to Ms. Volley, assuming $1 million of her $3 million contract is allocated to performing or covered services, the producer or the advertising agency will contribute, apart from that amount, 14.30% or $143,000 to the Plans. Or if Ms. Stunning is deemed to be engaged in covered services in 80 percent of her work, the producer will contribute, if my arithmetic is correct, $228,800 ($2 million x 80% x 14.30%). That much is clear.

The question presented, however, concerns the method of determining the amount or percentage of the performer's total compensation which is covered by the CBA and thus subject to the 14.30% contribution. The essential facts are not in dispute. For as long as the parties have had a collective bargaining relationship and the Plans have been in existence, thirty-five years or so, it is the Plans' trustees, not the parties to the contract, who have determined the allocation between covered and uncovered services. It is SAG's position that that practice is in accord with the CBA, has been endorsed by the parties and the Plans and therefore must not be disturbed. Joining the issue, the JPC says the practice is in direct contravention of the CBA; the Plans have no authority to make the

EXHIBIT B

9

determination; the parties must do it and if they disagree the question must be presented to an arbitrator.

Established by SAG and the signatories to its collective bargaining agreements – besides the JPC representing the commercial producers, the other major employer party is the Alliance of Motion Picture and Television Production (AMPTP) – the Plans are multi-employer trust funds each governed by eighteen trustees appointed by SAG and eighteen trustees appointed by management. Of the eighteen management trustees, eleven are appointed by AMPTP and seven by the JPC. The trustees, owing a fiduciary duty to the participants of the plans, do not report to or take direction from SAG or the employer organizations.

Over the years, the Plans have used informal guidelines to determine the contribution obligations of the producers in multi-service agreements. Developed by a collection committee comprised of equal members of SAG and management appointed trustees, the guidelines were ultimately published and issued to the producers in July 2007. They read as follows:

> "Commercials" as defined by the Screen Actors Guild Commercial Contract may include, but are not limited to: television and in-cinema advertising (film or tape), internet, in-store/television unit, internal usage, and commercials made for or designed for exhibition on new Media, etc. In addition, commercial services include the right to produce and use commercials and to hold the performer to exclusivity, whether or not that right is exercised.

A. 100% of contract amount is reportable where compensation paid is solely for SAG commercial services.

B. As a minimum, 90% allocation for combined SAG commercial services and radio services, subject to adjustment based on proportion of television to radio usage. An allocation of 80% or less may be considered based on contract specification of usage.

C. As a minimum, 50% allocation for a multi-service contract where SAG commercial services are involved with other non-covered services (including radio services). This allocation also applies where no SAG commercials are produced or used in a given period, but the employer has the right to do so and to hold the performer to exclusivity. Higher allocation may be appropriate in cases where SAG commercial services are involved in a significant amount and other non covered services are minimal.

D. As a minimum, 40% allocation for a multi-service contract of currently active athletes who endorse a product/brand with which they are strongly associated and who generally wear the corporate logo/image on their clothes or equipment. This allocation does not apply to athletes advertising products that are unrelated to their sport; nor does it apply to retired or inactive athletes regardless of the product/brand they are advertising. Guideline C would be applicable in those cases.

E. As a minimum, 40% allocation for a multi-service contract of print and fashion models advertising beauty products, clothing, etc., or other similar products. This allocation does not apply to actors performing as models in commercials. Guideline C would be applicable in those cases.

F. As a minimum, 40% allocation for commercials used exclusively in a contiguous regional foreign market (such

as East Asia), but which is short of worldwide. Any distribution for territories greater than regional market remains subject to the minimum 50% allocation.

G. As a minimum, 40% allocation for performers in commercials for products or product lines which the performer has had an active role in developing and often features the performer's name or image on the product or product line.

H. As a minimum, 40% of any upfront non-refundable guarantee to performers appearing in commercials for products or product lines, where performers have a financial interest in the sale of products or product lines, and other non-covered services are involved.

In the introduction to the guidelines the Plans explain that there is some flexibility which may at times be necessary. For example, the introduction includes the following paragraph:

> The Trustees recognize that because there can be such a wide range of covered and non-covered services, contractual provisions and performer histories, there may be circumstances where the "customary salary" should be higher or lower than these Guidelines would indicate. For example, there may be cases where television advertising may be dominant and the non-covered services may be minimal and in such cases, allocations from 60% to 90% or higher may be appropriate. The opposite may also be the case; where the television services are contractually limited and the non-covered services are substantial, a lesser allocation may be appropriate.

It is the JPC's position that Section 46 of the CBA requires the producers and SAG, not the Plans, to determine the amount allocated to covered services.

Should there be a dispute over that amount, Section 46 directs that ". . . *the principal performer's 'customary salary' shall be given substantial consideration in resolving such dispute.*" If they are unable to agree, JPC continues, the impasse must be resolved pursuant to arbitration as required by Section 57 of the agreement which provides in pertinent part:

> All disputes and controversies of every kind and nature whatsoever between any Producer and the Union or between any Producer and any principal performer and extra performer ("performer") arising out of or in connection with this Contract, and any contract or engagement (whether overscale or not and whether at the minimum terms and conditions of this Contract or better) in the field covered by this Contract as to the existence, validity, construction, meaning, interpretation, performance, non performance, enforcement, operation, breach, continuance, or termination of this Contract and/or such contract or engagement, shall be submitted to arbitration in accordance with the following procedure:
>
> A. The Union, acting on its own behalf or on behalf of any person employed under this Contract, or the Producer concerned, may demand such arbitration in writing. The parties shall thereupon endeavor to agree upon a single qualified arbitrator acceptable to them both. If the parties cannot agree upon a single qualified person within 5 working days after the demand for arbitration, the party demanding arbitration shall serve upon the other a notice which shall include the name of the arbitrator appointed by the party demanding arbitration. . .

The JPC seeks an award declaring that disputes regarding amounts to be allocated for covered services must be governed by Section 46 of the collective bargaining agreement and bargained over between SAG and the relevant producer.

EXHIBIT B (13)

In the event that the producer and SAG cannot agree on the allocation amount, such a dispute shall be subject to arbitration pursuant to Section 57 of the CBA.

First of all, SAG answers, the arbitrator has no jurisdiction to hear this claim because there is no dispute between a producer and the Union and no producer sought arbitration. JPC's reliance on Section 57 is misplaced, SAG says, pointing to the first sentence of Section A:

> The Union, acting on its own behalf or on behalf of any person employed under this Contract, or *the Producer concerned*, may demand such arbitration in writing. (Italics added)

While the provision clearly authorizes the union to file a grievance, SAG says, it explicitly limits the right to individual producers – and the JPC is not a producer. In any event, this dispute has nothing to do with it, the union adds, reasoning that if the JPC has any complaint it is with the Plans, but the Plans are not a party to the contract and not subject to arbitration.

Yet assuming for the sake of the argument there is a dispute between SAG and the JPC or a producer about the amount due to the Plans, SAG asserts that the U.S. Supreme Court in *Schneider Moving & Storage Co. v. Robbins*, 466 U.S. 364 (1984) has clearly ruled that a trust fund need not resolve contractual disputes through the arbitration provision of a labor agreement prior to instituting a collection action under ERISA. SAG underscores the following statement by the Court:

> It is unreasonable to infer that the parties to these [collective bargaining] agreements, or to the trust agreements, intended the trustees to rely on the Union to arbitrate their disputes with the

> employer. Because arbitration may be expensive, there is no reason to assume, without more persuasive evidence than is presented here, that the Union intended to incur such expenses at the request of the trustees and without any requirement that the trustees provide reimbursement. It is even less likely that the parties to the *trust* agreements intended to agree to such complete reliance on the Union. If the Union disagreed with the trustees' construction of the agreement, it could refuse to arbitrate the claim, or compromise the trustees' position in arbitration. The outcome of any subsequent judicial proceeding could be predetermined by the outcome of arbitration. . . In the absence of such evidence [of a duty of fair representation to arbitrate collections claims], we will not engage the unlikely inference that the parties to these agreements intended to require the trustees to rely on the Union to arbitrate their disputes with the employer. Without that inference, as petitioners' concede, there is no basis for assuming that the parties intended to require arbitration of disputes between the trustees and the employer. (*Schneider*, 466 U.S. at 375-376)

Furthermore, the SAG says, the JPC's argument that the Plans' trustees must defer their collection efforts to the actions of the Guild might well constitute a breach of fiduciary duty by the trustees for which they can be held liable. The trust agreements give the trustees full authority to enforce contribution collections in the broadest of terms without conditioning such collections on the exhaustion of the contract's arbitration provision. For example, SAG points to Article III Section 4 of the Health Plan Trust Agreement which states:

> The Plan Trustees may take or cause to be taken any action deemed by them advisable or necessary to enforce payment of the contributions due hereunder, including actions in law or equity. . . . The provisions of this Section 4 shall be without prejudice to the rights of the Guild, if any, under its collective

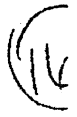
bargaining agreements, or otherwise, against the defaulting Producer by reason of such default.

For almost four decades that is the way it has been; the trustees exercising their fiduciary duty to collect the contributions. Allowing that the final sentence in the above provision gives it the right to file its own separate action for unpaid contributions under the contract, SAG says this should not be mistakenly conflated with requiring deferral to the union. If deferral were required, SAG reasons that the final sentence would be superfluous.

SAG points out that despite this clear language and a past practice in existence for as long as the parties have had a contractual relationship, never before has the JPC raised this issue. In fact, although the parties negotiated an increase in the pension and health contributions to 14.80% in 2006, the JPC did not offer a proposal consistent with its present position on multi-service allocations.

So what happened now, SAG ponders, for the JPC to awaken Rip Van Winkle-like to challenge a practice in which it has acquiesced contract after contract, never raising an issue about it at the bargaining table. The answer: *Nothing!* In SAG's view, the JPC claim is as inexplicable as it is devoid of merit. For all the foregoing reasons, SAG urges that the claim of the JPC be denied in its entirety.

SAG's defense basically consists of three arguments: JPC has no standing to bring this claim; lack of substantive arbitrability; and lack of substantive merit.



Although its counsel has presented a thorough and articulate case, all three arguments pose a difficult proposition for me.

Take the first one: Contrary to SAG's contention, JPC, as the party to the contract, is entitled to file an arbitration claim under Section 57 of the agreement. The producers are not parties, no more than members of a bargaining unit are parties to a contract entered into by their bargaining agent, their union. Absent a specific prohibition in an arbitration provision against a union filing a claim on its own, it cannot be gainsaid that the union retains that prerogative. The same rationale must apply to an employer association acting on behalf of its members. Citing a case exactly on point, *New England Road Builders Association, et al v. Operating Engineers Local 478*, 285 F. Supp. 311, 68 LRRM 2537 (D.Conn. 1968), Fairweather's Practice and Procedure in Arbitration states:

> Another case presenting the issue of whether an employer can enforce an agreement to arbitrate arose in the context of an employers' association. There, a federal district court held that the association had standing to invoke arbitration on behalf of the member employers. Since the association was the employers' agent in contract negotiations and a party to the agreement, and because the agreement allowed the employer to initiate arbitration, the court allowed the association to commence arbitration proceedings. The court cited a clause stating that either "the Employer or the Union shall submit the grievance to the [arbitration] Committee. . . ." (68 LRRM at 2540) *Fairweather*, 3rd Edition, p. 47, Footnote 159

The preamble to the parties' collective bargaining agreement supports the conclusion that the JPC, as the party to the agreement, is entitled to act on behalf of its constituent producers:

> AGREEMENT made by and between SCREEN ACTORS GUILD, INC. . . ., herein called the "UNION" and the ANA-AAAA JOINT POLICY COMMITTEE ON BROADCAST TALENT UNION RELATIONS, hereinafter called the "JOINT POLICY COMMITTEE", *acting on behalf of advertisers and advertising agencies who have authorized said Committee to act on their behalf. . . hereinafter individually referred to as "Producer."* (Italics added)

Should any doubt linger that a party to a labor contract has the right to use the contractual grievance and arbitration provision, it was laid to rest almost a half century ago in the *Steelworkers Trilogy*, the Supreme Court landmark cases establishing the overriding principle that collectively bargained dispute resolution procedures constitute the exclusive remedy for disputes arising under the agreement. The Court declared that an order to arbitrate will not be denied "unless it may be said with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the asserted dispute."(353 U.S. at 455.)

To be sure, the Supreme Court has carved out some limited exceptions to this principle. Yet as a rule they are limited to enforcement of rights granted by federal statute. Notwithstanding SAG's reliance on *Schneider*, this is not such a case. Suffice it for our purposes to state at this juncture – more on *Schneider* later – that JPC, the

party that negotiated and entered into the CBA, has standing to arbitrate this dispute in accordance with Section 57 which clearly provides that to be the proper vehicle with reference to "all disputes and controversies of every kind and nature in connection with the contract."

SAG counters that there is no dispute to be arbitrated. If a producer or advertiser believes that the Plans' Guidelines or its collections have somehow violated their rights, SAG suggests that they seek redress against the Plans. *We didn't do anything*, SAG says. *What does that have to do with us?* As SAG sees it, JPC, aware of this fatal defect in its case, has attempted to circumvent it by asserting a theory that the Guild improperly delegated authority to the Plans. Deriding this theory as an absurdity, SAG points out that there is absolutely no proof of such delegation; let alone that it would probably be a violation of the trustees' fiduciary duty to enter into such an agreement with the Union. Simply stated, SAG insists that even assuming, contrary to reality, that JPC's claim has merit, it is a claim against the Plans, not the Guild.

I would disagree. To be sure, the Guild's argument that it didn't do anything is accurate. That, however, is precisely the problem. The contract requires it to negotiate the allocation with the producer. Whether it actually delegated that responsibility or just let the Plans fill the void is beside the point.

Let's go to the contract. Section 46(E), the provision focusing on allocation of covered and non-covered services, states that

> when there is a dispute over the portion of the compensation allocated to acting services, the principal performers' 'customary salary' shall be given substantial consideration in resolving such dispute.

The dispute refers to one between a producer and the union. It doesn't make any sense to construe it to mean a dispute with a third party – in this case the Plans. Coupled with Section 57 requiring arbitration of all disputes arising out of or in connection with the agreement, I don't see how it could be any clearer unless the parties added, *"We really mean it!"*

SAG refuses or simply shrugs off its obligation under Section 46 to negotiate over the allocation, abdicating that role which has been allocated by the Plans. And now, reasoning that it didn't do anything, insists there is nothing to arbitrate. Nonfeasance, however, can be just as violative of an agreement as misfeasance. JPC alleges a nonfeasance; the Guild denies it. That is a dispute arising out of the contract and hence arbitrable.

SAG's reliance on *Schneider* is misplaced. Schneider dealt with collecting contributions. It had nothing to do with the function of determining allocation amounts. We're talking apples and oranges. This case is not about collecting contributions which are due to the Plans, an entirely different function, one most definitely belonging to the Plans which *Schneider* emphatically endorsed. In this collective bargaining agreement, however, the amount to be allocated for collection must first be determined according to Section 46.

(2)

Admittedly, this CBA is different than agreements which include a provision for contributions to a third party trust fund. In those agreements the parties bargain a specific amount or percentage; for example, ten percent of the hourly rate. In this one, it's 14.30%. No argument. If the producer doesn't pay that percentage, as *Schneider* instructs, the Plans need not yield to the Guild to collect the amount due. They may seek to enforce the producer's ERISA obligation in federal court without waiting for any arbitration award.

But this case is about deciding in the first instance the amount to which the 14.30% must be applied. *Schneider* does not wipe out the rights of the parties to a CBA to negotiate the percentage to be contributed to a third party trust fund – and that is essentially what SAG's misinterpretation of Schneider would require. Granted, this CBA is unusual in splitting the compensation between covered and uncovered work for performers whose compensation varies. Although the 14.30% remains constant the parties have agreed in Section 46 that in the event of a dispute, the amounts for covered work must be negotiated on an *ad hoc* basis.

For still another reason, *Schneider* is not applicable to this case. The Court relied on the fact that there was no language in the trust agreement or the collective bargaining agreement suggesting that the trust fund give any deference to the agreement or the parties thereto with regard to contributions. In this case, not only does Section 46 of the CBA state that the parties must determine the allocation, but the Plans'

Trust Agreements expressly require that they defer to the parties to do so. Article III Section 1 of the Trust Agreements provides that:

> [t]he rate and amount of contribution shall at all times be governed by said collective bargaining agreements. . . [and] [n]othing in this Trust Agreement or in any Plan or trust agreement pursuant hereto shall be deemed to change, alter or amend any of said collective bargaining agreements.

So there you have it. *Schneider* is distinguishable on two grounds: here we deal with the question of how much the allocation should be in order to determine the amount of the contribution while *Schneider* was concerned not with determining the amount due but with its collection. And in this case the CBA and the Trust Agreements leave no room for doubt that the allocation must be made by the parties, not the Plans.

The Union's reliance on past practice is equally misplaced. Past practice can be dispositive when there is no contractual language or the language is ambiguous. Section 46 is lapel grabbing clear, however – and clear language is to past practice as sunshine is to Dracula. Nor do contractual rights atrophy from non-use. The practice of the parties herein, albeit for thirty-five years, in allowing the Plans to decide the allocation being contrary to the explicit letter of the CBA, never mind the Trust Agreements, the practice must be brought into line with the contractual requirements of Section 46 and 57. Think about it. A contrary decision would uphold a violation of the contract.

Still, let us put aside what I believe to be the clear mandate of this CBA that the parties must do the allocation and the equally clear federal policy that arbitration provisions in labor agreements must be honored as the favored, if not the

EXHIBIT B

exclusive, method of resolving disputes. Instead, let us look at the practical aspects of this controversy and assume for the moment that the position advanced by SAG prevails. The outcome, I would submit, is untenable.

This is what would happen:

- JPC does not have standing in this case. Hence, the claim is dismissed because only a producer can bring an arbitration.
- The producer brings the arbitration. SAG prevails in its argument that it hasn't done anything. It's a dispute between the producer and the Plans. The grievance is dismissed.
- Relegating to bringing its claim of an erroneous allocation in federal court, the producer sues the Plans. *Good luck!* The evidence would suggest that a producer would be more likely to "pay the $2" before incurring the expense and delay of a federal lawsuit, never mind the damages looming should the Plans prevail on an ERISA counterclaim.*

*Douglas Wood, the lead negotiator for the JPC, testified about the problems a producer would encounter challenging the contribution amount sought by the Plans:

Q. What have your participating agencies informed you the issue they have with the particular guidelines?
A. Well, there are multiple problems that these present.
First, on an individual Producer basis in connection with an audit that the Plan auditors might commence where an advertising agency, for example, might have allocated 50 percent and Plan invariably wants a little more, 60 percent, whatever the number may be, that that difference of ten percent with respect to the amount that would be owed in additional contributions is generally in individual situations not necessarily a substantial number. Some situations it is, but in many situations it is not.

The Plan administrators and the auditors when they discuss this with agencies or signatories, they make it clear that if they cannot come to an agreement, that their remedy will be to institute litigation under the ERISA Act in Federal court. And they are fast to point out that in the event of a loss of such an action, that the signatory will not only be obligated to pay the amount in dispute that might be determined in the ERISA action, but, if they should lose that action, they would also be obligated to pay attorney's fees and additional damages, liquidated damages.

As a result, on individual situations it was economically – it was economically imprudent to fight the audits to a point of facing the prospect of ERISA litigation.

Secondly, and in particular with respect to these new guidelines, these official guidelines, if you will, that were issued in 2007, they created a floor, effectively, of about 50 percent, that in discussions with the auditors, signatories were finding that they were insisting that anything less than this would be unacceptable, and they were holding many agencies to additional compensation additional contributions that in our view on an individual basis were unfair, but on an individual basis were very difficult to economically justify the challenge. (Transcript p. 70-71)

23

Without going too far out on a limb, one can predict with a reasonable degree of certainty that a federal court, discerning no privity between the producer and the Plans, would remand the matter to arbitration. *Catch 22!* Having traveled full circle, back where he started from, if SAG's position is correct, the producer has no way to resolve an allocation dispute. The Plans will decide the allocation and that must be the end of it. Stretching the logic of that conclusion to the limits of its absurdity, should the trustees of the Plans decide tomorrow to set the floor in their Guidelines for all allocations at 95%, well, that's the way it would be; Section 46 and 57 of the CBA rendered useless.

It turns the whole purpose of contractual dispute resolution on its head to accept the proposition that parties to a CBA who agree on arbitration to resolve all their disputes are precluded from using it. Instead, as SAG would have it, a producer must start a federal lawsuit, not against the union, but against the Plans – an extraordinarily risky move with ERISA penalties hanging like a sword of Damocles over his head.

Besides, it's a litigation that makes no sense. It is the Guild with whom the producer has the complaint, not the Plans. But recall SAG's position that regardless of whether JPC or the producer brings the claim, it's not arbitrable. I can't buy it. Parties to a collective bargaining agreement should not be presumed to have been shoveling smoke when they negotiate an arbitration provision.

In conclusion, Section 46 and Section 57 of the CBA require SAG, in the event of a dispute, to negotiate the allocation for covered services with a producer and if they do not agree, SAG must arbitrate the impasse.

AWARD

The claim of the JPC is sustained as follows:

1. Disputes over determinations regarding amounts allocated to covered services for performers in commercials governed by Section 46 of the CBA must be bargained over between SAG and the relevant producer.
2. In the event that the producer and SAG cannot agree on an allocation amount, such a dispute is subject to arbitration pursuant to Section 57 o the CBA.

Dated: June 11, 2008

JACK D. TILLEM, Arbitrator

STATE OF NEW YORK)
COUNTY OF NASSAU) SS:

On the 11th day of June, 2008, before me personally came and appeared JACK D. TILLEM, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that the same was executed by him.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Percy Anderson and the assigned discovery Magistrate Judge is Victor B. Kenton.

The case number on all documents filed with the Court should read as follows:

CV08- 5346 PA (VBKx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

==========

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

[X] **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

[ ] **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

[ ] **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

COPY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SCREEN ACTORS GUILD, INC., PLAINTIFF(S) v. ANA-AAAA JOINT POLICY COMMITTEE ON BROADCAST TALENT RELATIONS, DEFENDANT(S).	CASE NUMBER CV08-05346 PA VBKx
	SUMMONS

TO: DEFENDANT(S): ANA-AAAA JOINT POLICY COMMITTEE ON BROADCAST TALENT RELA

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☑ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Russell Naymark, whose address is Screen Actors Guild, Inc., 5757 Wilshire Blvd., 7th Floor, Los Angeles, CA 90036. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: AUG 14 2008

By: NATALIE LONGORIA
Deputy Clerk

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

1198

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

COPY

CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)
SCREEN ACTORS GUILD, INC

DEFENDANTS
ANA-AAAA JOINT POLICY COMMITTEE ON BROADCAST TALENT RELATIONS

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Russell Naymark, Esq., Screen Actors Guild, Inc.
5757 Wilshire Blvd., 7th Floor
Los Angeles, CA 90036

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)

☐ 1 U.S. Government Plaintiff ☑ 3 Federal Question (U.S. Government Not a Party)

☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business in this State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. ORIGIN (Place an X in one box only.)

☑ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: **JURY DEMAND:** ☐ Yes ☑ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☑ No ☐ **MONEY DEMANDED IN COMPLAINT: $**

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
29 U.S.C. §185(a). Action for vacatur of arbitration award between employer association and labor organization.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES
☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce/ICC Rates/etc.
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 480 Consumer Credit
☐ 490 Cable/Sat TV
☐ 810 Selective Service
☐ 850 Securities/Commodities/ Exchange
☐ 875 Customer Challenge 12 USC 3410
☐ 890 Other Statutory Actions
☐ 891 Agricultural Act
☐ 892 Economic Stabilization Act
☐ 893 Environmental Matters
☐ 894 Energy Allocation Act
☐ 895 Freedom of Info. Act
☐ 900 Appeal of Fee Determination Under Equal Access to Justice
☐ 950 Constitutionality of State Statutes

CONTRACT
☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loan (Excl. Veterans)
☐ 153 Recovery of Overpayment of Veteran's Benefits
☐ 160 Stockholders' Suits
☐ 190 Other Contract
☐ 195 Contract Product Liability
☐ 196 Franchise

REAL PROPERTY
☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

TORTS PERSONAL INJURY
☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Fed. Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury
☐ 362 Personal Injury-Med Malpractice
☐ 365 Personal Injury-Product Liability
☐ 368 Asbestos Personal Injury Product Liability

IMMIGRATION
☐ 462 Naturalization Application
☐ 463 Habeas Corpus-Alien Detainee
☐ 465 Other Immigration Actions

TORTS PERSONAL PROPERTY
☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

BANKRUPTCY
☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

CIVIL RIGHTS
☐ 441 Voting
☐ 442 Employment
☐ 443 Housing/Accommodations
☐ 444 Welfare
☐ 445 American with Disabilities - Employment
☐ 446 American with Disabilities - Other
☐ 440 Other Civil Rights

PRISONER PETITIONS
☐ 510 Motions to Vacate Sentence Habeas Corpus
☐ 530 General
☐ 535 Death Penalty
☐ 540 Mandamus/ Other
☐ 550 Civil Rights
☐ 555 Prison Condition

FORFEITURE / PENALTY
☐ 610 Agriculture
☐ 620 Other Food & Drug
☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 630 Liquor Laws
☐ 640 R.R. & Truck
☐ 650 Airline Regs
☐ 660 Occupational Safety /Health
☐ 690 Other

LABOR
☐ 710 Fair Labor Standards Act
☑ 720 Labor/Mgmt Relations
☐ 730 Labor/Mgmt. Reporting & Disclosure Act
☐ 740 Railway Labor Act
☐ 790 Other Labor Litigation
☐ 791 Empl. Ret. Inc Security Act

PROPERTY RIGHTS
☐ 820 Copyrights
☐ 830 Patent
☐ 840 Trademark

SOCIAL SECURITY
☐ 861 HIA (1395ff)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID Title XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS
☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: CV08-05346

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☑ No ☐ Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☑ No ☐ Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:
(Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

(b) List the County in this District; California County outside of this District, State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	New York State

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District, State, if other than California; or Foreign Country
Los Angeles County	

*** Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties**
Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____ Date August 14, 2008

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))