



Sep 10 2008
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ORIGINAL FILED

**SEP 10 2008
LOS ANGELES
SUPERIOR COURT**

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13 Inc.

14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF LOS ANGELES

17 WILLIAM WEBB, an individual, and on behalf
18 of those similarly situated,

CASE NO. BC352621

[CLASS ACTION]

19 Plaintiffs,

Honorable Carl J. West

20
21 v.

**[REDACTED] ORDER AND JUDGMENT
GRANTING JOINT APPLICATION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

22
23 DIRECTORS GUILD OF AMERICA, INC.;;
DOES 1 THROUGH 20, INCLUSIVE,

Action Filed: May 18, 2006

24
25 Defendants.

1 Upon consideration of the Joint Application for Final Approval of Class Action
2 Settlement and the supporting papers filed therewith, as well as any papers filed in opposition
3 thereto, and upon consideration of the oral arguments presented by counsel and persons who
4 opted out of the class at the final settlement hearing conducted on August 26, 2008 (the
5 "Hearing"), the Court finds:

6 This Order incorporates by reference the definitions set forth in the Settlement
7 Agreement entered into between Plaintiff William Webb and Defendant Directors Guild of
8 America, Inc. ("DGA"), as amended on August 15, 2008, a copy of which is attached hereto as
9 Exhibit A, and all terms used herein shall have the same meanings as set forth in the Settlement
10 Agreement, unless otherwise noted. The key terms of the Settlement Agreement provide:

11 I. DGA will select and engage an accounting firm to conduct an annual
12 review of its foreign levy program (the "Review") commencing at the end of calendar year 2007.
13 The Review shall be conducted as follows and subject to the following express parameters and
14 limitations:

15 a. For the calendar year under review (the "Reviewed Year") the reviewing
16 firm will confirm: (i) the total balances of accounts holding Foreign Levies¹ at the end of the
17 Reviewed Year; (ii) amounts received and disbursed by DGA during the Reviewed Year; (iii)
18 interest earned on monies in such accounts in the Reviewed Year; (iv) fees deducted by DGA;
19 (v) out-of-pocket expenses and any other costs and expenses incurred by DGA in the Reviewed
20 Year for collection and distribution of Foreign Levies for non-members and otherwise
21 attributable to such efforts by DGA; (vi) the total amounts of Foreign Levies paid to non-DGA
22 members in the Reviewed Year; (vii) the total distribution fees charged for payments for Non-

23
24
25 1 The terms "Foreign Levy" or "Foreign Levies" shall refer to levies received by DGA
26 from foreign collecting societies pursuant to the Foreign Levy Agreement and individual
27 agreements with those societies, which constitute the Directors' portion of the Author's Share of
28 Video Levies and Video Rental Levies, and any other levies (including, in some countries,
royalties for cable retransmission) imposed by foreign jurisdictions and collected and transmitted
to DGA by the societies for payment to Directors in the U.S.

1 Covered Works;² (viii) the ratio of Foreign Levies received and assigned by DGA that are
2 assigned to Non-Covered Work and covered work; (ix) interest earned in the Reviewed Year
3 which is attributable to Non-Covered Work; (x) the number of non-DGA members receiving
4 Foreign Levies in the Reviewed Year; (xi) the reasonableness of fees in connection with the
5 Search (as defined below); and (xii) the reasonableness of the Administrative Fee (as defined
6 below).

7 b. The reviewing firm also will conduct sampling to confirm that DGA is
8 taking reasonable steps to assign titles to non-DGA member Directors³ and to locate and pay
9 Foreign Levies to such Directors.

10 c. If, during the period under review, DGA has ceased collecting Foreign
11 Levies for any particular territory or territories, this fact and the applicable territory or territories
12 shall be disclosed.

13 d. DGA shall maintain a log of any complaints received from non-DGA
14 member Directors (the "Complaint Log"), including the date of such complaints, and the
15 handling and disposition of such complaints. The reviewing firm will review the Complaint Log
16 and DGA's response to and handling of any complaints, to determine if DGA is reasonably
17 responding to and handling complaints from non-DGA member Directors.

18 e. The results of the Review will be posted on DGA's website, and an
19 electronic copy will be made available for download on the DGA website; a hard copy will be
20 provided upon the written request of any individual. Any reviews conducted through 2010 shall
21 be filed with the Court.

22 _____
23 ² The term "Non-Covered Work" shall mean a work that was not covered by a DGA
24 collective bargaining agreement at the time it was produced (e.g., a motion picture which was not
made under the auspices of a DGA collective bargaining agreement).

25 ³ The term "Director" shall have the meaning set forth in Section 1-301 of the DGA Basic
26 Agreement of 2005, namely: "A Director is one who directs the production of motion pictures,
27 as the word 'direct' is commonly used in the motion picture industry." The term includes any
28 director's heirs, successors, beneficiaries, trustees, and assigns, including, without limitation, any
entity to which a Director has assigned his/her right to receive Foreign Levies (to the extent
assignable). A person who has been credited as the Director on a film or television program is
presumptively considered the Director of that film or program.

1 f. The initial Review shall be of fiscal year 2006, shall begin in December
2 2007, and shall issue by April 1, 2008; succeeding years (if any) shall proceed on the same
3 schedule.

4 g. DGA shall conduct the Review only so long as (i) if and only if, after the
5 Effective Date,⁴ DGA receives Foreign Levies attributable to Non-Covered Work in a given
6 fiscal year and retains such levies for purposes of distribution, and (ii) the total Foreign Levies
7 received by DGA (whether for members or non-members) and retained for purposes of
8 distribution, total more than \$5,000,000 for each of two successive fiscal years. In the event
9 DGA is no longer required to conduct the Review as provided in this Paragraph but thereafter
10 receives levies attributable to Non-Covered Work that are more than five times the cost of the
11 last conducted Review, then the Review henceforth will be performed at least once every three
12 years.

13 2. DGA may, in its sole and exclusive discretion, use the search and
14 investigations firm OSO Group, Ltd. or a similar firm to conduct searches for non-DGA member
15 Directors who have been assigned Foreign Levies but cannot be found (the "Search"), but shall
16 have no obligation to do so.

17 3. The costs and expenses associated with the Review and the Search shall be
18 paid as follows: (a) first, from interest earned on Foreign Levies held by DGA which are
19 attributable to Non-Covered Work; (b) second, if necessary, from the Administrative Fee
20 (defined below) charged by DGA. In the event that the costs and expenses of the Review and the
21 Search cannot be paid in full from the foregoing sources in any calendar year, any unpaid costs
22 and expenses shall be accrued and may be reimbursed either from the foregoing sources for the
23 following calendar year, by an appropriate increase in the Administrative Fee, or both.

24
25 ⁴ The term "Effective Date" shall mean the date on which the Court's judgment approving
26 the settlement becomes final (the "Judgment"), which shall be deemed to be the last to occur of
27 the following: (a) if an appeal or review is not sought from the Judgment, the 61st day after
28 service of notice of entry of the Judgment; or (b) if an appeal or review is sought from the
Judgment, the day after the Judgment is affirmed, or the appeal or review is dismissed or denied,
and the Judgment is no longer subject to further judicial review.

- 1 4. Within three months of the Effective Date:
- 2 a. DGA will publish on its website, and update on at least a bi-monthly basis,
- 3 a list of non-DGA member Directors to whom at least \$25 of Foreign Levies have been assigned
- 4 but not yet paid. If a non-DGA member contacts DGA and requests payment of Foreign Levies,
- 5 DGA shall timely pay that non-member if at least \$10 of Foreign Levies have accrued for that
- 6 individual. DGA shall respond within a reasonable time to all written and telephonic requests
- 7 from non-DGA members for payment and to requests for contact information for foreign
- 8 collecting societies.
- 9 b. DGA website will include a function that permits non-members to register
- 10 information reasonably consistent with the following (the "Registration Function"): The
- 11 director's name; the title of each work directed by him/her that is not covered by DGA collective
- 12 bargaining agreements; and the duration, country, and year of production. The information
- 13 provided in connection with the Registration Function shall be for informational purposes only,
- 14 shall in no way be binding on DGA and shall be one of many sources of information used by
- 15 DGA in its sole and exclusive discretion. DGA is obligated to distribute foreign levies in
- 16 accordance with information it receives from foreign collecting societies, including titles,
- 17 directors' names, and amounts due. In all cases, the information received by DGA from foreign
- 18 collecting societies, pursuant to its agreements with them, shall be controlling.
- 19 5. The DGA website shall also include a history and explanation of Foreign
- 20 Levies. The DGA website shall include a telephone number and email address for all non-
- 21 members to contact DGA regarding Foreign Levies. DGA shall respond within a reasonable
- 22 time to all written and telephonic inquiries from non-members. DGA shall maintain a file of all
- 23 its representation agreements with foreign societies at its offices in Los Angeles, which may be
- 24 reviewed by non-members upon request and upon signing an agreement with DGA to protect the
- 25 confidentiality of the information included in such agreements.
- 26 6. DGA may retain interest on Foreign Levy monies held by DGA but not
- 27 yet paid to a Director. DGA may deduct a reasonable processing and handling fee (the
- 28 "Administrative Fee") from sums received for distribution to any Director. An Administrative

1 Fee of up to 10% on Foreign Levies (in addition to interest retained) for non-Covered Works
2 and/or non-members of DGA is hereby deemed reasonable as of the date of this Settlement
3 Agreement. DGA shall have discretion to increase the Administrative Fee as it deems necessary
4 to meet the costs and expenses of administering the distribution of Foreign Levies, including
5 costs associated with the Review and the Search.

6 7. Nothing in the Settlement Agreement shall be construed to obligate DGA
7 to continue to receive and distribute Foreign Levies, from any jurisdiction or collecting society,
8 which are attributable to Non-Covered Work. In the event DGA elects at any time not to
9 receive, retain, and distribute Foreign Levies attributable to Non-Covered Work from any foreign
10 country, it will provide notice to that effect by means of a posting on the DGA website, a single
11 advertisement in *Daily Variety* and *The Hollywood Reporter*, and a letter to each non-member
12 Director to whom it previously has actually paid Foreign Levies.

13 8. In exchange for the consideration recited in the Settlement Agreement, all
14 members of the Settlement Class (defined below), on behalf of themselves and on behalf of all
15 who claim by or through them or in their stead for Foreign Levies due members of the
16 Settlement Class, do hereby and forever release, acquit, discharge and covenant not to sue DGA
17 for any and all claims and/or causes of actions which the Settlement Class has, ever had, or
18 hereafter may claim to have against DGA up to the Effective Date which are or may be related to
19 or in any way connected with the claims, actions or causes of action which were alleged or stated
20 in the Action,⁵ or the facts, matters, transactions, or occurrences referred to in the Action.

21 The Court finds, and it is ORDERED, ADJUDGED, and DECREED as follows:

22 A. The Settlement Agreement (i) is fair, reasonable, and in the best interest of
23 the class; (ii) was negotiated at arms' length without collusion or undue influence; (iii) fairly and
24 appropriately reflects compromises by both sides in view of the risks inherent in the continued
25 prosecution and defense of the action; and (iv) offers a benefit to the class that will provide full
26

27 ⁵ The term "Action" refers to the present case, *William Webb v. Directors Guild of*
28 *America, Inc. and Does 1 through 20*, Civil Case No. BC 352621.

1 relief in terms of what might have been gained if the case had proceeded to trial.

2 B. The Settlement Class consists of any Director⁶ who satisfies all of the
3 following three criteria ("Class Members"):

4 a. Is a Director of a work that was not covered by any DGA
5 collective bargaining agreement at the time it was produced (e.g., a motion picture which was not
6 made under the auspices of a DGA collective bargaining agreement) (referred to as a "Non-
7 Covered Work"); AND

8 b. DGA has received a portion of an Author's Share⁷ of a Video Levy
9 or Video Rental Levy attributable to such work; AND

10 c. The Director was not a member of DGA as of the first date on
11 which criteria (2) is satisfied as to the Director.

12 C. The proposed Settlement Class satisfies the requirements of a class action
13 under California Code of Civil Procedure section 382.

14 D. Final certification of the Settlement Class is proper because: (i) it is
15 impracticable to bring all members of the Settlement Class before the Court; (ii) the questions of
16 law or fact common to the Settlement Class are substantially similar and predominate over the
17 questions affecting the individual members; (iii) the claims or defenses of the representative
18 plaintiff William Webb are typical of the claims or defenses of the Settlement Class; (iv) the

19 _____
20 ⁶ The term "Director" is defined as set forth in Section 1-301 of the DGA Basic Agreement
21 of 2005, namely: "A Director is one who directs the production of motion pictures, as the word
22 'direct' is commonly used in the motion picture industry." The term includes any director's
23 heirs, successors, beneficiaries, trustees, and assigns, including, without limitation, any entity to
24 which a Director has assigned his/her right to receive Foreign Levies (to the extent assignable).
25 A person who has been credited as the Director on a film or television program is presumptively
26 considered the Director of that film or program.

27 ⁷ "Author's Share," "Video Levy," and "Video Rental Levy" shall have the meanings set
28 forth in the June 1, 1990 agreement between DGA, Writers Guild of America, West, Inc., on the
one hand, and the Alliance of Motion Picture and Television Producers, on the other hand (the
"Foreign Levy Agreement"). "Foreign Levy" or "Foreign Levies" means levies received by
DGA from foreign collecting societies pursuant to the Foreign Levy Agreement and individual
agreements with those societies, which constitute the Directors' portion of the Author's Share of
Video Levies and Video Rental Levies, and any other levies (including, in some countries,
royalties for cable retransmission) imposed by foreign jurisdictions and collected and transmitted
to DGA by the societies for payment to Directors in the U.S.

1 representative plaintiff fairly and adequately protects the interests of the Settlement Class; and
2 (v) certification of the Settlement Class is superior to other methods for adjudicating the
3 individual claims of the Settlement Class members.

4 E. Class Counsel, Johnson & Johnson, LLP and Rishwain & Associates, Inc.,
5 and the Class Representative, William Webb, have fully and adequately represented the class for
6 purposes of entering into and implementing the Settlement Agreement.

7 F. Having considered Plaintiff's Application for Award of Attorneys' Fees
8 and Costs and Class Representative Enhancement, the Settlement Agreement and the exhibits
9 thereto, and all other documentary and oral evidence submitted concerning Plaintiff's motion, the
10 Court finds and grants:

11 a. Class representative, William Webb, is entitled to an incentive
12 payment of fifteen thousand dollars (\$15,000). This determination is made based on the Court's
13 finding that such an award is appropriate and warranted based on Mr. Webb's active
14 participation in the prosecution of the class claims and in the negotiation of the settlement of the
15 class claims.

16 b. Class counsel is entitled to an award of fees and costs in the
17 amount of three hundred ninety-nine thousand, five hundred thirty-eight dollars and sixty-nine
18 cents (\$399,538.69). This determination is made based on the Court's finding that counsel's
19 loadstar fees of two hundred forty-three thousand, four hundred one dollars and fifty cents
20 (\$243,401.50) are reasonable given the number of hours devoted to this litigation by counsel and
21 the rates charged by attorneys working on behalf of class counsel. The Court specifically finds
22 that the hourly rates charged by class counsel are typical of rates charged by lawyers in the Los
23 Angeles community with comparable experience in matters of this nature. This determination is
24 made based on the Court's further finding that in view of the complex substantive and procedural
25 issues presented by this case, the contingent nature of class counsel's representation, and the
26 significant benefit obtained for the class, that a multiplier of 1.63 times counsel's loadstar fee is
27 appropriate. The Court further finds that the costs requested by class counsel in the amount of
28 two thousand, nine hundred fifty-seven dollars and twenty four cents (\$2,957.24) is reasonable

1 given that the costs were necessarily incurred in the prosecution of this case.

2 c. The award of attorneys' fees and costs, and the class representative
3 incentive award, shall be paid by Defendant Directors Guild of America, Inc. within 20 days of
4 the Effective Date.

5 G. The parties have submitted to the jurisdiction of the Court for purposes of
6 settlement, the Court has personal jurisdiction over the parties and all members of the Settlement
7 Class, and the Court has subject matter jurisdiction to approve the Settlement Agreement.

8 H. The Motion Picture & Television Fund, which is the charity designated by
9 the parties to receive undistributed foreign levy funds (*i.e.*, funds for non-DGA members that
10 DGA cannot distribute within two years after receipt of said funds and the related documentation
11 required for distribution of said funds), meets the requirements of California Code of Civil
12 Procedure section 384(b).

13 I. Notice of the Settlement Agreement has been properly mailed and
14 published as set forth in the Settlement Agreement, as required by this Court's Amended Order
15 Granting Joint Motion for Preliminary Approval of Class Action Settlement, dated May 30,
16 2008. The provision of notice: (i) constitutes reasonable, adequate, and practicable notice
17 calculated, under the circumstances, to apprise members of the Settlement Class of the pendency
18 of the litigation and the terms of the settlement, including, without limitation, their right to object
19 to or opt out of the Settlement Class; (ii) constitutes due, adequate, and sufficient notice to all
20 persons entitled to receive such notice; and (iii) meets the requirements of due process, the
21 California Code of Civil Procedure, and any other applicable law and rules of the Court.

22 J. There has been no substantial opposition to the proposed Settlement
23 Agreement; the only objections filed have come from individuals who have opted out of the
24 Settlement Class (and those two individuals expressly confirmed at the Hearing that they
25 intended to opt out of the class) and therefore have no standing to object. Moreover, the Court
26 finds that the objections, even if legally cognizable, are without merit and were submitted by an
27 extremely small minority of those receiving notice.

28 K. The Settlement Class members shall be deemed to have conclusively

1 released any and all rights set forth in Section IX of the Settlement Agreement.

2 L. The Class Settlement Agreement is hereby granted final approval.

3 M. The parties are ordered to carry out their obligations under the Settlement
4 Agreement.

5 N. DGA is to provide Class Counsel with a copy of the Complaint Log and
6 the Review, on an annual basis, through August 26, 2010.

7 O. Annually, on August 26 (or the first court day thereafter), but concluding
8 on August 26, 2010, counsel for DGA shall file a declaration with the Court verifying that DGA
9 is in compliance with the terms of the Settlement Agreement and attaching the Review as an
10 exhibit. If Plaintiff believes that further monitoring is required beyond the year 2010, he bears
11 the burden of moving the Court to extend the monitoring and establishing that such further
12 monitoring is necessary.

13 P. The Settlement Class is determined and adjudged a final and permanent
14 class for purposes of this action and the Settlement Agreement.

15 Q. Each member of the Settlement Class, on behalf of themselves and on
16 behalf of all who claim by or through them or in their stead for Foreign Levies due members of
17 the Settlement Class, of their present and former director, heirs, successors, representatives,
18 beneficiaries, assigns, agents, associates, partners, subrogees, fiduciaries, privies, licensees,
19 employees, insurers, and attorneys, and any person acting in concert with any of them, are
20 deemed to have fully and forever released, acquitted and discharged DGA, including, without
21 limitation, its attorneys and past, present and future affiliates, predecessors, successors, officers,
22 directors, members, employees, agents, trustees, representatives, administrators, fiduciaries,
23 assigns, subrogees, executors, partners, subsidiaries, and privies for any and all actions, claim or
24 claims for relief in law or in equity, causes of action, suits, liens, demands, predicate acts,
25 demands, damages, losses, controversies and liabilities of any kind whatsoever (based upon any
26 legal or equitable theory, whether contractual, common law, statutory, federal, state or
27 otherwise) whether known or unknown, suspected, anticipated or unanticipated, fixed or
28 contingent, direct or indirect, which the Settlement Class has, ever had, or hereafter may claim to

1 have against DGA up to the Effective Date which were alleged, could have been alleged, or may
2 be based in whole or in part upon, or do or may arise out of, or are or may be related to or in any
3 way connected with the claims, actions or causes of action which were alleged or stated in the
4 Action, or the facts, matters, transactions, or occurrences referred to in the Action, including: (a)
5 Any of the claims, actions, or causes of action which were alleged or stated, or could have been
6 alleged or stated, or the facts, matters, transactions or occurrences referred to in the class action
7 entitled *William Webb v. Directors Guild of America, Inc. and Does 1 through 20*, Superior
8 Court for the State of California, Case No. BC 352621; (b) Any claim or right of payment by a
9 member of the Settlement Class to the payment or receipt of Foreign Levies which were received
10 by DGA pursuant to the Foreign Levy Agreement; and (c) Any challenge to DGA's receipt of
11 Foreign Levies from any collecting society, and DGA's handling, processing, payment,
12 distribution, and allocation of such Foreign Levies. The releases identified in this paragraph
13 shall be referred to herein as the Released Claims, and the parties released shall be referred to as
14 the Released Parties.

15 R. Without limiting the foregoing, the Released Claims specifically extend to
16 any rights or benefits available to the Settlement Class under the provisions of California Civil
17 Code section 1542.

18 S. Plaintiff and all members of the Settlement Class who did not timely opt
19 out of the Settlement are enjoined from prosecuting any Released Claims against the Released
20 Parties.

21 T. Following entry of the Judgment, the Court reserves continuing
22 jurisdiction over the construction, interpretation, implementation and enforcement of the
23 Settlement Agreement and over the administration and distribution of the benefits under the
24 Settlement Agreement.

25 U. Neither the Settlement Agreement nor any party's execution of or
26 agreement thereto, nor the consent of any party to the entry of this Judgment, shall be construed
27 or used as evidence or an admission of any fault, wrongdoing or liability whatsoever. Neither
28 the Settlement Agreement nor this Judgment, nor any documents in any way related to either,

1 shall be offered or received in evidence in any civil, criminal or administrative action or
2 proceeding in any court, administrative agency or other tribunal against any Plaintiff or Class
3 Member or against Defendant, for any purpose other than (a) in actions or proceedings to
4 consummate, enforce or defend the Settlement Agreement or (b) the use of the Judgment or
5 Stipulation to preclude, prevent or defend against the prosecution or assertion of Released
6 Claims against DGA or any other person or entity.

7 V. Notice of entry of this Order and Judgment (without exhibits) shall be
8 mailed to all non-DGA members presently in DGA's address database as of the date of this order
9 by the same means set forth in the Court's May 30, 2008 Amended Order Granting Joint Motion
10 for Preliminary Approval of Class Action Settlement, and shall be posted on DGA's website
11 within thirty days of entry of this judgment.

12 W. The form of the envelopes (Exhibit B) to be used to mail a copy of this
13 Order is hereby approved.

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1 The publication form of Notice of Court-Approved Class Action Settlement
2 (Exhibit C) is hereby approved and shall be published as follows: (a) in a single advertisement
3 in *Daily Variety* and *The Hollywood Reporter* to run no later than November 1, 2008; (b) in the
4 next available issue of *Animation Magazine*; and (c) in an advertisement posted on the
5 *International Documentary Magazine* website for a full month, to begin no later than November
6 1, 2008.

7 IT IS SO ORDERED.

8 DATED: September 10, 2008

9 **CARL J. WEST**

10 _____
11 Judge Carl J. West
12 Los Angeles Superior Court
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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to this action. My business address is Latham & Watkins LLP, 355 South Grand Avenue, Los Angeles, CA 90071-1560.

On September 9, 2008, I served the following document described as:

**[PROPOSED] ORDER AND JUDGMENT GRANTING JOINT
APPLICATION FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

by having a true copy of the above-described document transmitted in the following manner:

BY ELECTRONIC SERVICE

Pursuant to the Minute Order entered on May 16, 2007, the document has been electronically served and shall be deemed served as of the date and time it is posted by Lexis Nexis File and Serve on its website (fileandserve.lexisnexis.com):

Neville L. Johnson, Esq.
Nicholas A. Kurtz, Esq.
JOHNSON & JOHNSON LLP
Brian A. Rishwain
RISHWAIN & ASSOCIATES, INC.
439 N. Canon Drive, Suite 200
Beverly Hills, CA 90210

I declare that I am employed in the office of a member of the Bar of, or permitted to practice before, this Court at whose direction the service was made and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 9, 2008, at Los Angeles, California.



Lorraine Picar