

## MEMO ENDORSED

VIA ECF

October 28, 2014

Honorable Paul A. Engelmayer  
United States District Court  
Southern District of New York  
40 Foley Square, Room 2201  
New York, New York 10007

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Re: *Meredith Corp. et al. v. SESAC, LLC et al.*, No. 09 Civ. 9177 (PAE) (S.D.N.Y.)

Dear Judge Engelmayer:

We represent the parties in the above-referenced proceeding. We write in response to the Court's Order dated October 21, 2014 requesting a joint letter explaining: 1) "the reasons for expanding the class definition" so the proposed class action settlement can include local television stations that are owned and operated by the ABC and CBS television networks as well as NBCUniversal Media, LLC (the "O&Os"); and 2) "why expanding the class does not present fairness concerns for either the existing members of the class or the stations that plaintiffs propose to add." Dkt. No. 185.

### 1. Reasons For Expanding The Class Definition

Including the O&Os was an important settlement term as SESAC wanted to resolve antitrust claims by all local television stations arising out of the challenged conduct as part of any agreed-upon resolution. *See, e.g., Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 106 (2d Cir. 2005) ("Broad class action settlements are common, since defendants . . . would otherwise face nearly limitless liability from related lawsuits in jurisdictions throughout the country."); *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 311 (3d Cir. 2011) ("achieving global peace is a valid, and valuable, incentive to class action settlements"). SESAC sought such a "global" resolution here.

During the negotiations, SESAC indicated a strong interest in including the O&Os in any settlement and the settlement terms between the parties reflected that preference. The O&Os have potential antitrust claims against SESAC arising out of the same conduct challenged in this case. For example, the post-2007 changes to SESAC's per-program license challenged by the plaintiffs also applied to the O&Os. *See, e.g., J. MacDermott Dep. Tr.* 103:23-104:5 ("Q. With respect to the license period beginning in 2008 . . . did any of the NBC O&Os take the SESAC per program license? A. No, they did not because the license wasn't viable for them."). Accordingly, SESAC demanded that the settlement cover the O&Os and the O&Os have consented to their inclusion in this settlement.

In addition, although the O&Os have not brought a separate antitrust suit, they were represented historically by the Television Music License Committee ("TMLC") in its license negotiations with SESAC, including the most recent such industry-wide negotiation that resulted in arbitration for the 2005-2007 license period. Since the proposed settlement will govern SESAC's dealings with local stations going forward for a substantial period of time, including by way of negotiations with the TMLC,

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it made sense to include the O&Os so that (assuming they choose to be represented by the TMLC like any other station) future resolution of license fees and terms can be done on an industry-wide basis.

**2. Expanding The Settlement Class Does Not Present Fairness Concerns**

Stations in the originally defined class benefit from the inclusion of the O&Os and are not prejudiced by their participation in the proposed settlement. First, as explained above, without the O&Os, there might not have been a settlement at all. Second, as far as the conduct relief in the proposed settlement, SESAC is agreeing to treat all stations in the settlement class the same. Third, regarding the monetary relief in the proposed settlement, the size of the settlement fund was increased to account for the alleged overpayments by the O&Os and the proposed allocation plan distributing those monies treats the O&Os no differently than any other class members.

Finally, inclusion of the O&Os in the settlement class is fair to them. They get to benefit from the long-term conduct relief agreed to by SESAC and receive their allocable share of the settlement fund based on the amounts they paid to SESAC since 2008. Thus, as noted above, the O&Os consented to being a part of this settlement.

\* \* \*

The plaintiffs took account of SESAC's antitrust exposure to all local stations; SESAC, believing that it has meritorious defenses to the claims against it, concluded, based on a number of considerations, specifically including its ongoing exposure to bearing the continuing multimillion dollar cost of attorney's fees for both sides, that it is desirable that the litigation be settled; and the settlement was reached on that basis. This is common in class action settlements. *See In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 125 (S.D.N.Y. 2009) (settlement of lawsuit involving fees paid by credit cardholders included the same fees paid by debit cardholders). Thus, the parties believe that the proposed settlement is fair, reasonable, and adequate.

Sincerely,

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The Court appreciates this helpful explanation. An (PRG) order preliminarily approving the proposed class-action settlement and authorizing the filing of a Second Amended Complaint will issue shortly.

**SO ORDERED:**

Paul A. Engelmayer  
**HON. PAUL A. ENGELMAYER**  
**UNITED STATES DISTRICT JUDGE**