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**SUPPLEMENTAL DECLARATION OF
BARRY GOLDSTEIN IN SUPPORT OF
FINAL APPROVAL OF SETTLEMENTS
AND PETITION FOR FEES**

I Barry Goldstein, declare:

A. INTRODUCTION AND SUMMARY

1. I am "Of Counsel" to the law firm of Goldstein, Demchak, Baller, Borgen & Dardarian ("GDBBD"), an Oakland law firm that specializes in employment discrimination, wage and hour, and other types of class actions. I have personal knowledge of the facts contained in this declaration and if called as a witness, am competent to testify as to those facts.

2. Paul Sprenger, who is Lead Class Counsel, has requested that I give my independent professional opinion regarding the proposed settlements in *In Re: TV Writers Cases*, Case No. BC 268 836 (Sup. Ct. County of Los Angeles). In particular, Mr. Sprenger requested that I give my opinion on the difficulty and complexity of the litigation and compare the litigation and results obtained with other age discrimination cases as well as, more generally, fair employment cases.

1 3. In preparing this Declaration, I have reviewed the following documents: (a) *Wynn v.*
2 *National Broadcasting Company*, 234 F. Supp. 2d 1067 (C.D. Ca. 2002); (b) *Alch v. Time Warner*
3 *Entertainment*, 122 Cal. App. 4th 339 (2004), *review denied*, 2004 Cal. LEXIS 12622 (December 22,
4 2004); (c) *Alch v. Superior Court*, 165 Cal. App. 4th 1412 (2008), *review denied*, 2008 Cal. LEXIS
5 12786 (October 28, 2008); (d) Settlement Agreement (proposed), *In Re: TV Writers Cases*; (e) Order
6 Preliminarily Approving Class Action Settlement and Directing Notice; (f) Notice of Motion and
7 Motion for (1) Preliminary Approval of Settlement Agreements, etc.; (g) Declaration of Paul Sprenger
8 in Support of Motion for Preliminary Approval; and (h) Description of Fund for Future and other
9 documents and descriptions on the website, <http://www.tvwriterscounsel.com/>.

10 4. On the basis of the information and documents that I have reviewed and my more than
11 forty years of litigation experience and cases brought during that period under the federal and state laws
12 barring discrimination on the basis of age, it is my professional opinion that Class Counsel achieved an
13 extraordinary result. As explained below, the difficulty and complexity of this litigation, the novelty of
14 the issues raised, the substantial risk undertaken by Class Counsel and the substantial benefits obtained
15 for the class strongly support Class Counsel's request for a fee award that is one-third of the settlement
16 fund or approximately \$23.3 million, in my opinion.

17 **B. BACKGROUND AND EXPERIENCE**

18 5. I am an attorney admitted to the practice of law before the bars of the States of California
19 and New York, the District of Columbia, the Supreme Court of the United States, the United States
20 District Courts for the Northern District of California, the District of Columbia, and the Southern and
21 Eastern Districts of New York, and the United States Courts of Appeal for the Ninth Circuit.

22 6. A copy of my resume is appended as Attachment A to this Declaration. While the
23 resume accurately summarizes my educational and professional experience, it is relevant to highlight
24 several aspects of my background and experience that are particularly pertinent.

25 7. From 1971, when I joined the staff of the NAACP Legal Defense & Educational Fund,
26 Inc., (LDF), until 1989, I primarily litigated fair employment and other complex civil rights class action
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1 cases on behalf of LDF. During the period of 1971 through my departure from LDF in June 1989, I had
2 substantial responsibility for the fair employment program at LDF.¹

3 8. In 1989, I joined the Oakland-based firm of Goldstein, Demchak, Baller, Borgen &
4 Dardarian (at that time the firm was known as Farnsworth, Saperstein & Seligman). After serving as a
5 partner, I became managing partner from 1995 through 1999. GDBBD has prosecuted scores of federal
6 and state court class actions. The firm is a nationally recognized leader in the field of fair employment
7 and class action law. One of the cases I have litigated, *Haynes v. Shoney's Inc.*, 89-30093-RV (N.D.
8 Fla.), resulted in a nationwide consent decree that provided \$132.5 million in monetary relief as well as
9 extensive injunctive relief. The University of Georgia Press has published a book describing this civil
10 action. S. Wakins, *The Black O: Racism and Redemption in an American Corporate Empire* (1997).
11 Other significant cases litigated by GDBBD in which I have played a significant role, include: *Butler v.*
12 *Home Depot*, C94-4335-SI (N.D.Cal.) (\$87.5 million gender class action settlement covering employees
13 in the company's western division); *Shores v. Publix, Inc.*, No. 95-1162-CIV-T-25E (M.D. Fla.) (a
14 gender discrimination company-wide consent decree providing extensive injunctive relief plus \$81.5
15 million in monetary relief); *Babbitt v. Albertson's, Inc.*, No. C-92-1883-SBA (PJH) (N.Ca.); *Byrd v.*
16 *Sprint Corp.*, No. CV92-18979 (Cir. Cit. Jackson County, MO.) (\$62.5 million recovery for class based
17 primarily on a state contract claim); *Kraszewski v. State Farm General Ins. Co.*, C-79-1261-THE (N.D.
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20 ¹ The Legal Defense Fund had an extensive fair employment docket during my tenure. Many of these
21 cases were class actions that involved the application of the class action rule in litigation and settlement
22 contexts. The scope and importance of LDF's docket is illustrated by the number of Supreme Court
23 cases in which LDF lawyers represented the plaintiffs. *Phillips v. Martin Marietta Corp.*, 400 U.S. 549
24 (1971); *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971); *McDonnell Douglas Corp. v. Green*, 411 U.S.
25 792 (1973); *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454 (1975); *Albemarle Paper Co. v.*
26 *Moody*, 422 U.S. 405 (1975); *Franks v. Bowman Transportation Co.*, 424 U.S. 747 (1976); *Brown v.*
27 *General Services Administration*, 425 U.S. 280 (1976); *International Union of Electrical Workers v.*
28 *Robbins & Myers, Inc.*, 429 U.S. 229 (1976); *Furnco Construction Corp. v. Waters*, 438 U.S. 567
(1978); *Carson v. American Brands, Inc.*, 450 U.S. 79 (1981); *Gulf Oil Co. v. Bernard*, 452 U.S. 89
(1981); *American tobacco Co. Patterson*, 456 U.S. 63 (1982); *Pullman-Standard v. Swint*, 456 U.S. 273
(1982); *United States v. Aikens*, 460 U.S. 711 (1983); *Firefighters Local Union No. 1784 v. Stotts*, 467
U.S. 561 (1984); *Cooper v. Federal Reserve Bank*, 467 U.S. 867 (1984); *Anderson v. City of Bessemer*
City, 470 U.S. 564 (1985); *Library of Congress v. Shaw*, 487 U.S. 310 (1986); *Bazemore v. Friday*, 478
U.S. 385 (1986); *University of Tennessee v. Elliott*, 487 U.S. 788 (1986); *Lorance v. AT&T*
Technologies, 109 S.Ct. 2261 (1989); *Patterson v. McLean Credit Union*, 109 S.Ct. 2363 (1989). I
argued two of these cases before the United States Supreme Court. After joining GDBBD, I argued a
third case before the Supreme Court.

1 Cal.) (a gender discrimination case brought on behalf of women who were denied positions as insurance
2 agents that resulted in over \$200 million in monetary relief to the class and extensive injunctive relief).
3 Since becoming Of Counsel to GDBBD, I served as counsel for the class in *Gonzalez v. Abercrombie &*
4 *Fitch*, Civil Action No. 03-2817 SI (N.D. Cal.) which, in 2005, resulted in a settlement of approximately
5 \$47 million and in *Satchell v. Federal Express*, Civil Action No. C03-2659 SI (N.D. Cal.), which
6 resulted in a settlement of approximately \$55 million.

7 9. Of particular relevance to this age discrimination litigation, I have served as counsel to
8 plaintiffs in two large collective actions brought under the Age Discrimination in Employment Act
9 (ADEA) that were contested over several years and resulted in significant settlement in the eight
10 figures.² I was also counsel in an age discrimination case that resulted in an opinion, *Pines v. State*
11 *Farm Insurance*, 1992 WL 92398 (C.D. Cal. 1992), relied upon by the federal court decision in this
12 litigation, *Wynn v. National Broadcasting Company*, 234 F. Supp. 2d 1067, 1081, 1085 (C.D. Ca. 2002).

13 10. Two law review articles have described some of the class action litigation in which I
14 have participated. Sturm, "Second Generation Employment Discrimination: A Structural Approach,"
15 101 *Columbia L. Rev.* 458 (2001); Sturm, "Lawyers and the Practice of Workplace Equity," 2002 *Wis.*
16 *L. Rev.* 277 (2002). In particular, these law review articles describe, in part, my experience in the
17 design and implementation of remedial programs designed to assure fair employment opportunity.

18 11. For many years, I have been involved in projects concerning the development of the law
19 as it pertains to class action procedures. From 1981 through 1985, I served on the American Bar
20 Association's (ABA) Special Committee on Class Action Improvements ("Committee"). As reported at
21 110 F.R.D. 195, 196 (1986), the Committee was "comprised of attorneys with broad experience
22 representing plaintiffs and defendants in major class action litigation" and included the late Hon. Sam
23 C. Pointer, Jr., U.S. District Judge (Alabama), who was the principal author of The Manual for
24 Complex Litigation, Second. The Committee issued a report and recommendations to the Advisory
25 Committee on Civil Rules of the Judicial Conference of the United States. Similarly, I was invited to
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27 ² As collective actions in which numerous individuals opted-in, the settlements were not public and
28 were entered under confidentiality provisions.

1 serve on the Brookings Task Force on Civil Justice Reform, sponsored by the Brookings Institution, and
2 participated in the preparation of Justice for All: Reducing Costs and Delay in Civil Litigation (1989),
3 which was the “genesis for many of the ideas embraced within Title I [the Civil Justice Reform Act of
4 1990] ...” S. Rep. No. 101-416 at 14 (1990). As described in the United States Senate Report, the task
5 force was comprised of “leading litigators from the plaintiffs’ and defense bar, civil and women’s rights
6 lawyers, ... general counsels of corporations, former judges, leading attorneys, and law professors.” *Id.*

7 12. As indicated by my resume, I have taught law, been active generally in continuing legal
8 education programs, and co-chaired a committee on fair employment law for both the Litigation Section
9 and Labor and Employment Law Section of the American bar Association. I am a co-editor of the third
10 of the leading employment discrimination treatise, Lindemann & Grossman, Employment
11 Discrimination Law, Bureau of National Affairs (1996 BNA Books).

12 13. On several occasions, I have been asked to provide expert testimony in support of
13 requests for attorneys’ fees or other matters related to complex class action litigation. Courts have
14 accepted my testimony as an expert. For example, *Wilfong v. Rent-A-Center, Inc.*, Case No. 00-680-
15 DRH (S. D. Ill Oct. 4, 2002) (Attachment B), the Court specifically accepted and adopted the expert
16 testimony that I presented. Att. B. at pp. 6-8. In that opinion, the District Court referred to me as “the
17 most skilled employment discrimination lawyer in the United States.” *Id.* at p. 7. *See also Velez v.*
18 *Wynne*, No. 04-17425 (9th Cir. Jan 29, 2007) (not for publication) (Ninth Circuit relies upon affidavit
19 that I submitted in support of a request for attorneys’ fees in an employment discrimination action.)

20 C. **THE EXTRAORDINARY DIFFICULTY OF THE LITIGATION AS WELL AS THE**
21 **RESULTS ACHIEVED SUPPORT THE AMOUNT OF FEES AND COSTS**
22 **REQUESTED.**

23 14. Class Counsel achieved an extraordinary result for the classes of writers over age forty
24 whom they represent by obtaining a monetary remedy of approximately \$70 million and establishing an
25 innovative plan that promises to increase significantly the opportunity of older writers to obtain work.
26 The \$70 million monetary remedy, which Defendants and their insurance carriers agreed to pay in the
27 Agreement, is the largest amount of which I am aware in a state or federal age discrimination lawsuit.
28 The fact that the aggregate amount was funded by many separate defendants does not detract from Class

1 Counsel's achievement. The combination of a significant monetary award in civil actions against
2 multiple studios, networks and talent agencies and the innovative Fund for the Future will provide
3 substantial benefits both in monetary awards and increased opportunities to class members. It is
4 remarkable that hiring of writers over age 50 has increased by 10%. See WGA Data,
5 1999 -- 2007.

6 15. The seminal California decision addressing the determination of reasonable attorneys'
7 fees is *Serrano v. Priest*, 20 Cal. 3d 25 (1977). The Supreme Court stated that the "starting point" for
8 determining a reasonable fee was the "lodestar" method because this analysis provided the "objectivity"
9 that is "vital" for the prestige of the bar and courts. 20 Cal. 3d at 48. The lodestar method is premised
10 upon a determination of reasonable hours times a reasonable rate. The focus of this Declaration is upon
11 three additional factors which the *Serrano* Court examined: (1) the novelty and difficulty of the
12 questions involved, and the skill displayed in presenting them; (2) the extent to which the nature of the
13 litigation precluded other employment by the attorneys; and (3) "the contingent nature of the fee award
14 both from the point of view of eventual victory on the merits and the point of view of establishing
15 eligibility for an award." *Id.* at 49. It is important to note that while the United States Supreme Court
16 has approved the factors referenced in *Serrano*, see *Lealao v. Beneficial California, Inc.*, 82 Cal. App.
17 4th 19, 28 (2000) (citations to Supreme Court decisions), the United States Supreme Court, but not the
18 California Supreme Court with respect to state statutory fee cases such as this one, has rejected in
19 certain types of federal statutory fee cases contingent risk as a ground for awarding a multiplier to the
20 lodestar rate. See *City of Burlington v. Dague*, 505 U.S. 557 (1992). California courts consider
21 contingent risk in determining whether to award an enhancement. *Ketchum v. Moses*, 24 Cal. 4th 1122,
22 1131-33 (2001); *Lealao*, 82 Cal. App. 4th at 42 (California "trial courts have considerably wider
23 latitude to consider whether an enhancement is necessary to induce lawyers to undertake expensive and
24 risky litigation in order to further public policy or enforce the right of individuals in class . . . suits"). It
25 is my understanding that Class Counsel are not seeking an enhancement to their lodestar and, in fact,
26 are accepting a reduction to their lodestar despite, as explained below, the significant contingent and
27 risky nature of this litigation. In my opinion this approach underscores the reasonableness of the
28 requested fee.

1 16. For approximately ten years, Class Counsel have persistently pursued claims of age
2 discrimination in the television industry. A good deal of the litigation is described in three opinions:
3 *Wynn v. National Broadcasting Company*, 234 F. Supp. 2d 1067 (C.D. Ca. 2002); *Alch v. Time Warner*
4 *Entertainment*, 122 Cal. App. 4th 339 (2004), *review denied*, 2004 Cal. LEXIS 12622 (December 22,
5 2004); and *Alch v. Superior Court*, 165 Cal. App. 4th 2008, *review denied*, 2008 LEXIS 12786
6 (October 28, 2008). By dividing the litigation into three parts, the (a) development of the legal theories
7 and strategies, (b) implementation of the legal theories and strategies, and (c) negotiation of the
8 settlement, we may appreciate fully the complexity and novelty of the issue raised, the skill required to
9 achieve a successful result, and the substantial risk involved.

10 17. Class Counsel embarked on unprecedented litigation in the fair employment field by
11 challenging practices of discrimination of an entire industry. After an investigation Class Counsel
12 concluded that there was a pattern or practice of age discrimination in the hiring of writers in the
13 television industry, Class Counsel developed a legal strategy to advance the claims of their clients. This
14 was not the usual set of discrimination claims where a protected class of employees allege that an
15 employer is failing to hire or promote in a non-discriminatory manner. Rather the writers' claims
16 alleged that an industry, comprised of multiple studios, networks and talent agencies, engaged in
17 practices that effectively denied equal opportunity to older writers. Since writers might work for
18 multiple employers as well as seek advice from a talent agency, Class Counsel sought to achieve an
19 effective remedy for older writers by challenging the practices of an entire industry and the multiple
20 players, studios, networks and agencies in that industry.

21 18. To mount such an industry-wide challenge was an unprecedented undertaking for private
22 counsel. The only somewhat comparable litigation in fair employment law was the settlement entered
23 into in the 1970s by the United States Justice Department, Department of Labor and Equal Employment
24 Opportunity Commission with nine steel companies and the Steelworkers Union. *See United States v.*
25 *Allegheny-Ludlum Industries*, 517 F.2d 826 (5th Cir. 1975), *cert denied*, 425 U.S. 944 (1976). While a
26 massive undertaking, the *Allegheny-Ludlum* settlement addressed entrenched patterns of racial
27 segregation in job opportunity that were established by identifiable selection and seniority rules. The
28 alleged claims in the television were not so well identified and more difficult to establish.

1 19. Initially, Class Counsel filed a complaint in federal court representing fifty individuals
2 alleging a pattern of age discrimination in violation of federal, California and New York law. Class
3 Counsel named approximately forty employer defendants and eleven agency defendants. The
4 defendants³ raised substantial challenge to this complaint and the theories of liability, including, among
5 others, timeliness of the allegation, the validity of the claims of “deterred” applicants, the application of
6 the joinder of the multiple plaintiffs and defendants, this industry-wide approach, and the justification
7 for issuing “Notice” for potential claimants to opt-in to assert their individual claims. In a lengthy
8 opinion, the District Court dismissed all of the plaintiffs’ claims some with prejudice and some without
9 prejudice. *Wynn v. National Broadcasting Company, supra*.

10 20. Class Counsel refashioned the legal strategy by filing twenty-three separate class actions
11 in California Superior Court asserting only violations of California law. After not succeeding in joining
12 all of the claims into one action, Class Counsel undertook the arduous step of filing multiple,
13 coordinated class actions. I do not know of another example where private plaintiffs have undertaken to
14 pursue claims by filing such a large number of coordinated class actions. Once again, the multiple
15 defendants filed substantial challenges to the plaintiffs’ claims and, once again, the defendants were
16 successful in the trial court. However, in a detailed opinion, the appellate court reinstated the principal
17 claims asserted by the plaintiffs. *Alch v. Time Warner Entertainment, supra*. In its opinion, the
18 appellate court recognized the “significant history” of the federal litigation, 122 Cal. App. 4th at 350,
19 but permitted the class claims to proceed. After four years of extensive litigation in federal and state
20 courts during which numerous difficult legal issues were addressed, Class Counsel had finally
21 established a legal strategy that would permit the claims of age discrimination to proceed against the
22 television industry.

23 21. Having established a legal basis for proceeding, Class Counsel had the difficult task of
24 litigating twenty-three class actions simultaneously against multiple well-represented defendants. One
25 specific difficulty created by having to prosecute so many class actions was the requirement to respond
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28 ³ The defendants have been represented by some of the most distinguished and experienced members of
the employment defense bar.

1 to extensive interrogatories and document requests served on each of the more than 150 class
2 representatives. I am informed that class representatives had to answer collectively thousands of
3 interrogatories including the subparts of the interrogatories and cumulatively produced or made
4 available for inspection, hundreds of thousands of documents in response to numerous document
5 requests. As a general matter, it is a burdensome task for Class Counsel to respond to extensive
6 discovery served on the named class representatives. Typically, there may be three to seven class
7 representatives in a large fair employment class action. This burdensome task was multiplied twenty-
8 three fold in this litigation.

9 22. In order to maintain and successfully litigate a large fair employment class action, Class
10 Counsel need demonstrate tenacity and a willingness to expend the lawyer and financial resources
11 necessary to prosecute these complex cases. A dramatic example of the commitment of Class Counsel
12 was its prompt response to the significant set back when the federal district court dismissed, on January
13 24, 2002, the original complaint. Approximately one month after that dismissal, Class Counsel filed the
14 twenty-three class actions in state court. The coordination and organization of such a filing required
15 significant time and effort. For Class Counsel to respond to such a loss with a dramatic and aggressive
16 strategy signaled clearly that they were willing to undertake the risk and expend the resources in order
17 to represent effectively the putative class members.

18 23. The discovery of evidence relevant for trial is often the most burdensome and expensive
19 part of the prosecution of a fair employment class action. However, as explained by the United States
20 Supreme Court, in the usual fair employment class action the "liberal civil discovery rules" and federal
21 regulations, which require employers to maintain records regarding the impact of its selection practices,
22 facilitate such discovery. *Ward Cove Packing Co. v. Atonio*, 490 U.S. 642, 657-58 (1989). However, in
23 this case, Class Counsel could not simply rely upon the liberal federal or state discovery rules
24 applicable to parties to litigation since most of the class members were "deterred applicants" and since
25 the various defendants would have little or no pertinent information about the class members or the
26 characteristics of the available workforce. Instead, Class Counsel had to seek relevant information
27 about potential and available applicants from a third party, the Writers Guild of America. After 7,700
28 out of the 47,000 past or current members of the Writers Guild objected, and/or persons with potential

1 benefits in Guild pension and health plans, objected to providing personal information, the trial court
2 sustained the objections to the production of the information. This order effectively blocked the ability
3 of Class Counsel to develop the statistical information necessary for attempting to prove the claims of
4 discrimination. But, once again, Class Counsel were able, on appeal, to preserve the viability of the
5 claims. The appellate court granted the petition file by Class and ordered the production of sufficient
6 information to allow Class Counsel to develop a valid statistical analysis. *Alch v. Superior Court*,
7 *supra*.

8 24. After persevering in the litigation, Class Counsel commenced a complicated mediation
9 process with the multiple defendants. The mediation sessions lasted for over two years. It is
10 particularly difficult to settle a complex class action where there are multiple parties. I am not familiar
11 with any fair employment case where the settlement discussions involved as many parties. It is a tribute
12 to Class Counsel as well as to the mediator and counsel for defendants that such a comprehensive
13 settlement was reached.⁴

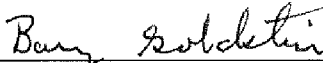
14 25. The total settlement amount which Defendants and their carriers have agreed to pay in
15 the aggregate, \$70,000,000, is the largest monetary settlement in age discrimination case of which I am
16 aware. Of course, it should be considered that there are multiple defendants and carriers contributing to
17 the aggregate settlement amount but that does not detract from Class Counsel's accomplishment. The
18 distribution plan is carefully developed. Furthermore, the innovative "Fund for the Future" creates an
19 approach that is tailored to this unique situation that promises to develop and open opportunities for
20 older writers as well as providing benefits for the entire industry by expanding the availability of skilled
21 writers. This "Fund for the Future" is the type of effective relief that can be developed by innovative
22 counsel as part of a settlement that can benefit all parties.

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28 ⁴ It is my understanding that the proposed settlement agreement covers nineteen class actions and
approximately 120 defendants and their affiliates. In January 2009, two other defendants entered into a
separate settlement (ICM – Broder Settlement). In 2006, another defendant entered into a settlement
(Irv Schechter Agency). There is one ongoing litigation (Creative Artists Agency).

1 **D. CONCLUSION**

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3 26. It is my opinion that the novel nature of this litigation, the substantial risk undertaken by
4 Class Counsel in pursuing these claims over a ten-year period, the difficulty and complexity of the legal
5 and evidentiary issues, the significant results obtained, and the diligence and skill demonstrated by
6 Class Counsel at each stage of the litigation support Class Counsel's request for an attorneys' fee award
7 of 33.3% of the settlement fund or approximately \$23,000,000.

8 I declare under penalty of perjury, under the laws of the United States, that the foregoing is true
9 and correct. Executed this 5th day of May, 2010, in Oakland, California.

10 
11 _____
12 Barry Goldstein