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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF LOS ANGELES - CENTRAL CIVIL WEST**

18 IN RE: TV WRITERS CASES
19 _____

Case Nos. BC 268836 (and related cases)
[Assigned to Hon. Emilie H. Elias for all
purposes]

20 THIS DOCUMENT RELATES TO:

21 **Case No. 268 836** – Alch, et al. v. Time Warner
Entertainment Company, L.P., et al.;

22 **Case No. 268 837** – Neal, et al. v. Viacom Inc.
and United Paramount Network;

23 **Case No. 268 838** – Young, et al. v.
DreamWorks SKG TV LLC;

24 **Case No. 268 839** – Bast, et al. v. Fox
Broadcasting Company, et al.;

25 **Case No. 268 840** – Levy, et al. v. The Gersh
Agency, Inc.;

26 **Case No. 268 841** – Edwards, et al. v. The
Carsey-Werner Co., et al.;

27 **Case No. 268 842** – Wynn, et al. v. National
28 Broadcasting Company, Inc., et al.;

**REPORT OF LEAD CLASS COUNSEL
RE: (1) COMPLIANCE WITH ORDER
DIRECTING NOTICE; and (2)
CLAIMANT AND NON-CLAIMANT
COMMENTS, REQUESTS TO
APPEAR, OBJECTIONS AND OPT-
OUTS; SUPPORTING
DECLARATIONS: LANCE BLAIR
(MAILED NOTICE AND
ADMINISTRATION STATISTICS);
PATRICIA MCCARRON
(PUBLISHED NOTICE); BARRY
GOLDSTEIN (CASE RESULTS), AND
THEODORE EISENBERG, PH.D.
(ATTORNEYS' FEES)**

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- Case No. 268 843** – Brooks, et al. v. William Morris Agency, Inc.;
- Case No. 268 844** – Brett, et al. v. Walt Disney Company, et al.;
- Case No. 268 845** – Distefano, et al. v. Columbia TriStar Television, Inc.;
- Case No. 268 847** – Eisenson, et al. v. Lucy Stille & Associates, Inc., d/b/a Paradigm Talent & Literary Agency, et al.;
- Case No. 268 848** – Lang, et al. v. Shapiro-Lichtman, Inc., d/b/a Shapiro Lichtman-Stein;
- Case No. 268 849** – Neal, et al. v. The Endeavor Agency, Inc.;
- Case No. 268 877** – Kinghorn, et al. v. Universal Studios, Inc., et al.;
- Case No. 268 878** – Moriarty, et al. v. Viacom Inc., Paramount Studios, Inc., et al.;
- Case No. 268 880** – Yanok, et al. v. Agency for the Performing Arts, Inc.;
- Case No. 268 881** – Schwartz, et al. v. United Talent Agency, Inc.;
- Case No. 268 882** – Shayne, et al. v. Viacom Inc. and CBS Broadcasting Inc.; and
- Case No. 268 883** – Kalish, et al. v. Viacom Inc., Spelling Entertainment Inc., et al.

1 Lead Class Counsel files this Report pursuant to Administrative Order Numbers 2 and 4
2 of this Court (“AO2” and “AO4,” respectively) confirming that requisite notice-related actions
3 were performed post-Preliminary Approval and the requisite numbers of claims received¹ (Part
4 I) and reporting on responses received to the notice of settlement (Part II).

5 **I. COMPLIANCE WITH ORDER DIRECTING NOTICE**

6 A. Mailed, Internet & Published Notice of Settlement

- 7 1. I retained Garden City Group, Inc. (“GCG”), to serve as Claims
8 Administrator in the TV Writers Case Settlements (“the Settlements”).
9 GCG effected mailed and emailed notice of the Settlements, and managed
10 the administrative website and toll-free, pre-recorded information line.
11 2. GCG mailed and emailed a total of 467,077 notices. A detailed account
12 of notice and related activities is set forth in the Declaration of Lance
13 Blair, attached here as Exhibit 1, Tab 1.
14 3. I retained Yellin McCarron, Inc. (“YM”), to manage and effect published
15 and internet notice of the Settlements. YM effected publication of 13 print
16 media notices and 2,903,460 impressions of online notice.
17 4. YM published notice on seven occasions in 9 alternating publications,
18 including The New York Times, LA Times, Hollywood Reporter, and
19 Chronicle of Higher Education. A detailed accounting of YM’s activities,
20 including internet, and the publication schedule is set forth in the
21 Declaration of Patricia McCarron, attached hereto as Exhibit 2, Tab 2.

22 B. Notice Expense

23 The cost of mailed notice, published notice and associated fees amounted to
24 \$1,148,353.30, as shown on Exhibit 3, Tab 3.
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28 ¹ All capitalized terms are as defined in this Court’s January 22, 2010 Administrative Order No. 2 (hereafter “AO2”) and/or other Settlement documents internally referenced therein.

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C. Inquiries Concerning the Settlements and Claim Forms

1. Class Counsel provided assistance to class members seeking explanations of claim forms and privileged advice concerning their claims. To facilitate this, I set up two sets of toll-free numbers that proffered explanatory information. Non-privileged assistance was provided by GCG through a website established for that purpose, www.TVWritersSettlementAdmin.com, which provides answers to frequently posed questions and information about filing procedures. All settlement documents are posted on this web site. In addition to the toll-free number and the TV Writers Administrator’s internet site, Class Counsel also set up and maintained www.tvwriterscounsel.com, an alternate site that provides generalized litigation and claims information to class members in addition to claims documents and contact information for Class Counsel. We received 235,589 “hits” to this site.

2. I also arranged to staff six toll-free lines for settlement class members to seek privileged advice as well as general information. Since January 22, 2010, we fielded approximately 2,247 phone calls concerning the Settlements on these lines, and responded to over 1,517 emails.

D. Claims Statistics

1. In total, settlement class members submitted 4,282 timely claim forms, substantially exceeding the Settlements’ minimum requirement of 1,000. These claims were filed by 2,039 members of the “aspiring television writers” (“ATW”) settlement class and by 2,223 members of the professional television writers (“PTW”) settlement class, as stated in the Blair Declaration. (The total includes 13 supplemental claims.)

2. We have received 71 late claims to date. We have so far been able to ascertain that at least one claimant (Dorothy Jean Ahlswede) can establish “excusable neglect” entitling her to participate in the Claims Fund. We intend to examine the remaining late claims to ascertain whether the other late claimants too can establish grounds, and if so, to seek permission for their inclusion in the claims distribution process in conjunction with our motion

1 for approval of the awards allocation formula on June 7, 2010.

2 E. Fund for the Future

3 Class members also received notice of, or were provided, nomination forms for the initial
4 Board of Governors of the Fund for the Future (“FFF”) and the web site,
5 www.tvwritersFundfortheFuture.com, will continue to provide access to information and
6 opportunities. Rules for the FFF will be proposed and published on that site and an opportunity
7 to comment on those rules and procedures will be afforded to settlement class members. To date
8 we have received 12 nominations in writing.

9 **II. REQUESTS TO APPEAR, COMMENTS, OBJECTIONS AND OPT-OUTS**

10 A. Introduction

11 In addition to the 4,282 claims filed by settlement class members, nine claimants have
12 requested the opportunity to appear at the hearing on May 14, 2010; seven claimants have filed
13 comments on the proposed settlement; three claimants have filed objections; one putative class
14 member who hasn’t filed a claim has also filed comments and an objection; and 22 class
15 members have excluded themselves from the settlement. All of these submissions are attached to
16 the declaration of the Claims Administrator. In this report, I summarize and address each of
17 these submissions.

18 B. Claimant Requests to Appear

19 The following nine claimants have requested an opportunity to be heard at the May 14th
20 hearing: Daniel X. Brack; Charles Payne; Peter Anthony Lance; Claudia Prada; Kevin Kelton;
21 Luther Winston Fortinberry; Art Eisenson;² and Ron Friedman. Among these, seven wish to
22 make statements in support of the settlement; Claudia Prada and John S. Keating wish to appear
23 to state objections which are addressed below.

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28 ² Art Eisenson has also submitted a letter to the Court which is attached as Exhibit 7, Tab 7.

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C. Claimant Comments

Prior to preliminary approval, five members of the Plaintiffs’ Liaison Committee submitted letters to the court in support of the settlement, explaining the consultative process between the Committee and Class Counsel during the course of the litigation and settlement negotiations, and concluding, variously worded, “that this fair and equitable settlement accurately reflects our input, convictions and concerns.” (Larry Mintz) Another member of the Plaintiffs’ Liaison Committee, Art Eisenson, praised class counsel for their “courage, integrity, skill and will.” Ron Friedman, “wholeheartedly endorse[d]” the settlement, commended the “rigorous” process that culminated in the settlement and praised class counsel for their “integrity, empathy, tenacity, expertise and extraordinary humanity and unflagging efforts” on behalf of the class. Allan Leicht, also a member of the Plaintiffs’ Liaison Committee, “completely and without reservation” supported the settlement and, having discussed it with over 100 other class members, stated his belief that it has wide support throughout the class. And finally, Bob Shayne reported that he and the Committee were regularly consulted during the negotiation process and that Class Counsel “achieved an important breakthrough in the entertainment industry.” These letters were previously submitted to the court and are posted on www.tvwriterscounsel.com.

The strongest support for the settlement is reflected in the 4,282 claims filed by settlement class members. During the comment period, four additional comments were received and are summarized below.

1. Michael Russnow. Mr. Russnow submitted favorable comments about the settlement but expressed concern about the possibility that awards might be subject to deductions for union dues and/or pension and health benefits. Class counsel advised Mr. Russnow that those issues had been favorably resolved and that there would be no such deductions. He responded by email with enthusiastic appreciation.

2. Stephen Geller. Mr. Geller, a member of the Plaintiffs’ Liaison Committee, lauds the settlement as the means to “write the wrongs” the plaintiffs have borne. In an earlier comment, he praised the settlement negotiation process for its inclusivity and the

1 lawyers “who have worked to see justice for older writers.”

2 3. Kevin Kelton. Mr. Kelton reviews his experience of age discrimination
3 and the tremendous impact it has had on his professional and personal life and urges the court to
4 approve the settlement.

5 4. Father Guy G. Gurath. Father Gurath writes “Bravo for pursuing this!”

6 D. Claimant Objections (3)³

7 1. Dorothy Jean Ahlswede. Ms. Ahlswede raised three objections. First, she
8 believes that there was insufficient notice of the settlement and that insufficient time was allowed
9 to file a claim. However, over 4,200 individuals found that the 11 weeks allowed to file a claim
10 were sufficient. The notice, which cost almost \$1 million, was extensive, to say the least, and
11 approved by a renowned expert in the subject. See Declaration of Todd B. Hilsee, filed January
12 22, 2010. Nevertheless, we communicated with Ms. Ahlswede and learned that she lives in rural
13 Nebraska where there is no home mail delivery service and access to the post office is difficult.
14 An elderly family member is responsible for collecting the mail periodically and distributing it to
15 family members; this happens erratically. Accordingly, we recommend that her claim filed after
16 the postmark deadline of April 13, 2010 be deemed eligible (assuming she establishes eligibility
17 as a class member) on the grounds of excusable neglect. If the Court grants this request, this
18 disposition resolves Ms. Ahlswede’s first objection.⁴

19 She also believes that individual notice should have been sent to her by certified mail. As
20 verified in the Claims Administrator’s declaration, mailing of individual notice to members of
21 the professional television writers settlement class was by first-class mail, as directed by the
22 Court. (Potential members of the aspiring writers settlement class received a Standard A mailer,
23 as directed.) Accordingly, there is no basis for this second objection. Indeed, if the Court had
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26 ³ All comments and objections are attachments to the Declaration of Lance Blair, Claims
Administrator, Exhibit 1, Tab, 1.

27 ⁴ As noted above, 71 claims were received with postmarks after April 13. Class Counsel
28 will review each of these claims and recommend to the Court at the time of the formula hearing
whether they should be deemed eligible on the grounds of “excusable neglect.” Two other class
members with severe disabilities have also requested leave to file late claims.

1 ordered that notice be sent by certified mail, the cost of notice would have increased
2 substantially, decreasing the money available for other purposes, including awards to Settlement
3 Class Members.

4 Ms. Ahlswede opines that the settlement of age discrimination cases should include
5 injunctive relief compelling the defendants to read the work of the class members and consider
6 representing them or purchasing their work. Without revealing confidential settlement
7 discussions, I can state that there would be no settlement had Plaintiffs continued to demand such
8 relief. Moreover, Class Counsel came to conclude that the Fund for the Future, under the aegis
9 of class members, would provide more opportunities for class members going forward than a
10 court-ordered system that would invite controversy and litigation. Ms. Ahlswede has commented
11 favorably on the Fund for the Future, describing it in an email as “a novel idea” and a “promising
12 concept.”

13 2. Claudia Prada. Ms. Prada has a three-fold objection to the provisions that
14 protect the confidentiality of awards. First, she proposes that all awards be public and states that
15 “there is no good reason for any confidentiality here.” Class Counsel strongly disagree with this
16 assertion. Indeed, there would have been far fewer claims filed if confidentiality were not
17 assured. Rightly or wrongly, many class members profoundly fear that the disclosure of their
18 claim – never mind their award – would impair their future opportunities in the television
19 industry. Maintaining confidentiality of the claims and awards is thus not only important but
20 essential. Indeed, only Class Counsel, and the Court, will know the amounts of the awards, and
21 they are sworn to keep them confidential too.

22 Second, Prada objects to the enforcement provision in the confidentiality agreement
23 signed by all claimants. This provision calls for liquidated damages in the amount of the **lesser**
24 of \$50,000 or 25% of the **net** amount of any award, after taxes. This objection is addressed in a
25 separate filing.

26 Third, Prada also comments that there should be an accounting for the expenditure of the
27 settlement fund. We fully agree with Prada’s comment and the Trustees of the Qualified
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1 Settlement Fund II (Paul Sprenger and Jane Lang) will, of course, provide that accounting to the
2 Court, as they are obligated to do, before the fund is closed.

3 Prada also raises several concerns about the administration of the Fund for the Future.
4 Some of these concerns are very legitimate. Accordingly, Class Counsel propose that, before the
5 Fund is activated, the proposed rules be published on the Fund for the Future web site, and the
6 opportunity to comment be afforded to class members. We fully agree that the rules must include
7 a provision that strictly precludes any self-dealing, “financial abuses” and conflicts of interest.
8 We do not agree with Prada’s position that it would be better to distribute the FFF among all
9 claimants.⁵ The FFF is a creative and forward-looking concept that encourages and enables
10 older writers to advance their professional careers. Ultimately, with the pour over of other
11 reserves, about 4% of the settlement fund will become available for FFF activities. It will be
12 closely monitored by the Trustees and will report its activities and expenditures publicly each
13 year. The FFF provides exciting possibilities for class members to break out of the confines of
14 the existing industry structure and forge new opportunities for themselves.

15 3. John S. Keating. Mr. Keating objects that the claim-filing period was too
16 short; he filed his claim on April 14, the day after the postmark deadline. Class Counsel believe
17 that the claim-filing period was more than adequate but, as in the case of Ms. Ahlswede, there
18 are situations in which a late claim should be deemed eligible for “excusable neglect.” Class
19 Counsel will submit a list of late claimants to the court before the June 7, 2010 hearing,
20 including Mr. Keating, with recommendations on the disposition of their claims based on the
21 circumstances of each individual.

22 Mr. Keating also raised concerns about the rules that will govern the Fund for the Future.
23 As noted above, Class Counsel propose to publish the proposed rules for the FFF and to afford
24 an opportunity for class members to comment before they are finalized. An annual written
25 report of the activities and expenditures of the fund is required to be published and will be posted
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28 ⁵ We note that a claimant can check a box on the claim form to receive a credit of \$150 to
\$500 by choosing not to participate in the Fund for the Future.

1 on www.tvwritersfundforthefuture.com. We believe this assures that the Fund will be
2 administered impartially, openly and with integrity.

3 Finally, Mr. Keating asserts that the fee agreements entered into by the original 187
4 plaintiffs are not binding on the class. We pointed out that Class Counsel’s petition for one-third
5 of the settlement fund as fees is broadly based on California law, and is supported by the
6 declaration of Barry Goldstein concerning the risk involved and the significance of the results
7 achieved. (Exhibit 4, Tab 4). Additionally, the declaration of Professor Theodore Eisenberg
8 provides a compelling analysis in support of Class Counsel’s fee request. (Exhibit 5, Tab 5)

9 E. Non-claimant Comments and Objection (1)

10 An objection and several comments were received from an individual, David Barrow,
11 who avers he is a member of the settlement class but *who has not filed a claim*. Inasmuch as he is
12 not a claimant, Mr. Barrow lacks standing to object to the settlement. Simply being a member of
13 a class is not enough to establish standing: one must be an *aggrieved* class member. In Wolford
14 v. Gaekle (9th Cir. 1994) 33 F.3d 29), the court held that a class member who had, under the
15 settlement, received full recompense for her injury, lacked standing to challenge an award of
16 attorneys’ fees. “She asserts no economic or noneconomic injury,” the Ninth Circuit wrote. “She
17 suffered no injury ‘likely to be redressed by a favorable decision.’” *Id.* at 30. It then explained,
18 “It is Wolford's particular lack of injury that is unique and it is this fact which precludes her from
19 having standing to appeal.” *See also Rebney v. Wells Fargo Bank*, 220 Cal. App. 3d 1117, 1128
20 (1990) (appellant not injured by the expansion of a settlement class is not an aggrieved party and
21 lacks standing to appeal).

22 In this situation, Mr. Barrow, as he acknowledges, has not filed a claim. Accordingly, *the*
23 *fee award to which he objects has no impact on him at all* and precludes him from being an
24 “aggrieved party.” His objection should be dismissed on that basis. Nevertheless, since Mr.
25 Barrow’s ten comments and one objection are part of the record, Class Counsel would like to put
26 them to rest.

1 **Comment # 1:** Mr. Barrow states that he is unclear about how much of the settlement
2 will be awarded to the claimants. In the notice to Settlement Class Members, it is stated that
3 approximately \$43 million will be used to pay awards to class members and to activities to
4 benefit class members, *i.e.* the Fund for the Future. Under Administrative Order No. 3, \$42
5 million is allocated to claimants' awards (\$40.5 million plus interest) and the initial funding of
6 the FFF (\$1.5 million); and \$28 million is allocated to pay Legal Fees/Costs and Notice and
7 Administrative Expenses. However, any monies in the Legal and Administrative Expense
8 Portion not needed to pay Class Counsel's fees, reimburse Class Counsel's expenses, or pay the
9 costs to notify Settlement Class Members of the Settlement and administer the Settlement will
10 "pour over" into the FFF. Class Counsel now estimate that the amount to be paid to the FFF out
11 of the Legal and Administrative Expense Portion will be about \$1 million. That brings the total
12 amount to be paid to or for the benefit of Settlement Class Members to \$43 million, about
13 61.43% of the total.

14 **Comment #2:** Mr. Barrow approves the posting of the number of class member
15 claims. This was updated and includes the breakdown between the two classes, as he requested.

16 **Comment #3:** Mr. Barrow received extensive email responses from Class Counsel on
17 numerous occasions. He apparently agreed that most of his observations were in the nature of
18 comments and filed them accordingly. The Fee Petition was made available to Mr. Barrow and
19 all class members by posting on the settlement web site in accordance with the prescribed
20 schedule. Class Counsel did decline to provide him a draft before it was finished.

21 **Comment #4:** Mr. Barrow's suggestion that fees be determined at the beginning of a
22 class action rather than at the end runs counter to the law in California and other American
23 courts. It also is impractical in employment discrimination class actions as very few firms in the
24 country are willing to litigate these challenging and lengthy cases. In any event, "low bidders"
25 would be incented to settle claims quickly and cheaply, rather than stay the course.⁶

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27 ⁶ It isn't clear how Mr. Barrow's analysis of the decision in the securities case, *Goldberger*
28 *v. Integrated Resources, Inc.* (2^d Cir. 2000) 209 F.3d 43, relates to this comment. We note, however, that *Goldberger* was resolved in under three years. The appellate court expressed

1 **Comment #5:** Mr. Barrow faults Class Counsel for not addressing the analysis of
2 Professors Eisenberg and Miller in connection with our fee petition. Initially, Class Counsel
3 properly relied primarily on California cases rather than the comprehensive analyses of
4 Professors Eisenberg and Miller, which are based on federal and state decisions throughout the
5 country. Equally important, however, Mr. Barrow has misapplied those analyses in this case. In
6 a Declaration attached as Exhibit 5, Tab 5, Professor Eisenberg himself directly addresses the
7 application of his studies to this case, and concludes that his analyses support the award of one-
8 third of the settlement fund to Class Counsel based on several factors, including the client
9 agreements; the lodestar in excess of the one-third award; the relationship between the fee and
10 benefits to the class; the time dimension; and the high risks of this complex case.

11 **Comments #6 through 9:** Although he acknowledges the sworn declarations of all
12 Class Counsel verifying their time and rates, Mr. Barrow is uncomfortable with the procedures in
13 California and indeed all American courts regarding the award of fees without an audit. The
14 discretion is conferred on the judge to determine whether anything additional is necessary to
15 support a fee award. Particularly in this case, with multiple counsel from different firms whose
16 cumulative lodestar significantly exceeds the one-third award that they seek based on the
17 percentage-of-the-benefit method, there is ample reason to rely on cross-checking among them –
18 in addition to the sworn word of the attorneys involved. No auditor could better advise the court
19 how long it should take to write briefs to three Superior Court judges and then the Court of
20 Appeal on privacy rights, to assist clients responding to discovery requests or understanding the
21 proceedings, or to negotiate with counsel for 19 sets of defendants. An auditor could confirm
22 only what Class Counsel have already sworn to: the amount of time they invested in this case
23 over ten long years.

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26 doubt that there was any substantial risk of non-recovery in that case. *Id.* at 52. Moreover, the
27 fee award was reduced because counsel’s lodestar was far less than the percentage of the
28 common fund sought. The situation is exactly reversed here in this ten-year, hard-fought
litigation: Class Counsel’s lodestar far exceeds the one-third cap they agreed to accept, as
explained in our fee petition, pp. 11-14.

1 In the end, Mr. Barrow acknowledges at page 19 of his submission that the court is in the
2 best position to cross-check the percentage fee award against the lodestar. As noted in Class
3 Counsel’s petition, even after eliminating between 5,000 and 10,000 hours valued at over \$3
4 million as a matter of billing judgment, the cumulative lodestar for Class Counsel would exceed
5 the fee award of one-third of the settlement fund by 75%.

6 **Comment # 10:** Class Counsel are well aware of their fiduciary responsibilities to the
7 class. As Mr. Barrow notes, Lead Class Counsel has a distinguished record in class action
8 litigation and neither he, nor any Class Counsel, takes these responsibilities lightly. Nothing in
9 Mr. Barrow’s proposed “Pandora Rules” would enhance the ethical and procedural rules that
10 govern those responsibilities. Indeed, apart from Mr. Barrow’s first proposal for a “competitive
11 fee auction” at the outset of a case, a procedure that has been used in only a “handful of
12 securities class actions,” *In re Synthroid Mktg. Litig.* (7th Cir. 2003) 325 F.3d 974, 977,⁷ all of his
13 “rules” already are widely implemented. Indeed, all of them are incorporated in the process for
14 the approval of fees in this case before this court.

15 **Objection:** Mr. Barrow’s sole objection is to the award of one-third of the settlement
16 fund as a legal fee in these 19 cases. Unlike plaintiff Art Eisenson,⁸ Mr. Barrow hasn’t
17 previously been involved in these cases and is thus unaware of the challenges of this ten-year,
18 hard-fought litigation, including the three times the litigation has been left for dead by decisions
19 of federal and state trial courts. Nor is he familiar with the tough negotiations that spanned
20 almost three years before this settlement was concluded. He ignores the outstanding results
21 achieved in this settlement, as described in the declaration of the eminent civil rights attorney,
22 Barry Goldstein. Nevertheless, he asserts, relying on his misapplication of studies conducted by
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24 ⁷ If there had been an “auction” at the start of this case, the result would have been as one
25 federal district court concluded concerning an especially risky ERISA class action: “Class
26 Counsel would have been the only bidder and, in light of the risk then involved, would have
27 extracted a far higher fee than they are now requesting.” *Cooper v. IBM Pers. Pension Plan*
28 (S.D. Ill. Aug. 16, 2005) 2005 U.S. Dist. LEXIS 17071, at *21-22.

⁸ In his letter to the Court, Exhibit 7, Tab 7, Mr. Eisenson writes, “Our lawyers could have
bailed on us when things got tough and expensive. Instead, they honoured the commitment they
made without our asking for it. . . . Their 33.33% fee is the least of what we owe them.”

1 Professors Eisenberg and Miller, that a fee award “of around 20% is more appropriate.”

2 In the accompanying declaration, Professor Eisenberg (Exhibit 5) demonstrates that Mr.
3 Barrow has misapplied his analyses and further explains that his published analyses show that
4 risk, longevity of litigation and amount of lodestar fees incurred are strongly related to size of fee
5 awards in class action cases. He concludes that, under the facts and circumstances of this
6 litigation, the award of one-third of the settlement fund to Class Counsel as a fee is fully justified
7 based on relevant factors, and actually protects the class from a possibly higher award based on
8 the lodestar.

9 F. Requests for Exclusion

10 Twenty-two individuals filed requests to exclude themselves from the settlement.⁹ They
11 are listed in the Declaration of the Claims Administrator (Exhibit 1, Tab 1). All but four of these
12 individuals responded to Class Counsel’s inquiries about their reasons. Of these, eleven
13 indicated in conversations or email correspondence with Class Counsel Jane Lang that they had
14 no claims or evidence of age discrimination against themselves; two indicated no interest in
15 television writing during the limitations period or at this time; one is employed by a defendant;
16 and four are engaged in other careers. Five of the opt-outs are members of the Professional
17 Writers Class; 17 of them are actual or potential members of the Aspiring Writers Class. See
18 Exhibit 6, Tab 6.

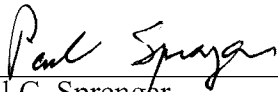
19 **III. CONCLUSION.**

20 The number of claims filed – over 4,200 – and the absence of any objections that go to
21 the overall fairness of the settlement together demonstrate that there is strong support for the
22 settlement of this precedent-setting litigation. The unqualified support for the settlement avowed
23 by Mr. Goldstein (Exhibit 4, Tab 4) and several class members (Declaration of Lance Blair,
24 Exhibit 1, Tab 1), the analytical support for the award of attorneys’ fees in the Declaration of
25 Professor Eisenberg (Exhibit 5, Tab 5), Plaintiffs’ Motion for Approval and Petition for
26 Attorneys Fees, and the declarations of Class Counsel providing factual support for the motion
27

28 ⁹ Four other individuals filed requests to opt out of the settlement but subsequently withdrew their requests.

1 together create a solid record for final approval of the Settlement and approval of the requested
2 award of fees and expenses.

3 Respectfully submitted,

4
5 
6 _____
7 Paul C. Sprenger
8 Lead Class Counsel

9 Dated: May 7, 2010

10 PAUL SPRENGER AND JANE LANG, ATTORNEYS
11 Paul C. Sprenger
12 Jane Lang

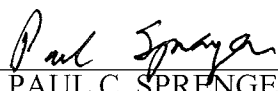
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