

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

IN RE: TV WRITERS CASES,

[Assigned to Hon. Emilie H. Elias for all purposes]

Case No. BC 268 836

THIS DOCUMENT RELATES TO:

- Alch, et al., v. Time Warner Entertainment, Company, et al., Case No. BC 268 836;
- Neal, et al., v. Viacom Inc. and United Paramount, Network, et al., Case No. BC 268 837;
- Young, et al., v. DreamWorks SKG TV LLC , Case No. BC 268 838;
- Bast, et al., v. Fox, Broadcasting Company, et al., Case No. BC 268 839;
- Levy, et al., v. The Gersh Agency, Inc., Case No. BC 268 840;
- Edwards, et al., v. The Carsey-Werner, Company, et al., Case No. BC 268 841;
- Wynn, et al., v. National Broadcasting Company, Inc., et al., Case No. BC 268 842;
- Brooks, et al., v. William Morris Agency, Case No. BC 268 843;
- Brett, et al., v. The Walt Disney Company, et al., Case No. BC 268 844;
- DiStefano, et al., v. Columbia TriStar Television, Inc., Case No. BC 268 845;
- Eisenson, et al., v. Lucy Stille & Associates, Inc., d/b/a Paradigm Talent & Literary Agency, et al., Case No. BC 268 847;
- Lang, et al., v. Shapiro-Lichtman, Inc., d/b/a Shapiro-Lichtman-Stein, Case No. BC 268 848;
- Neal, et al., v. The Endeavor Agency, Inc., Case No. BC 268 849;

**[Proposed]
ADMINISTRATIVE ORDER NO. 3:
Qualified Settlement Fund II**

1 Kinghorn, et al., v. Universal Studios, Inc., et al.,
Case No. BC 268 877;
2 Moriarty, et al., v. Viacom Inc., and Paramount,
Studios, Inc., et al., Case No. BC 268 878;
3 Yanok, et al., v. Agency for the Performing Arts,
Inc., Case No. BC 268 880;
4 Schwartz, et al., v. United Talent Agency, Inc., Case
No. BC 268 881;
5 Shayne, et al., v. Viacom Inc. and CBS
Broadcasting, Inc., Case No. BC 268 882,
6 Kalish, et al., v. Viacom Inc., et al., Case No. BC
268 883.

7
8 **I. PREAMBLE**

9 This Court has entered orders preliminarily approving class action settlements in the
10 above-referenced cases (“Settlement or “Settlements”). Those Settlements provide for the
11 establishment and funding of a Qualified Settlement Fund (“QSF”), which shall be entitled
12 Qualified Settlement Fund II (or QSF II), within five (5) business days after the Effective Date.
13 The parties have agreed to jointly notice and administer the separate Settlements together to save
14 costs, increase efficiency, and minimize confusion among Settlement Class Members.¹ This
15 Order – entitled Administrative Order No. 3: Qualified Settlement Fund II – (a) sets forth the
16 terms and conditions for establishment and administration of QSF II, and (b) appoints the initial
17 Trustees of QSF II. Unless otherwise indicated, all terms defined in the Settlement Agreements or
18 other Administrative Orders and utilized herein shall have the same meanings set forth in the
19 Settlement Agreements or other Administrative Orders.

20 **II. COLLECTIVE ADMINISTRATION; NO ALLOCATION**

21 A. The parties have agreed to administer their respective, separate settlements
22 together, including issuing a single notice and Claim Form. Together, the nineteen Settlements
23 provide for the settling Defendants or their insurers (for those settling defendants with insurance
24 coverage) to make a collective payment of seventy million dollars (\$70,000,000.00), plus accrued
25

26
27 ¹ The parties’ agreement to proceed in this fashion, which is acceptable to the Court, does not
28 affect or prejudice Defendants’ position that the cases are separate or Plaintiffs’ position that the
cases should be consolidated.

1 income on a portion of that amount (as further specified in certain of the Settlement Agreements)
2 into a settlement fund.

3 B. The Defendants and each of their respective insurance carriers, if any, have reached
4 a confidential agreement regarding their respective contributions to funding the collective,
5 unallocated payment referenced above. Class Counsel did not participate in the decision process
6 for allocating shares of the settlement payment, do not know the ultimate allocation or the basis
7 for it, and would not necessarily agree with the allocation, even if known. Because the parties
8 have agreed on a collective, unallocated payment, it will not be possible to determine what
9 portion, if any, of any given Eligible Claimant's award relates to any particular Settlement or
10 Defendant among the Settling Cases.

11 **III. ESTABLISHMENT AND ADMINISTRATION OF QUALIFIED SETTLEMENT**
12 **FUND**

13 **A. Transfer of Settlement Fund II Assets Into QSF II**

14 1. Within five (5) business days after the Effective Date, the Trustees of
15 Settlement Fund II shall transfer all monies then held in Settlement Fund II, less any monies
16 needed to cover outstanding, but not yet negotiated, payments for settlement notice and/or
17 administrative expenses and/or any other authorized expenses (e.g., taxes), into a QSF established
18 by this Order pursuant to the United States Internal Revenue Code and Treas. Reg. Section
19 1.468B-1 et seq.

20 2. The deposit accounts comprising the Qualified Settlement Fund shall be
21 titled Qualified Settlement Fund II or QSF II.

22 3. QSF II exists exclusively to: (a) hold and invest the QSF II monies for the
23 benefit and in the best interests of the ultimate beneficiaries of such funds pending distribution of
24 such funds pursuant to the terms of the Settlement Agreements and Administrative Order
25 Nos. 3 and 4; (b) make payments to Claimants who submit timely, valid, and sufficiently complete
26 Claim Forms ("Eligible Claimants"); (c) pay for authorized "Fund for the Future" activities and
27 operational expenses; (d) pay Class Counsel's court-approved legal fees and expenses; (e) hold the
28 reserves specified below; (f) pay the expenses of settlement administration, including Depository,

1 professional investment manager, and tax advice/service fees related to holding and investing
2 QSF II funds; (g) pay any settlement notice and/or administrative expenses and/or any other
3 authorized expenses (e.g., taxes) that are pending or incurred but not yet billed at the time of the
4 transfer of the Settlement Fund II monies to QSF II; and (h) withhold and remit all required
5 income and employment taxes and pay any required WGA MBA pension, health and welfare
6 contributions – all in accordance with the terms of the Settlement Agreements, the Administrative
7 Orders and applicable law.

8 4. QSF II shall be domiciled in the State of New York and administered and
9 overseen by the Trustees of QSF II, defined *infra*, under the Court’s supervision – all in
10 accordance with the terms of the Settlement Agreements, the Administrative Orders and
11 applicable law.

12 5. Except as otherwise provided herein, QSF II, and all income generated by
13 QSF II following creation, shall be held immune from attachment, execution, assignment,
14 hypothecation, transfer or similar process by any Person.

15 **B. Division of QSF and Disbursements Therefrom**

16 QSF II shall consist of three portions and shall be administered accordingly:

17 **1. Class Claims Portion**

18 The Class Claims Portion (“Claims Portion”) of QSF II shall be used to pay awards to
19 Eligible Claimants, in accordance with the procedures set forth in Administrative Order No. 4.
20 The Claims Portion shall also be used to pay all required income and employment taxes
21 attributable to distributions made by, or on behalf of, QSF II, including amounts required to be
22 withheld and remitted to a government taxing authority, and shall pay all other fines, fees, taxes,
23 levies, charges and excises of any kind, including interest, penalties, or additions to such amounts,
24 as well as any WGA MBA pension, health, and welfare contributions that may be assessed as a
25 result of the disbursements required in connection with the Settlements. The Claims Portion shall
26 also provide the funds to be set aside for the various reserves specified below. The Claims Portion
27 shall consist of all funds in QSF II less the FFF Portion and the Legal and Administrative Expense
28 Portion (both defined *infra*). In the event the Legal Fees and Administrative Expenses Portion,

1 described below, is exhausted before all settlement notice and administration expenses are paid,
2 the Claims Portion shall also pay any funds needed to pay incurred or anticipated settlement notice
3 and administrative costs. The portion of the Claims Portion that is ultimately distributed to
4 Eligible Claimants shall be administered for the benefit of Eligible Claimants as a group and not
5 for the benefit of individual Eligible Claimants, except insofar as they receive awards from the
6 Claims Portion of QSF II.

7 **2. Fund for the Future (FFF) Portion**

8 The Fund for the Future Portion (“FFF Portion”) of QSF II shall be used to pay Fund for
9 the Future expenses/activities, as provided in the Settlements. The FFF Portion shall initially
10 receive funding of one million five hundred thousand dollars (\$1,500,000.00) plus a pro rata share
11 of any income earned thereon. In addition, as set forth below, the FFF Portion will be funded by
12 any excess monies from the Legal and Administrative Expense Portion, which funding Class
13 Counsel estimate will be approximately one million dollars (\$1,000,000.00), and the residue of
14 QSF II upon its termination. Following the Effective Date, the Trustees of QSF II may disburse
15 FFF Portion monies to pay, reimburse, or advance such authorized FFF expenses without further
16 order of this Court.

17 **3. Legal Fees/Costs and Notice and Administrative Expenses Portion**

18 a. The Legal Fees/Costs and Notice and Administrative Expenses
19 Portion (“Legal and Administrative Expense Portion”) of QSF II shall be used to pay (a) Class
20 Counsel’s court-awarded fees and expenses, as well as any income earned thereon following the
21 date of the award (provided the Court’s award so provides), (b) all notice and administrative
22 expenses of the Settlements, including any tax advice/service and professional money
23 management fees (to the extent, if any, permitted by this Order and Administrative Order No. 1),
24 or Depository fees, that have been incurred prior to the Effective Date but not paid by or
25 reimbursed from Settlement Fund II, and (c) all notice and administrative expenses of the
26 Settlements, including any tax advice/service, professional money management fees, or
27 Depository fees, that are incurred after the Effective Date. The Legal and Administrative Expense

1 Portion shall be equal to twenty-eight million dollars (\$28,000,000), or such lesser amount as the
2 Trustees of QSF II determine, plus a pro rata share of any income earned thereon.

3 b. The Trustees of QSF II shall disburse, without further order of this
4 Court, funds from the Legal and Administrative Expense Portion of QSF II to pay authorized
5 notice and administrative expenses (including authorized professional money management fees,
6 Depository fees, and tax advice/service fees). In addition, if at any time the Trustees of QSF II
7 determine that some or all of the monies in the Legal and Administrative Expense Portion will be
8 unnecessary to pay attorneys' fees and expenses or estimated notice and administrative expenses,
9 they may transfer the monies to the FFF Portion.

10 c. Within five (5) business days after the later of the transfer of monies
11 from Settlement Fund II to QSF II or entry of a final award (i.e., the award following the
12 exhaustion of all appeals or writs or the expiration of time for appellate or further appellate
13 proceedings to be initiated without a notice of appeal or petition for writ of mandate being filed)
14 regarding Class Counsel's and/or Trustees' request(s), now or in the future, for attorneys' fees and
15 reimbursement of out-of-pocket costs advanced in connection with the cases covered by these
16 Settlements, the Trustees of QSF II shall wire the awarded amount from the Legal and
17 Administrative Expense Portion to an account designated by Lead Class Counsel. Defendants and
18 Ins. Co. shall have no responsibility for the allocation or distribution of the award among counsel
19 for Plaintiffs and the Settlement Classes, and any other person with an interest in such fees and
20 expenses.

21 **C. Investment of QSF II**

22 1. The Trustees of QSF II shall invest QSF II with the primary objective of the
23 safety of the principal; a secondary objective of assuring the availability of cash to meet its
24 payment obligations; and a third objective of generating income to enhance payments to Eligible
25 Claimants and to ensure that all administrative expenses and tax and other legal obligations are
26 paid. Notwithstanding any other provision in this Order or the Settlement Agreements to the
27 contrary, absent Defendants' Liaison Counsel's written consent, all monies held in the Tax, PHW

1 and Defendant Expense Reserves shall be invested in one or more of the approved investments
2 listed in Administrative Order No. 1.

3 2. The Trustees of QSF II shall engage the services of Janney Montgomery
4 Scott (“JMS”) or such other fixed income strategist as they deem appropriate to advise the
5 Trustees of QSF II on suitable investments for QSF II monies (“professional investment
6 manager”).

7 3. All investments shall be made with the reasonable expectation that they will
8 either mature or be liquid at the dates and in the amounts projected by the Trustees of QSF II as
9 distribution points to Eligible Claimants, tax authorities and other eligible recipients, so as to
10 maximize interest/income and liquidity.

11 **D. Administration**

12 1. The Trustees of QSF II may divide activities, as between the two Trustees
13 of QSF II, as they agree, but all actions involving disbursements from QSF II require the
14 agreement of both Trustees of QSF II.

15 2. The Trustees of QSF II shall make arrangements, based upon the advice and
16 with the assistance of Caplin & Drysdale (a law firm specializing in tax law) (“Tax Counsel”), to
17 prepare and submit any applicable reporting forms, including income or other tax returns,
18 concerning all or any part of QSF II.

19 3. The Trustees of QSF II shall keep detailed and accurate accounts of all
20 investments, receipts, disbursements and other transactions involving QSF II monies, and shall file
21 a final accounting with the Court thirty (30) days prior to the termination of QSF II.

22 4. Subject to applicable privacy rights (including the names and identifying
23 information of Claimants and the information on their Claim Forms), and subject to the limitations
24 on usage specified in Administrative Order No. 4, as well as the requirement that all Claim Forms
25 and supporting material be destroyed as specified in Administrative Order No. 4, all accounts,
26 books and records relating to QSF II shall be open for reasonable inspection by such persons or
27 entities as the Court orders.

1 **E. QSF II Trustees**

2 1. Paul Sprenger and Jane Lang are hereby appointed Trustees of QSF II, and
3 Daniel Edelman is hereby designated first successor Trustee. If additional successor Trustees are
4 required, Lead Class Counsel shall appoint such successor Trustees subject to Court approval.
5 The Trustees of QSF II, including any successor Trustee, must be licensed to practice law and
6 carry malpractice insurance (either individually or through the Trustee's law firm) in the amount
7 of at least one million dollars per occurrence or the value of the assets in QSF II, whichever is less.

8 2. A Trustee may resign or be removed for cause by the Court at any time.
9 Upon resignation/removal, the designated successor Trustee shall execute a written acceptance or
10 declination of the position of Trustee, which shall be forwarded to Lead Class Counsel and Class
11 Counsel and filed with the Court. Upon execution and transmission of said written acceptance and
12 Court approval if required, the successor Trustee shall have, without further action on the part of
13 anyone, all the duties, powers, functions, immunities, and discretion granted to his, her, or its
14 predecessor Trustee. Any Trustee who is replaced (by reason other than death) shall execute all
15 instruments, and do all acts, that may be necessary or that may be ordered or requested in writing
16 by the Court or by any successor Trustee, to transfer administrative powers over QSF II to the
17 successor Trustee.

18 **F. Expiration/Termination of QSF II**

19 1. QSF II shall not terminate until (a) its liability for any and all (i) Federal,
20 State and local government fees, fines, taxes, levies, charges and excises of any kind, including
21 income and employment taxes, and any interest, penalties or additions to such amounts, (ii) WGA
22 MBA pension, health, and welfare contributions, if any, and (iii) notice and administration costs
23 and other expenses covered by the Settlement, are finally determined and all such amounts have
24 been paid by QSF II, and (b) the time period for any Federal, State and local governmental entity
25 or other entity to pursue such claims arising out of payments to Eligible Claimants or otherwise to
26 seek the payment of monies from the QSF II or any of the reserves has expired, or (c) the Trustees
27 of QSF II obtain Defendants' Liaison Counsel's consent and Court approval for termination.

1 2. In the event there are funds remaining in QSF II at the time of its
2 termination, those funds shall be transferred to a non-profit organization specifically created to
3 perform the functions of the FFF. If no such organization exists, the Trustees of QSF II may
4 transfer the remainder funds to another non-profit organization, subject to the use-limitations
5 specified in Section VIII.B.7 of the Settlement Agreements. The Trustees of QSF II shall confer
6 with Defendants' Liaison Counsel regarding the identity of this alternative non-profit
7 organization. If the Trustees of QSF II and Defendants' Liaison Counsel cannot agree on a
8 suitable non-profit organization or organizations, either party may present the issue for resolution
9 pursuant to the Dispute Resolution Process specified in the Settlement Agreements.

10 **IV. OTHER EXPENSES**

11 The fees and costs of any and all professional services required by the Trustees and Claims
12 Administrator in connection with administration of the Settlements shall be borne by QSF II or
13 Settlement Fund II, as appropriate. Notwithstanding the immediately preceding sentence,
14 Settlement Fund II shall have no responsibility for any professional money management fees
15 incurred prior to the Effective Date by Lead Class Counsel or his successor, in his/her capacity as
16 a Trustee of Settlement Fund II, provided however, that such expenses may be reimbursed by QSF
17 II if the Effective Date occurs.

18 **V. WITHHOLDING, PAYMENT AND REPORTING OF TAXES**

19 The Court and the Trustees of QSF II recognize that there may be tax payments,
20 withholding and/or reporting requirements in connection with the administration of Settlement
21 Fund II and QSF II. This Administrative Order No. 3 and the Settlement Agreements, among
22 other things, set out the responsibilities, liabilities and obligations of the Trustees of QSF II with
23 respect to any such withholding, payment and/or reporting requirements.

24 **A. Definitions**

25 For purposes of this Administrative Order No. 3, the term "income taxes" shall mean taxes
26 imposed or measured by taxable income, and shall be withheld by the Trustees of QSF II as
27 required by the Internal Revenue Code with respect to federal tax and, for claimants who are
28 residents of states and or localities for which income taxes are levied, the applicable tax rate for

1 that state and/or locality. The term “employment taxes” shall mean all federal, state, and local
2 unemployment taxes and all other federal, state and local taxes imposed on employees and
3 employers on or with respect to wages, including the employee and employer portions of Federal
4 Insurance Contribution Act (“FICA”) taxes. The term “state” shall include the state and the
5 political subdivisions of any state.

6 **B. Tax Calculations/Reporting**

7 1. The Claims Administrator, under the supervision of the Trustees of QSF II,
8 and on the advice of Tax Counsel, shall (a) determine any income taxes and employment taxes due
9 with respect to each distribution to an Eligible Claimant; and (b) make and file with the
10 appropriate taxing authorities all reports or returns due with respect to all distributions to an
11 Eligible Claimant, including IRS Forms W-2 and 1099.

12 2. The Trustees of QSF II shall withhold and pay over to the appropriate
13 taxing authority, from the Claims Portion of QSF II, all amounts calculated as due pursuant to
14 Section V.B.1.

15 3. The Trustees of QSF II, on the advice of Tax Counsel or accountants
16 recommended by Tax Counsel, also shall determine and pay any income taxes owing with respect
17 to the income earned by Settlement Fund II and/or QSF II (or reimburse any Person who pays or
18 advances such taxes), and allocate such payments appropriately among the Claims Portion, the
19 Legal and Administrative Portion, and the FFF Portion of the QSF.

20 4. The Trustees of QSF II may request expedited review and decision or other
21 available relief by the IRS and/or the applicable state or local taxing or administrative authorities,
22 with regard to the correctness of the returns or any other IRS forms filed on behalf of Settlement
23 Fund II and/or QSF II, and/or any deductions and/or contributions paid.

24 **VI. RESERVES**

25 The Trustees of QSF II shall establish a Tax Reserve and Defendant Expense Reserve.
26 The Trustees of QSF II shall establish the Claimant Challenge and WGA MBA Pension, Health,
27 and Welfare Reserves if the circumstances set forth below occur. All Reserves are designed to
28 ensure the availability of sufficient funds in QSF II to meet its various obligations. The Trustees

1 of QSF II shall be responsible, to the extent of applicable law and subject to Section VII of this
2 Order, for payment of any underlying obligations in the event any shortfall in the reserves listed in
3 Sections A-C below results in the inability of QSF II to pay obligations covered by such reserves.
4 Ins. Co., Defendants, and the Settling Party Affiliates shall not be responsible for any shortfall in
5 such reserves under any circumstances.

6 **A. Tax Reserve**

7 1. In addition to the payments and withholding specified in Section V, the
8 Trustees of QSF II shall set aside a certain amount of the Claims Portion as a tax reserve to pay
9 any claim from any government agency, entity or department for payroll taxes, withholding, or
10 any other tax assessment in connection with Settlement Fund II, QSF II, or any Eligible
11 Claimant's award or any other payment to or on behalf of an Eligible Claimant ("Tax Reserve"),
12 including any final assessment based on a finding that prior payments and/or withholding were
13 improperly calculated.

14 a. Tax Counsel shall be retained by the Trustees of QSF II to provide
15 an opinion regarding the amount of the Claims Portion that shall be set aside for this purpose. The
16 QSF II Trustees shall provide a copy of the opinion to Defendants' Liaison Counsel for
17 dissemination to Defendants. All of Tax Counsel's fees and costs shall be paid by QSF II as a cost
18 of claims administration. The Trustees of QSF II shall provide the following parameters for Tax
19 Counsel to take into account in forming its opinion: (i) the amount of the reserve shall be
20 conservatively estimated to ensure that sufficient funds exist to cover any government or other
21 claims to Settlement Fund II or QSF II funds, (ii) the amount of payroll taxes, interest, penalties,
22 and interest on penalties that would be payable on monies allocated to non-wage damages and
23 interest if some or all of such amount were determined to be wage losses, and (iii) the reasonable
24 attorneys' fees of the Trustees of QSF II.

25 b. Ins. Co. and Defendants (collectively, through Defendants' Liaison
26 Counsel or his designee) shall have the right to confer with and provide information to Tax
27 Counsel in connection with the preparation of Tax Counsel's opinion. Tax Counsel and the
28 Claims Administrator will provide aggregate level (and other appropriately de-identified)

1 information to Defendants and Ins. Co. -- e.g., the total amount of disbursements allocated to
2 interest, non-wage damages, and wages -- to facilitate their ability to confer with and provide
3 meaningful input to Tax Counsel in connection with its preparation of the opinion.

4 c. Class Counsel, Ins. Co., or Defendants' Counsel may, within ten (10)
5 calendar days of receipt of the initial or any amended opinion, ask Tax Counsel to reconsider its
6 opinion and, in connection therewith, may provide additional information to Tax Counsel. Tax
7 Counsel may choose to reconsider its opinion based on the request in its sole discretion. No party
8 shall have any further recourse to challenge Tax Counsel's opinion or calculation of the Tax
9 Reserve in accordance with said opinion.

10 d. Subject to paragraph VI.A.1.c above, Tax Counsel's opinion
11 regarding the amount to be reserved shall be final and the Trustees of QSF II shall set aside that
12 amount as the Tax Reserve.

13 2. Defendants and Ins. Co. shall be notified and given an opportunity to object
14 prior to the disbursement of any monies from the Tax Reserve other than to a taxing authority on
15 the grounds that it is inconsistent with the Settlement Agreement or Administrative Orders of this
16 Court.

17 B. **WGA MBA Pension, Health, and Welfare Reserve**

18 1. Class Counsel and Defendants collectively, through Defendants' Liaison
19 Counsel or his designee, shall jointly request an expedited determination from the Producer-
20 Writers Guild of America Pension Plan and the Writers Guild-Industry Health Fund (together the
21 "Plans"), including, if necessary, through the dispute resolution mechanism specified in the
22 relevant trust documents, that no pension, health, and/or welfare contributions are due under the
23 WGA MBA, including any predecessor WGA MBA, in connection with the Settlements. This
24 request shall be made within fourteen (14) days after Preliminary Approval of the Settlements,
25 unless Lead Class Counsel and Defendants' Liaison Counsel agree to extend the date by which to
26 make the request.

27 2. Class Counsel and Defendants anticipate that the issue of pension, health,
28 and welfare contributions will be finally resolved before the Trustees of QSF II are ready to

1 distribute awards to Eligible Claimants. If, however, (a) this issue remains unresolved 90 days
2 after the Trustees of QSF II are ready and permitted under the terms of the Settlements to
3 distribute checks to Eligible Claimants, and (b) the Trustees of QSF II conclude that final
4 resolution of this issue will further unreasonably delay the issuance of awards, and (c) Class
5 Counsel and Defendants' Liaison Counsel agree on the amount of the Pension/Health Reserve
6 (defined *infra*), the Trustees of QSF II may set aside a certain amount of the Claims Portion as a
7 reserve against any final determination or agreement that pension, health and/or welfare
8 contributions, including but not limited to any liquidated damages, interest, penalties, and/or audit
9 fees, are due in connection with the amounts paid (in whole or in part) in these Settlements (the
10 "Pension/Health Reserve"), and then proceed with the distribution in accordance with subsection
11 4, *infra*. If the parties cannot agree on an amount pursuant to clause (c) after 30 days of
12 negotiation over such amount, then the parties shall attempt in good faith to select a third party
13 who shall determine the amount to set aside; if they cannot agree on such a person, then the
14 awards may not be issued.

15 3. If said final determination or agreement requires the payment of such
16 contributions (by anyone), and awards have not yet been distributed to Eligible Claimants, then
17 said amount shall be deducted and paid from the Claims Portion of QSF II.

18 4. If said final determination or agreement requires the payment of such
19 contributions (by anyone), and awards have been distributed to Eligible Claimants pursuant to
20 Section VI.B.2, *supra*, then the Pension/Health Reserve shall be used to pay any and all amounts
21 due.

22 5. Defendants and Ins. Co. shall be notified and given an opportunity to object
23 prior to the disbursement of any monies from the Pension/Health Reserve other than to the Plans
24 or either of them pursuant to a final determination or agreement regarding the obligation to make
25 contributions as set forth above.

26
27

1 **C. Claimant Challenge Reserve**

2 When calculating the amount of Claims Portion funds available for distribution to
3 Eligible Claimants, the Trustees of QSF II, in consultation with the Claims Administrator, may
4 reserve funds to cover any claims that awards were miscalculated.

5 **D. Defendants' Expense Reserve**

6 1. The Defendants' Expense Reserve specified in Exhibit J to the Settlement
7 Agreements, shall be initially funded from the Claims Portion in the amount of \$375,000 (less any
8 amounts paid out of Settlement Fund II to Defendants' Liaison Counsel, the Trustee of Settlement
9 Fund II selected by defendants, or other Defendants' Counsel, as applicable, pursuant to paragraph
10 II.A.1.b.iii.b of Administrative Order No. 1).

11 a. Subject to the cap below, if, at any time prior to the distribution of
12 QSF II to the Eligible Claimants, the balance of the Defendants' Expense Reserve should fall to or
13 below \$25,000, the Defendants' Expense Reserve shall be restored to the initial funding amount to
14 cover further approved disbursements.

15 b. If any Non-Settling Cases are still pending when the Trustees of
16 QSF II distribute QSF II funds to Eligible Claimants, and subject to the cap below, the
17 Defendants' Expense Reserve shall be restored to the initial funding amount.

18 c. If no Non-Settling Cases are still pending at the time the Court
19 approves the list of distribution awards, the Defendants' Expense Reserve shall be reduced to that
20 amount necessary to cover pending and anticipated requests for reimbursement and the remainder,
21 less any funds necessary for cross-funding pursuant to Section VI.E, *infra*, shall be transferred to
22 the Fund for the Future.

23 2. The total direct funding of the Defendants' Expense Reserve, including the
24 amounts of all replenishments, pursuant to this Section VI.D shall not exceed \$750,000.00 (less
25 any amounts paid out of Settlement Fund II to Defendants' Liaison Counsel, the Trustee of
26 Settlement Fund II selected by defendants, or other Defendants' Counsel, as applicable, pursuant
27 to paragraph II.A.1.b.iii.b of Administrative Order No. 1), but additional monies may be available

1 to reimburse Defendants' Expense Reserve-eligible expenses pursuant to the cross-funding
2 provisions set forth in Section VI.E.

3 3. The following fees and expenses, and only the following fees and expenses,
4 are reimbursable/payable from the Defendant Expense Reserve:

5 a. Fees and expenses for discovery in connection with the Non-Settling
6 Cases pursuant to the procedure specified in Section III of Exhibit J;

7 b. Fees and expenses incurred, between Preliminary Approval and the
8 close of Settlement Fund II, by the Trustee of Settlement Fund II appointed by Defendants for
9 performing the function of Trustee of Settlement Fund II; and

10 c. One-half of the fees and expenses incurred, between the Court's
11 preliminary acceptance of the template settlement agreement and the first date on which awards
12 are mailed to Eligible Claimants, by Defendants' Liaison Counsel (or personnel working under his
13 supervision) for performing the function of Defendants' Liaison Counsel.

14 4. Payments and reimbursements pursuant to subsections VI.D.3.b and
15 VI.D.3.c are subject to the following terms and conditions:

16 a. Payments and reimbursements shall be made when due after receipt
17 of the invoice. The invoice shall describe the number of hours charged during the billing period
18 by timekeeper, the hourly rate of the timekeeper and a general description of the services provided
19 (e.g., email correspondence; court hearing; telephone conference).

20 b. The billing entity shall be paid its regular hourly rates as of the time
21 of the invoice. By submitting an invoice, the billing entity certifies that the rates charged are its
22 regular hourly rates and that the time and expenses charged to Settlement Fund II or QSF II were
23 expended in fulfillment of the fiduciary obligations of and the duties as Trustee or Defendants'
24 Liaison Counsel, as appropriate.

25 c. If Defendants' Liaison Counsel agrees, following the submission of
26 an invoice to Settlement Fund II or QSF II, to write-off or write-down a billing entry or expense
27 on the 50% of the invoice submitted to Defendants, Defendants' Liaison Counsel shall provide a
28 reciprocal write-off or write-down to Settlement Fund II or QSF II.

1 d. Notwithstanding any other provision in this Order to the contrary, including
2 the cross-funding provisions set forth in Section VI.E, all payments and reimbursements under
3 subsections VI.D.3.b and VI.D.3.c shall not exceed \$250,000.00 in the aggregate.

4 **E. Cross-Funding of Reserves**

5 1. In the event any of the reserves specified in Sections VI.A-D are
6 insufficient to satisfy claims made upon such reserve, the other reserves specified in Sections
7 VI.A-D may be used to satisfy such obligations, provided all claims on the reserve which shall
8 provide such cross-funding of the type for which that original reserve was created have been
9 satisfied and the time for any further claims to be made on such reserve has expired.

10 2. If a claim for cross-funding of additional Defendants' Expense Reserve-
11 eligible expenses (i.e., over and above the \$750,000 direct capitalization provided for in Section
12 VI.D plus any accrued income) is made before other reserve funds can be used for cross-funding
13 pursuant to Section VI.E.1, then such request(s) shall be held until such monies are available for
14 cross-funding, if ever, and paid/transferred at that time.

15 3. With the exception of the Defendants' Expense Reserve, the maximum
16 funding for which shall consist of the original \$750,000 capitalization, any accrued income
17 thereon, and any cross-funding permitted pursuant to Section VI.E, the Trustees of QSF II are
18 ultimately responsible, to the extent of applicable law, for any reserve shortfall that is not covered
19 by cross-funding.

20 **VII. INDEMNIFICATION**

21 Subject to compliance with the terms of the Settlement Agreements and orders of the
22 Court, Defendants, Defendants' Counsel, and the Released Persons shall be free from any and all
23 liability in connection with the implementation of the Settlements, including the administration of
24 QSF II or its predecessor Settlement Fund II.

25 Subject to compliance with the terms of the Settlement Agreements and orders of the
26 Court, Class Counsel and the Trustees of Settlement Fund II and QSF II shall be free from any and
27 all liability in connection with the administration of QSF II and its predecessor Settlement Fund II,
28 except (a) for any loss arising out of their gross negligence and/or willful misconduct, or (b) that

1 the Trustees of QSF II shall be liable for any loss due to any shortfall in a Reserve as otherwise
2 herein provided.

3 Provided they have acted in good faith and complied with the terms of the Settlement
4 Agreements and orders of the Court, QSF II shall indemnify and hold harmless Defendants,
5 Defendants' Counsel, Class Counsel, the Released Persons, and the Trustees of Settlement Fund II
6 and QSF II as to any third-party claims against them arising from their actions with respect to the
7 Settlements, including their administration of same, for all reasonable expenses, including
8 reasonable attorneys' fees, judgments, taxes, fines, and amounts paid in settlement of any action,
9 which amounts are ordinarily and reasonably paid by them in connection with such action, suit, or
10 proceeding.

11 Each Claimant who receives a payment from QSF II shall be fully and ultimately
12 responsible for payment of any and all federal, state or local taxes (excluding the employer share
13 of employment taxes and unemployment taxes and taxes actually withheld) resulting from or
14 attributable to the payment received by such person. Each Claimant shall indemnify and hold the
15 Defendants, Released Persons, Defendants' Counsel, Class Counsel, Depository, the Trustees of
16 Settlement Fund II and QSF II and the Claims Administrator harmless from any tax liability or
17 ERISA contribution requirements, including liquidated damages, audit fees, penalties and interest,
18 related in any way to any acts or omissions on the part of the Claimant. In all cases in which the
19 tax or other liability that arises is not attributable to any acts or omissions on the part of a
20 Claimant, the Claimant shall indemnify and hold Defendants, Released Persons, Defendants'
21 Counsel, Class Counsel, Depository, the Trustees and the Claims Administrator harmless from
22 such tax or other liability, but not penalties and interest and not the costs of any proceedings
23 related to such liability.

24 **VIII. AMENDMENT OF THIS ORDER**

25 This jointly drafted Order is a material part of the Settlements. This Order may not be
26 modified except by a written agreement between Lead Class Counsel and Defendants' Liaison
27 Counsel that is approved by the Court.

1 **IX. RELATIONSHIP TO SETTLEMENT AGREEMENTS.**

2 If there is any conflict between the terms of this Administrative Order No. 3 and the
3 Settlement Agreement, the Settlement Agreement shall take precedence.

4

5

6 IT IS SO ORDERED.

7 Dated: _____, 2010

8

9 _____
Hon. Emilie Elias
Judge, Superior Court for the County of Los Angeles

10

11 AGREED AS TO FORM AND SUBSTANCE BY:

12

13 DATED: January __, 2010

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

PAUL SPRENGER and JANE LANG,
ATTORNEYS

Paul C. Sprenger, Esq.
Lead Class Counsel
Attorneys for Plaintiffs and the Settlement
Class

PAUL SPRENGER and JANE LANG,
ATTORNEYS

Paul C. Sprenger (DC Bar No. 412029)
Jane Lang (DC Bar No. 031112)
1614 Twentieth Street, NW
Washington, DC 20009
Telephone: (202) 518-2021

Facsimile (202) 518-0228

SPRENGER & LANG, PLLC
Steven M. Sprenger (DC Bar No. 418736)
Michael D. Lieder (DC Bar No. 444273)
1400 Eye Street, N.W., Suite 500
Washington, D.C. 20005
Telephone: (202) 265-8010
Facsimile: (202) 332-6652

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

KATOR, PARKS & WEISER, PLLC
Maia Caplan (DC Bar No. 422798)
1200 18th Street, N.W., Suite 1000
Washington, D.C. 20036
Telephone: (202) 898-4800
Facsimile: (202) 289-1389

SCHWARTZ, STEINSAPIR, DOHRMANN &
SOMMERS LLP
Henry Willis (CA Bar No. 82981)
6300 Wilshire Boulevard, Suite 2000
Los Angeles, California 90048-5268
Telephone: (323) 655-4700
Facsimile: (323) 655-4488

LAW OFFICES OF DANIEL WOLF
Daniel Wolf (DC Bar No. 429697)
1220 N Street, N.W., Suite PH2
Washington, D.C. 20005
Telephone: (202) 842-2170

AARP FOUNDATION LITIGATION
Thomas W. Osborne (DC Bar No. 428164)
Barbara Jones (CA Bar No. 88448)
601 E Street, N.W.
Washington, D.C. 20049
Telephone: (202) 434-2060
Facsimile: (202) 434-6424

KATZ, MARSHALL & BANKS, LLP
Daniel B. Edelman (DC Bar No. 075101)
1718 Connecticut Avenue N.W., Sixth Floor
Washington, D.C. 20009
Telephone: (202) 299-1140
Facsimile: (202) 299-1148

DATED: January __, 2010

MUNGER TOLLES & OLSON LLP
Glenn D. Pomerantz or Katherine Forster

By: _____
Glenn D. Pomerantz or Katherine Forster
Attorney for Defendants
BC 268 842 and BC 268 877

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

DATED: January __, 2010

MORGAN LEWIS BOCKIUS LLP
George A. Stohner

By: _____
George A. Stohner
Attorney for Defendants
BC 268 837, BC 268 878, BC 268 882, BC
268 883

DATED: January __, 2010

MITCHELL SILBERBERG & KNUPP LLP
William L. Cole
Kevin E. Gaut
Seth E. Pierce

By: _____
Seth E. Pierce
Attorneys for Defendants
BC 268 836, BC 268 838, BC 268 839, BC
268 841 and BC 268 845

DATED: January __, 2010

PROSKAUER ROSE LLP
Anthony Oncidi
Robert H. Horn

By: _____
Anthony Oncidi
Attorney for Defendant
BC 268 843 and BC 268 881

DATED: January __, 2010

MURCHISON & CUMMINGS LLP
Pamela Marantz

PARADIGM AGENCY
Craig Wagner

By: _____
Pamela Marantz or Craig Wagner
Attorney for Defendant
BC 268 847

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

DATED: January __, 2010

KAYE SCHOLER LLP
Robert Barnes

By: _____
Robert Barnes
Attorney for Defendant
BC 268 880

DATED: January __, 2010

JUDITH SALKOW SHAPIRO, P.C.
Judith Shapiro

By: _____
Judith Shapiro
Attorney for Defendant
BC 268 848

DATED: January __, 2010

GLASER, WEIL, FINK, JACOBS, HOWARD
& SHAPIRO, LLP
Patricia Glaser
Mark Block

By: _____
Mark Block
Attorney for Defendant
BC 268 849

DATED: January __, 2010

THE GERSH AGENCY, INC.
Robert Gersh

By: _____
Robert Gersh
Co-President
BC 268 840

DATED: January __, 2010

PAUL, HASTINGS, JANOFSKY & WALKER
Paul Grossman

By: _____
Paul Grossman
Attorney for Defendants
BC 268 844

1 DATED: January __, 2010

BINGHAM MCCUTCHEN
Bruce Friedman

2
3 By: _____
4 Bruce Friedman
5 Attorney for Chartis Claims, Inc., on
6 behalf of all Ins. Cos., as that term is
7 defined in the Settlement Agreements
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27