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

17 IN RE: TV WRITERS CASES

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

18 THIS DOCUMENT RELATES TO:

19 **Case No. 268 836** - Alch, et al. v. Time Warner
20 Entertainment Company, L.P., et al.;

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

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

25 **Case No. 268 839** - Bast, et al. v. Fox
26 Broadcasting Company, et al.;

27 **Case No. 268 840** - Levy, et al., v. The Gersh
28 Agency, Inc.;

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

Case No. 268 842- Wynn, et al. v. National
Broadcasting Company, Inc., et al.;

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-

**DECLARATION OF PAUL C.
SPRENGER IN SUPPORT OF
PLAINTIFFS' MOTION FOR (1)
PRELIMINARY APPROVAL OF
SETTLEMENT AGREEMENTS AND
DIRECTING NOTICE; (2) ENTRY
OF ADMINISTRATIVE ORDER
NOS. 1-4; AND (3) ENTRY OF
PRELIMINARY APPROVAL
ORDER ;**

**EX. A EXPERIENCE OF CLASS
COUNSEL**

**EX. B HISTORY OF LITIGATION
AND NEGOTIATION OF
SETTLEMENT**

**EX. C PLAINTIFFS' LIAISON
COMMITTEE SUPPORTING
COMMENTS**

**EX. D DECLARATION OF TODD B.
HILSEE**

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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 I, PAUL C. SPRENGER, declare and state as follows:

2 1. I am Lead Counsel for Plaintiffs in the Television Writers Cases and submit this
3 declaration in support of Plaintiffs’ Motion for (1) preliminarily approval of 19 Settlement
4 Agreements and directing notice to class members; (2) entry of Administrative Orders Nos. 1-4;
5 and (3) entry of the Preliminary Approval Order. The defendants in these 19 cases include all of
6 the “employer defendants,” including 17 major networks and production studios, and all of the
7 “talent agency defendants,” except Creative Artists Agency, that have not previously entered into
8 settlement agreements with plaintiffs, including most of the major talent agencies in the country.
9 I also intend this declaration to support final approval of the settlement agreements in these
10 matters, although I am likely to file a supplemental memorandum. The opinions I express here
11 about the notice and proposed settlement are based on my experience in employment and class
12 action litigation, and personal knowledge of the facts, all of which are set out below and in
13 attachments, Exhibit A “Experience of Class Counsel,” and Exhibit B “History of the Litigation
14 and Negotiation of Settlement.” I have personal knowledge of the litigation history, claims and
15 defenses, and record in all the Television Writers Cases, including the competing legal theories
16 and facts, and personally directed plaintiffs’ negotiations and the ultimate compromise reached
17 by the settling defendants and plaintiffs’ counsel.

18 2. The settlement amount is for over \$70 million, inclusive of some interest income
19 since partial deposit. The amount is unallocated among the Settling Defendants in the 19 cases,
20 except for purposes internal to defendants and their insurers.

21 3. In my opinion, the proposed Settlement is a fair, reasonable and adequate
22 compromise of plaintiffs’ class claims and should be offered to the proposed settlement class
23 members to accept or comment upon via the Notice Plan and Schedule proposed by the parties.

24 4. I base my opinion on four decades of experience serving as counsel in multi-party
25 litigation and in employment discrimination class action trials and the following:

26 A. Benefits to the class: (1) the settlement makes available significant
27 monetary awards for any economic losses that Settlement Class Members incurred during
28 the liability period and clearly is within the “range of reasonableness”; and (2) the

1 settlement makes available significant future opportunities for class members in the Fund
2 for the Future provisions.

3 B. Risks of loss to the class: the class could lose and come away with
4 nothing.

5 C. Delay is avoided: absent a settlement, a trial on class liability is years
6 away as is any final judgment.

7 D. Savings in human and monetary resources are achieved: already 21
8 named plaintiffs have died, over 120,000 hours of legal time have been expended and
9 over \$3 million in out-of-pocket costs have been advanced on behalf of plaintiffs over the
10 past 10 years. I estimate a minimum of \$5 million in out-of-pocket costs and at least
11 another 40,000 hours of legal time will be saved by resolving these cases now rather than
12 taking them to a possible judgment years or perhaps a decade from now.

13 E. In my opinion, the damages exposure of these Defendants, after taking
14 into account the risks of loss and delay, is fairly reflected in the amount to be paid.

15 **History of This Litigation.**

16 5. This litigation began in the Spring of 2000, when Class Counsel undertook to
17 investigate industry-wide allegations of age discrimination with respect to the hiring and
18 representation of television writers. In connection with the investigation, Class Counsel
19 reviewed reports commissioned by the Writers Guild of America (“WGA”) on the demographic
20 composition of television writers and researched publicly reported ageist statements made by
21 television executives and agents. In addition, Class Counsel conducted telephone and in-person
22 interviews, ultimately with hundreds of television writers, to determine the potential evidentiary
23 and anecdotal support for the allegations of age discrimination. Based on this investigation,
24 beginning in May, 2000, I undertook representation of more than 50 plaintiffs who filed charges
25 of age discrimination with the Equal Employment Opportunity Commission and the California
26 Department of Fair Employment and Housing alleging that the television networks and studios
27 engaged in patterns or practices of age discrimination in the hiring of television writers and
28 adopted practices that had a disparate impact on older writers. As to talent agencies, the charges

1 alleged that they engaged in patterns or practices of age discrimination and adopted practices that
2 had a disparate impact on older writers in representation and referral for work. Eventually, all
3 charging parties received notices of right to sue from the EEOC for the federal action and the
4 California DFEH for the 23 TV Writers Cases.

5 6. I was aware of the huge scope of the contemplated industry-wide class litigation
6 and assembled a skilled litigation team of co-counsel, within which I created a Steering
7 Committee of lawyers to assist in prosecuting the litigation. My Steering Committee initially
8 included Maia Caplan, Steven Sprenger, Michael Lieder and Daniel Wolf. Dolly Gee and
9 Thomas Osborne of AARP Foundation Litigation later joined the Steering Committee. I acted as
10 Chair of the Steering Committee, which met in person or by teleconference as frequently as six
11 times a month to once every other month over most of the past 10 years.

12 7. The detailed history of the litigation, from the filing of the initial class action in
13 the United States District Court in Los Angeles in 2000, through plaintiffs' production of over
14 100,000 pages of documents and answering hundreds of written interrogatories directed to each
15 of our 186 named plaintiff clients, and five different writ petitions or appeals to the California
16 Court of Appeal and two petitions to the California Supreme Court, is set forth in Exhibit B to
17 this Declaration.

18 **Settlement Negotiations.**

19 8. I began preliminary settlement discussions with several Defendants in the late Fall
20 of 2006. Over the next three years, those initial exploratory meetings broadened and resulted in
21 this Settlement.

22 9. Plaintiffs and the Defendants with whom we were then negotiating engaged a
23 skilled mediator, Hunter Hughes, Esq., of Atlanta, Georgia, at the beginning of the negotiations.
24 Mr. Hughes is one of the two leading mediators of class action employment discrimination cases
25 in the country. Later in the negotiations, with a different group of Defendants, the parties
26 engaged Linda Singer of Washington, DC, the other leading negotiator of class action
27 employment discrimination cases in the country. And on June 25, 2009, the Court appointed The
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1 Honorable Anthony Mohr to conduct mandatory settlement negotiations with a third group of
2 defendants pursuant to Rule 3.1380.

3 10. During the negotiations, several of the Defendants provided employment data
4 with all identifying information redacted pursuant to terms negotiated by Mr. Hughes. We used
5 the data and information contained in reports issued periodically by the Writers Guild of
6 America (“WGA”) to estimate exposure numbers for Defendants. Finally, during these
7 negotiations, my colleagues and I benefited from input from the Plaintiffs Liaison Committee
8 (discussed in paragraph 15 below) and the interrogatory answers of most of the Defendants to
9 form an understanding of industry policies, practices, and structure.

10 11. The negotiations over the monetary relief and all of the non-monetary terms (such
11 as the Fund for the Future (“FFF”), the terms of a release and indemnification, and the future
12 rights of the defendants and the settling classes) and the reduction of the various oral
13 understandings to mutually agreeable language have been protracted. I, joined by various
14 members of the Steering Committee and my partner Jane Lang, have engaged in scores of face-
15 to-face negotiating and drafting sessions and thousands of telephone, email and other
16 communications about terms and language of this settlement. Not a day has gone by in the past
17 year in which I have not had at least one videoconference, teleconference or email from or with
18 at least one, and more often dozens, of defense counsel, plaintiffs’ counsel and/or clients
19 concerning every word and detail in the settlement papers.

20 12. To say the negotiations were vigorous understates the fact – the negotiations were
21 zealous and hard-fought, and at many times, it appeared that the negotiations would fail because
22 of drastic differences in the parties’ positions. The level of complexity and contentiousness was
23 unprecedented in my 45 years of litigation experience. Frequently parties reached original
24 solutions to bridge their differences. For example, the FFF was created as a program run by
25 class members and supervised by the trustees of the settlement fund instead of the more normal
26 provisions for programmatic relief involving defendant-run activities. The FFF’s primary
27 purpose is to create and enhance work opportunities for older TV writers. Without the FFF
28 solution, I do not believe that there would have been a settlement.

1 13. Finally, in December 2009, after more than three years of effort, involving over
2 45 lawyers on both sides, the parties agreed on the final settlement terms and language

3 14. I am not privy to the internal allocation of payment or other obligations of the
4 settling defendants as among them or between them and their insurance carriers.

5 15. During the negotiations, I regularly consulted with the six class representatives
6 who formed the Plaintiffs' Liaison Committee. The mission of the Committee is to assist
7 counsel in (a) understanding nuances of the practices affecting TV writers' employment so a
8 resolution that benefits the class as a whole, as opposed to any particular sub-set, can be reached,
9 and (b) consulting as to certain provisions, for example, those related to the FFF. The
10 Committee is composed of Larry Mintz, Stephen Geller, Ron Friedman, Art Eisenson, Bob
11 Shayne and Allan Leicht. The members of the committee are all "Lead Named Plaintiffs" and as
12 such designated by agreement of the parties and Court Order for deposition and more extensive
13 discovery. They all support the settlement, as shown by their letters attached as Exhibit C.

14 16. Throughout the course of the settlement discussions and negotiations, I and other
15 Class Counsel also had the assistance of the statistical consulting firm of Drogin, Kakigi &
16 Associates. These statisticians, who frequently have been qualified to testify in employment
17 discrimination class action cases, estimated damages based on the information described in
18 paragraph 10 above.

19 **Suitability of Classes for Certification.**

20 17. The settlement calls for the certification of two classes: the Professional
21 Television Writers Class ("PTW") and the Aspiring Television Writers Class ("ATW"). The
22 PTW Settlement Class includes members of the WGA age 40 and older and other persons who
23 have been paid to write for television. Based on my knowledge of the industry, I believe that
24 WGA members comprise most of this class and that the class contains well over 10,000 current
25 and former members of the WGA, all of whom can be ascertained with virtual certainty from the
26 WGA's records. Under any standard of joinder, the members of the PTW class are too numerous
27 to be joined as parties in one action.

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1 18. The ATW class is composed of an unknown number of people who are not
2 members of the PTW, who are older than 40, and who are interested in television writing even
3 though they have not been paid to write for television. The number probably exceeds that of the
4 PTW class based on the number of script registrants and other information; however, there is no
5 “list” of members of the ATW class over the age of 40. The only partial list is of the “script
6 registration” databases maintained by the WGA East and West, and those databases cannot be
7 screened for age or for interest in television writing as opposed to other forms of writing.

8 19. Common legal and factual questions abound as to both classes. One of plaintiffs’
9 legal theories is that defendants’ facially-neutral practices have created a disparate impact on the
10 class and/or age-based subclasses. Proof of that common legal claim is based on the same body
11 of facts for all persons in those age ranges: primarily a statistical analysis of a labor economist
12 or statistician of the ages of writers employed or represented compared to the ages of those in the
13 pool of qualified writers, controlling for appropriate factors available in the data.

14 20. Myriad common questions arise from the other primary legal theory of plaintiffs:
15 defendants engaged in a pattern or practice of disparate treatment. The statistical proof would be
16 largely the same as for a disparate impact claim. In addition, plaintiffs have accumulated,
17 through public information, information from plaintiffs, and informal discovery, evidence
18 concerning numerous alleged statements or incidents involving Defendants that, plaintiffs would
19 contend, have fostered and reflected the culture and stereotypes that prevent older writers from
20 obtaining employment.

21 21. The Settlement Classes in these cases are represented by a litigation team I
22 believe to be supremely experienced in employment class action litigation. I have prosecuted
23 plaintiffs’ employment class actions for forty years. My partner, Jane Lang, has 30 years of
24 employment class action litigation experience including defending against protected class claims
25 in the AT&T and Steel Industry Consent Decree proceedings in the 1970s. Our law firm and
26 each of us individually have been honored by national civil rights advocacy groups, including the
27 National Partnership for Women and Children, and the Washington Lawyers Committee for
28 Civil Rights. We have received honors and recognition as top employment litigators nationally

1 from the National Lawyer, the American Lawyer, the Washingtonian, The Minnesota Journal of
2 Law and Politics, The Best Lawyers in America, the Washington Post and as Super Lawyers in
3 Minnesota and Washington DC. Other class counsel collectively have over 100 years of
4 employment class action experience. Furthermore, Class Counsel include lawyers from AARP
5 Foundation Litigation, some of the foremost legal experts in the country in the area of age
6 discrimination law.

7 22. My full professional biography is set forth in Exhibit A which I summarize here.
8 I am admitted to practice law before the United States Supreme Court and in the District of
9 Columbia and Minnesota. I am a member of the Bars of the United States Courts of Appeal for
10 the District of Columbia, First, Third, Fourth, Sixth, Seventh, Eighth, and Tenth Circuits. I
11 have been a trial lawyer since 1965. My experience and qualifications in the field of
12 employment and class action litigation span four decades.

13 23. Jane Lang and I established the firm of Sprenger & Lang on January 1, 1989. The
14 predecessor firms' employment class action representation goes back to the 1970's, as detailed in
15 Exhibit A. I have served as plaintiffs' lead counsel or liaison counsel in several federal multi-
16 district proceedings, involving collectively more than 250 class actions, and as lead counsel in
17 about two dozen consolidated employment class action litigations, including 17 landmark
18 decisions or settlements listed in Exhibit A. I've been lead counsel in and actually tried more
19 employment discrimination class actions than any other plaintiffs' lawyer of whom I am aware.
20 No defendant has ever challenged my adequacy as counsel to a class, a requirement that must be
21 satisfied in any class action. To the contrary, I have assumed representation of certified
22 employment classes midway through litigation when the court determined the predecessor
23 counsel could not adequately represent the classes. Over the past 30 years, I have spoken
24 regularly at national, state and local continuing legal education courses across the country and
25 prepared articles concerning trial of employment class actions and related topics.

26 24. Gwendolyn Baer and Linda Yandell, the two persons whom the Court is
27 requested to add as new plaintiffs in order to serve as representatives of the ATW class, have
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1 filed charges of discrimination and received right-to-sue notices from the California Department
2 of Fair Employment and Housing.

3 **The Fairness, Reasonableness and Adequacy of the Settlement**

4 25. In my opinion, the \$70 million current settlement amount, including the provision
5 for the Fund for the Future, constitutes a fair, reasonable and adequate settlement of the disputed
6 claims, after discounts for: (a) risk of loss; (b) avoidance of further delay; and (c) savings of
7 human and other resources, which would necessarily be expended in prosecuting these cases into
8 the future. About \$42 million of that \$70 million initially will be dedicated to pay awards to
9 Settlement Class Members who timely submit valid claim forms, including the appropriate taxes
10 and benefits (if any) payable on the awards, to fund reserves associated primarily with the
11 awards to class members and to fund prospective activities under the aegis of the Fund for the
12 Future. I anticipate that after the Trustees of the QSF II finally account for all costs incurred in
13 the settlement administration, notice and other outlays, an additional sum of about one million
14 dollars will be contributed to the Fund for the Future by the Trustees from the Legal Expense and
15 Costs portion.

16 26. To the best of my knowledge, the FFF is a unique provision in employment
17 discrimination settlement agreements designed to respond to the circumstances facing Settlement
18 Class Members. It is an independent body and fund run by Settlement Class Members, with
19 oversight provided by the Trustees of QSF II, to engage in activities designed to further the
20 careers and projects of Settlement Class Members and provide financial support for Settlement
21 Class Members facing life crises. It empowers Settlement Class Members themselves to fashion
22 programs for the benefit of the Settlement Classes, and I believe that this structure creates strong
23 incentives for success for the FFF.

24 27. Although the theories underlying plaintiffs' claims are well-established under
25 federal law and were endorsed by the California Court of Appeal in its 2004 decision in these
26 cases, risk remains as to the (A) scope of the classes (and subclasses) that would be approved for
27 trial and as to (B) a jury finding of liability and (C) the amount of damages awarded to the class
28 as a whole.

1 28. I believe that proceeding through a class action trial against these defendants
2 would require an additional expenditure of over 40,000 attorney, paralegal, legal assistant and
3 law clerk hours and over \$5,000,000 in out-of-pocket expenses primarily for pretrial expert
4 statistical analysis and testimony; discovery depositions; and document production review and
5 analysis. All of this work would be looking toward development of class certification evidence
6 in 19 cases and trial testimony establishing that the Employer Defendants are liable for failing to
7 hire older television writers and that the Talent Agency Defendants are directly liable and are
8 liable under the theory that they “aided and abetted” the production studios and networks to
9 whom they failed to refer qualified members of the classes.

10 29. I doubt the litigation would be complete for at least a decade from now. After
11 nearly nine years of hard-fought litigation, including five trips to the Court of Appeal and two
12 petitions to the Supreme Court, the parties have barely commenced discovery. The 19 cases
13 included in the Settlement could not be tried all at once. And while the litigation was
14 proceeding, plaintiffs and Settlement Class Members would continue to age. Already 21 of the
15 plaintiffs named in the original complaints have died.

16 30. While the settlement that Class Counsel reasonably could allocate to each case is
17 smaller than the maximum possible exposure calculated by plaintiffs’ statistical experts for that
18 case, it is far greater than Defendants’ position, which is that Plaintiffs are entitled to nothing.

19 **Notice of the Settlement.**

20 31. The parties have devised a sophisticated notice plan. Indisputably, in these cases,
21 the mailed notice alone has “a reasonable chance of reaching a substantial percentage” of the
22 members of the PTW Settlement Class. Notice will be mailed to all persons shown on the
23 records of the WGA East and West are or were members (or associate members) of the WGA,
24 unless those records show that they are under the age of 40. Before mailing to WGA members,
25 mailing addresses shown in the WGA records will be updated through the two change of address
26 databases. I believe that WGA members over 40 comprise virtually all of PTW Settlement Class
27 members, so that mailed notice will likely reach more than 90% of the PTW Settlement Class
28 members.

1 32. The parties' notice plan requires that, with a few narrow exceptions, mailed and
2 emailed notice will be sent to non-WGA members who registered scripts and other literary
3 materials with the WGA East or West. That is the only data source available to the parties
4 concerning the identity and addresses of possible members of the ATW Settlement Class.

5 33. There is no list of ATW Settlement Class members. Some script registrants may
6 be class members. For these reasons, the provisions for published notice are more important as
7 to the ATW Settlement Class than as to the PTW Settlement Class.

8 34. Published notice of this Settlement will be national in scope and designed to reach
9 more than 70% of Americans, including older writers. Print and online media selected by
10 experts in the field retained by me for this purpose will cost over \$765,000. Although not
11 required by the Settlement, the WGA West and East have decided to announce the Settlement on
12 the first pages of their websites starting immediately after preliminary approval. The Notice that
13 appears on the WGA West and East websites will provide links to Class Counsel's website from
14 which Settlement Class Members could find all of the settlement documents and other
15 information about the cases and the Settlement. The websites of the WGA East and West are
16 likely to be visited by members of the PTW Settlement Class as well as any persons who
17 seriously aspire to become professional writers.

18 35. All of these various notices direct readers to websites maintained by the Claims
19 Administrator and by Class Counsel. The Settlement requires the Claims Administrator's
20 website to contain, and Class Counsel's website will contain, copies of all of the Settlement
21 documents and additional information about the Settlement. Class Counsel's website also will
22 contain information about the litigation generally. Counters will track the number of hits on the
23 webpages of the Claims Administrator and Class Counsel.

24 36. In total, I anticipate that about \$1 million in out-of-pocket costs will be disbursed
25 from the Settlement fund to provide published and mailed notice to Settlement Class Members.

26 37. In order to ensure the best notice campaign reasonably practicable, I engaged the
27 services of Todd Hilsee, a noted class action legal notice consultant who specializes in advising
28 courts and counsel about compliance of notice plans with class action due process requirements.

1 Seth Pierce (Defendants' Liaison Counsel) and I have been consulting with him regularly. A
2 separate declaration from Mr. Hilsee regarding the notice plan, together with his CV, is
3 submitted with these materials and attached as Exhibit D.

4 **Attorneys' Fees.**

5 38. At the final approval hearing, Class Counsel will seek an award of attorneys' fees
6 equal to the percentage specified in their contingent fee contracts with the Plaintiffs, 1/3 of the
7 settlement amount, or about \$23,333,000. According to our contemporaneously maintained
8 records, about 160 lawyers, paralegals, legal assistants and law clerks have worked more than
9 120,000 hours on the various TV Writers Cases over the years. That amount of work is equal to
10 sixty 2,000-hour years.

11 39. We will also seek reimbursement of expenses actually incurred throughout the
12 over 9-year course of litigating these cases. The expenses sought to be reimbursed, which I
13 personally know to be in excess of \$2.5 million in the TV Writers Cases overall, will be verified
14 by those who advanced those expenses to prosecute the cases on behalf of the classes, primarily
15 Sprenger & Lang, AARP, Jane Lang and me.

16
17 I declare under penalty of perjury that the foregoing is true and correct.

18 Executed this ___ day of January, 2010 at Washington, DC.

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20
21 _____
Paul C. Sprenger