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

19 IN RE: TV WRITERS CASES  
20 \_\_\_\_\_

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

21 THIS DOCUMENT RELATES TO:

- 22 **Case No. 268 836** – Alch, et al. v. Time Warner  
Entertainment Company, L.P., et al.;
- 23 **Case No. 268 837** – Neal, et al. v. Viacom Inc.  
and United Paramount Network;
- 24 **Case No. 268 838** – Young, et al. v. DreamWorks  
SKG TV LLC;
- 25 **Case No. 268 839** – Bast, et al. v. Fox  
Broadcasting Company, et al.;
- 26 **Case No. 268 840** – Levy, et al. v. The Gersh  
Agency, Inc.;
- 27 **Case No. 268 841** – Edwards, et al. v. The Carsey-  
28 Werner Co., et al.;

**DECLARATION OF THOMAS W. OSBORNE 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) LEAVE TO ADD TWO PLAINTIFFS**

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

3 **Case No. 268 843** – Brooks, et al. v. William  
4 Morris Agency, Inc.;

5 **Case No. 268 844** – Brett, et al. v. Walt Disney  
6 Company, et al.;

7 **Case No. 268 845** – Distefano, et al. v. Columbia  
8 TriStar Television, Inc.;

9 **Case No. 268 847** – Eisenson, et al. v. Lucy Stille  
10 & Associates, Inc., d/b/a Paradigm Talent  
11 & Literary Agency, et al.;

12 **Case No. 268 848** – Lang, et al., v. Shapiro-  
13 Lichtman, Inc., d/b/a Shapiro  
14 Lichtman-Stein;

15 **Case No. 268 849** – Neal, et al. v. The Endeavor  
16 Agency, Inc.;

17 **Case No. 268 877** – Kinghorn, et al. v. Universal  
18 Studios, Inc., et al.;

19 **Case No. 268 878** – Moriarty, et al. v. Viacom  
20 Inc., Paramount Studios, Inc., et al.;

21 **Case No. 268 880** – Yanok, et al. v. Agency for  
22 the Performing Arts, Inc.;

23 **Case No. 268 881** – Schwartz, et al. v. United  
24 Talent Agency, Inc.;

25 **Case No. 268 882** – Shayne, et al. v. Viacom Inc.  
26 and CBS Broadcasting Inc; and

27 **Case No. 268 883** – Kalish, et al. v. Viacom Inc.,  
28 Spelling Entertainment Inc., et al.

**DECLARATION OF THOMAS W. OSBORNE IN SUPPORT OF PLAINTIFFS'**

1 **MOTION FOR PRELIMINARY APPROVAL**

2  
3 Thomas W. Osborne, hereby declares and states:

4  
5 I am National Class Counsel for plaintiffs in the television writers cases and submit this  
6 declaration in support of preliminary and final approval and notice of settlement in the following  
7 cases: *Alch, et al. v. Time Warner Entertainment Company, L.P., et al.*, Case No. C268836; *Bast,*  
8 *et al. v. FoxEntertainment Group, Inc., et al.*, Case No. BC 268839; *Brett, et al. v. The Walt*  
9 *Disney Company, et al.*, Case No. BC 268844; *Brooks, et al. v. William Morris Agency, Inc.*,  
10 Case No. BC 268843; *Distefano, et al. v. Columbia Tristar Television, Inc.*, Case No. BC  
11 268845; *Edwards, et al. v. The Carsey-Werner Company, et al.*, Case No. BC 268841; *Kalish, et*  
12 *al. v. Viacom Inc., et al.*, Case No. BC 268883; *Kinghorn, et al. v. Universal Studios, Inc., et al.*,  
13 Case No. BC 268877; *Moriarty, et al. v. Viacom Inc., et al.*, Case No. BC 268878; *Neal, et al. v.*  
14 *Viacom Inc., et al.*, Case No. BC 268837; *Shayne, et al. v. Viacom Inc., et al.*, Case No. BC268  
15 882, *Wynn, et al., v. National Broadcasting Company, Inc., et al.*, Case No. BC 268842;  
16 *Andyoung, et al., v. Dreamworks SKG TV, LLC*, Case No. BC 268838 (“Settling Cases” herein).

17 1. The opinions I express here about the notice and settlement are based on my  
18 experience in employment and class action litigation, which is described herein and personal  
19 knowledge of the facts, all of which are set out in Exhibit B “History of the Litigation and  
20 Negotiation of Settlement” attached to the Declaration of Paul C. Sprenger in Support of  
21 Preliminary and Final Approval of Proposed Class Settlement and Order Directing Notice. I  
22 have personal knowledge of the litigation history, claims and defenses, and record in all the  
23 Television Writers Cases, including the competing legal theories and facts supporting each,  
24 which served as the bases for the extensive negotiations and mediated compromise reached by  
25 the parties and counsel.

26 2. In my opinion, the proposed Settlement Agreement is a fair, adequate and  
27 reasonable compromise of plaintiffs’ class claims alleged in the relevant complaints in the  
28 Settling Cases. I reached my opinions on the fairness of the settlement and adequacy of notice

1 after assessing (a) the damages exposure of the entire industry and the settling defendant  
2 employers and agency individually; and (b) the risks of loss to both sides. I applied my  
3 judgment accumulated over more than three decades of experience as an attorney, seventeen of  
4 which have been devoted exclusively to employment litigation, including serving as class  
5 counsel in several complex actions.

6 3. The settlement offers significant benefits to the class as a whole, and each class  
7 member should be given Notice and an opportunity to accept that offer as it applies to him or her  
8 by filing a claim for monetary and/or a job opportunity. Notice will also offer the class members  
9 the chance to: (a) express their views by commenting on the offer, either in favor or not; (b) opt  
10 out of the settlement to pursue their individual claims against these defendants, if any; or (c)  
11 object to the settlement offer to the class as a whole.

12 4. It is also my opinion that the forms of Notice by publication and mailing will  
13 reach and fully and fairly inform 100% of class members of the settlement provisions and their  
14 rights. The proposed forms of notice and schedule for publication are attached to the proposed  
15 Order granting preliminary approval and directing notice. The Professional Television Writers  
16 Settlement Class consists primarily of probably more than 10,000 current and former members of  
17 the Writers Guild of America (“WGA”), concentrated in Los Angeles (WGA West) and New  
18 York (WGA East); most of their current addresses are on WGA electronic databases. However,  
19 because accurate current addresses and/or dates of birth for some class members may be missing  
20 or are unknown to WGA, its databases would not be sufficient to assure that mailed notice alone  
21 would reach all of the Professional Television Writers Settlement Class; mailed notice will  
22 therefore be supplemented by published notice designed to reach class members in the most  
23 practical and cost effective means.

24 5. Published notice, and internet notice, were designed primarily to reach the  
25 members of the Aspiring Writers Class, most of whom are not in the WGA databases unless they  
26 previously registered their scripts. The number of “aspiring writers” is unknown, but probably  
27 exceeds the number of Professional Television Writers. The “aspiring writers” who registered  
28 scripts or other material with either WGA West or WGA East will be sent a copy of the

1 published notice by U.S. mail or email. The published and internet notices will refer readers to  
2 the detailed notice and websites of the Claims Administrator and Class Counsel for more  
3 information.

4 6. The notice informs class members of the names and roles of the attorneys who  
5 have represented plaintiffs since 2000 and the contingent nature of the fees they will seek, based  
6 on verified statements of the hours they expended to prosecute the litigation and their hourly  
7 rates. Counsel have also agreed that the total of attorneys' fees shall not exceed one-third and  
8 out-of-pocket expense reimbursement shall not exceed 6.7% of the settlement amount for a total  
9 of 40%. Plaintiffs' counsel have also agreed that a portion of the expense reimbursement  
10 allocation shall be contributed to the Fund for the Future.

#### 11 **Summary of Professional Experience and Qualifications**

12 7. I am admitted to practice law before the United States Supreme Court and in the  
13 District of Columbia and Virginia. I am a member of the Bars of the United States Courts of  
14 Appeal for the Second, Third, Fourth, Sixth, and Eleventh Circuits. I have been a trial and  
15 appellate lawyer for 32 years and have practiced employment law exclusively since 1992. My  
16 resume is attached to this Declaration as Exhibit A. I have served as co-counsel for plaintiffs in  
17 several class or collective actions, including *Williams, et al. v. Sprint/United Mgt. Co.*, USDC D  
18 KANSAS CA No. 03-2200-JWL, *Feltman, et al. v. Capital One Services, Inc.*, USDC ED VA  
19 No. 3:02CV894, *Siegel, et al. v. Ford Motor Co.*, Superior Ct. Wayne County Michigan Case  
20 No. 01-102583-CL, *Romero, et al. v. Allstate Ins. Co., et al*, USDC ED PA No. 2:01-cv-3894,  
21 *Merritt v. Wellpoint, Inc.* USDC ED VA No. 3:08-cv-272, *Peterson, et al. v. Seagate US LLC, et*  
22 *al.*, USDC D MN No. 0:07-cv-2502, and *Garcia, et al. v. 3M Co.*, USDC ND CA No. C09-  
23 01943 PVT [ADR]. My CV is attached.

24 8. In my opinion, the present cases meet the rigorous legal standards to be  
25 maintained as class actions for trial, as well as for settlement purposes.

26 a. Numerosity. Under any standard of joinder, the class members are too  
27 numerous to be joined as parties in one action, making a single class action appropriate. The  
28 Professional Writers class alone is composed of about 10,000 members with about 7,500 in and

1 around Los Angeles and 2,500 in and around New York City, all of whom can be ascertained  
2 with virtual certainty from records of their membership in the Writers Guild of America, West  
3 and East.

4           b.       Community of Interest (Common Questions/Typicality). Common legal  
5 and factual questions abound in both cases. One of plaintiffs' legal theories is that there is a  
6 disparate impact on the class and/or sub-classes of writers 40 to 49, and 50 and more years of  
7 age, respectfully. Proof of that common legal claim is based on the same body of facts for all  
8 persons in those age ranges: essentially a statistical compilation of age data of those represented,  
9 based in part on the expert opinion of a labor economist describing the available pool of older  
10 writers, that underlies an opinion on the existence of age bias in the hiring processes of settling  
11 defendants.

12           There are myriad common questions arising from the other primary legal theory of  
13 plaintiffs: that defendants engaged in a pattern or practice of disparate treatment. The proof is  
14 the same body of statistical evidence for all in the class, as well as corroborative factual  
15 anecdotes from plaintiffs and others, and the documented admissions of settling defendants to the  
16 effect that age bias permeates their hiring practices. There is also substantial evidence from  
17 public statements and other public information that could form the basis for a favorable jury  
18 verdict for the class as a whole in one trial leading to one classwide fluid damages award.

19           The factual and legal questions common to the core issue of age discrimination presented  
20 by all class members necessarily give rise to claims that are typical of each of them. Thus, in  
21 these cases, the two requirements, and the ability of the class to satisfy them, merge.

22           c.       Adequacy of representation. My qualifications to represent a class in a  
23 discrimination class or collective action have never been questioned by any defendant.  
24 Likewise, there are no conflicts among settlement class members and/or within the class.

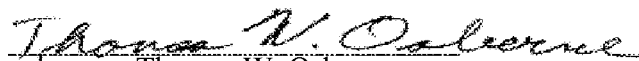
25           9.       In my opinion, the \$67 million settlement amount fairly and accurately reflects  
26 the settling defendants exposure, taking into account the good faith allocation to non-settling  
27 defendants, after discounts for: (a) risk of loss; (b) avoidance of further delay and lost income  
28 opportunities for the class; (c) the innovative Fund for the Future in lieu of injunctive relief; and

1 (d) savings of human and other resources, which would necessarily be expended in prosecuting  
2 these cases into the future. I believe that proceeding through a class action trial against these  
3 defendants would require an additional expenditure of several thousand attorney hours and well  
4 over \$6 million to \$8 million in out-of-pocket expenses primarily for pretrial expert statistical  
5 analysis and testimony; discovery depositions; document production review and analysis; and  
6 development of trial testimony establishing liability of the settling defendants.

7 10. The statistical and labor economic analysis of the facts described in the  
8 Declaration of Paul C. Sprenger, coupled with legal precedents and judgments on apportioning  
9 damages among joint and several parties, support the \$67 million settlement payment by settling  
10 defendants. More importantly, the Fund for the Future creates a blueprint to enable the class to  
11 help reshape the industry to provide opportunities for older TV writers going forward. This is an  
12 opportunity that would not likely be available even if they prevailed in the litigation. Moreover,  
13 in complex and lengthy age discrimination litigation such as this one, a settlement *today* as  
14 opposed to years from now, means everything to more and more class members each year.  
15 Already, 20 named plaintiffs have died during the ten years this matter has been in litigation. In  
16 2000, when the litigation commenced, the average age of plaintiffs was 47. Given that trial and  
17 further appeals will not likely be completed for eight to ten more years, the average age of  
18 plaintiffs would then be 65 years, and it is predictable that at least 20 more will have died by  
19 then.

20  
21 I declare under penalty of perjury under the laws the State of California that the foregoing is  
22 true and correct.

23 Executed this 24<sup>th</sup> day of September, 2009, in Washington, D.C.

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26 Thomas W. Osborne

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*(Additional Plaintiffs' Attorneys)*

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