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6
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF LOS ANGELES**
9 **CENTRAL CIVIL WEST**

10 IN RE: TV WRITERS CASES,

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

11
12 Case No. BC 268 836

13 THIS DOCUMENT RELATES TO:

14 Alch, et al., v. Time Warner Entertainment,
Company, et al., Case No. BC 268 836;
15 Neal, et al., v. Viacom Inc. and United Paramount,
Network, et al., Case No. BC 268 837;
16 Young, et al., v. DreamWorks SKG TV LLC ,
Case No. BC 268 838;
17 Bast, et al., v. Fox, Broadcasting Company, et al.,
Case No. BC 268 839;
18 Levy, et al., v. The Gersh Agency, Inc., Case No. BC
268 840;
19 Edwards, et al., v. The Carsey-Werner, Company,
et al., Case No. BC 268 841;
20 Wynn, et al., v. National Broadcasting Company,
Inc., et al., Case No. BC 268 842;
21 Brooks, et al., v. William Morris Agency,
Case No. BC 268 843;
22 Brett, et al., v. The Walt Disney Company, et al.,
Case No. BC 268 844;
23 DiStefano, et al., v. Columbia TriStar Television,
Inc., Case No. BC 268 845;
24 Eisenon, et al., v. Lucy Stille & Associates, Inc.,
d/b/a Paradigm Talent & Literary Agency, et
25 al., Case No. BC 268 847;
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27
28

**NOTICE OF MOTION AND
MOTION FOR AN AWARD OF
ATTORNEYS' FEES AND
EXPENSES; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF;
DECLARATIONS OF BARRY
GOLDSTEIN, ROGER WARIN
PAUL C. SPRENGER, STEVEN M.
SPRENGER, MAIA CAPLAN,
DANIEL WOLF, HENRY M.
WILLIS, THOMAS W. OSBORNE,
DANIEL B. EDELMAN, AND
WILLIAM T. PAYNE**

DATE: May 14, 2010

TIME: 1:45 p.m.

DEPT: 324

1 Lang, et al., v. Shapiro-Lichtman, Inc., d/b/a
2 Shapiro-Lichtman-Stein, Case No. BC 268
3 848;
4 Neal, et al., v. The Endeavor Agency, Inc., Case No.
5 BC 268 849;
6 Kinghorn, et al., v. Universal Studios, Inc., et al.,
7 Case No. BC 268 877;
8 Moriarty, et al., v. Viacom Inc., and Paramount,
9 Studios, Inc., et al., Case No. BC 268 878;
10 Yanok, et al., v. Agency for the Performing Arts,
11 Inc., Case No. BC 268 880;
12 Schwartz, et al., v. United Talent Agency, Inc., Case
13 No. BC 268 881;
14 Shayne, et al., v. Viacom Inc. and CBS
15 Broadcasting, Inc., Case No. BC 268 882,
16 Kalish, et al., v. Viacom Inc., et al., Case No. BC
17 268 883.

18 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD AND TO**
19 **ALL MEMBERS OF THE SETTLEMENT CLASSES:**

20 **PLEASE TAKE NOTICE** that Plaintiffs, by and through their counsel and
21 pursuant to C.C.P. § 382, C.C.P. § 473, and Rule 3.769 of the California Rules of Court,
22 and governing case law, hereby move the Court for an award of attorneys' fees in the
23 amount of 1/3 of the amount of the settlement, or \$23,333,333.33, plus allocable interest,
24 and of \$2,062,810.26 to reimburse them for out-of-pocket expenses incurred.

25 **PLEASE ALSO TAKE NOTICE** that Plaintiffs will present the motion orally on
26 May 14, 2010, at 1:45 p.m., or as soon thereafter as Plaintiffs may be heard, in
27 Department 324 of the above-entitled court located at 600 S. Commonwealth Avenue,
28 Los Angeles, California.

A memorandum referring to the points and authorities justifying this motion follows.

Factual support is contained in the accompanying Declarations of Barry Goldstein, Roger E. Warin, Paul C. Sprenger, Steven M. Sprenger, Maia Caplan, Daniel Wolf, Henry M. Willis, Thomas W. Osborne, Daniel B. Edelman and William T. Payne.

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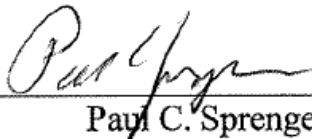
Dated: April 14, 2010

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

I. INTRODUCTION 1

II. FACTS

III. LEGAL ARGUMENT 6

A. An Attorneys’ Fee Award of One-Third of the Common Fund is Fair and Reasonable in Light of the Benefit Conferred on the Class. 6

1. The Requested Fee Award is Justified Under the Percentage of Benefits Methodology. 7

2. The Requested Fee Award is Easily Justified Under the Lodestar Methodology..... 11

B. Payment of Expenses of About \$2 Million is Fair and Reasonable. 14

IV. CONCLUSION..... 19

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
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17
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TABLE OF AUTHORITIES

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In re "Agent Orange" Product Liability Litig.,
611 F. Supp. 1296
(E.D.N.Y. 1985).....18

In re: Broadcom Corp. Sec. Litig
2005 U.S. Dist. LEXIS 41993
(C.D. Cal. 2005)..... 16-17

In re: Brooktree Sec. Litig,
915 F. Supp. 193 (S.D. Cal. 1996).....16

In re: Complaint of Kirby Inland Marine, L.P.,
2008 U.S. Dist. LEXIS 82353
(M.D. La. 2008)18

Daly v. Hill,
790 F.2d 1071 (4th Cir. 1986)19

Di Giacomo v. Plains All Am. Pipeline,
2001 U.S. Dist. LEXIS 25532
(S.D. Tex. Dec. 18, 2001) 11-12

Dowdell v. City of Apopka,
698 F.2d 1181
(11th Cir. 1983).....17

Goldberger v. Integrated Resources, Inc.,
209 F.3d 43
(2nd Cir. 2000).....11

Harris v. Marhoefer,
24 F.3d 16
(9th Cir. 1994).....15

In re Heritage Bond Litig.,
2005 U.S. Dist. LEXIS 13555
(C.D. Cal. June 10, 2005)15, 16

In re Immune Response Sec. Litig.,
497 F. Supp. 2d 1166
(S.D. Cal. May 31, 2007).....15, 16, 17

1	<i>In re Media Vision Technology Secs. Litig.</i>	
2	913 F. Supp. 1362	
	(N.D. Cal. 1995).....	15, 16, 17
3	<i>Muehler v. Land O'Lakes, Inc.,</i>	
4	617 F. Supp. 1370	
	(D. Minn. 1985)	19
5	<i>In re Omnivision Technologies, Inc.,</i>	
6	559 F. Supp. 2d 1036	
	(N.D. Cal. 2007).....	16, 17
7		
8	<i>Meyer v. Citizens & Southern Nat'l Bank,</i>	
9	117 F.R.D. 180	
	(M.D. Ga. 1987).....	18
10	<i>Norwood v. Charlotte Mem'l Hosp. and Med. Ctr.,</i>	
11	720 F. Supp. 543	
	(W.D.N.C. 1989).....	19
12	<i>In re Rite Aid Corp.,</i>	
13	396 F.3d 294	
	(3d Cir. 2005).....	11
14		
15	<i>Vincent v. Hughes Air West,</i>	
16	557 F.2d 759	
	(9th Cir. 1977).....	15
17	<i>Vizcaino v. Microsoft Corp.,</i>	
18	290 F.3d 1043	
	(9th Cir. 2002).....	8-9, 10-11
19	<i>Wallace v. Valdez AFT,</i>	
20	2005 U.S. Dist. LEXIS 41456	
	(D. Alaska Dec. 20, 2005)	16
21	<i>Young v. Polo Retail, LLC,</i>	
22	2007 U.S. Dist. LEXIS 27269	
23	(N.D. Cal. 2007).....	10
24	STATE CASES	
25	<i>Bussey v. Affleck,</i>	
26	225 Cal. App. 3d 1162 (1990)	15
27	<i>Chavez v. Netflix, Inc.,</i>	
28	162 Cal. App. 4th 43 (2008)	7, 14

1	<i>Consumer Privacy Cases,</i>	
2	175 Cal. App. 4th 545 (2009)	7
3	<i>Glendale City Employees' Ass'n, Inc. v. City of Glendale,</i>	
4	15 Cal. 3d 328 (1975)	6
5	<i>Graham v. DaimlerChrysler Corp.,</i>	
6	34 Cal. 4th 553 (2004)	13
7	<i>Knight v. Hayward Unified School Dist.,</i>	
8	132 Cal. App. 4th 121 (2005)	15
9	<i>Lealao v. Beneficial California, Inc.,</i>	
10	82 Cal. App. 4th 19 (2000).....	6, 14
11	<i>Melendres v. City of Los Angeles,</i>	
12	45 Cal. App. 3d 267 (1975)	6
13	<i>Quinn v. State,</i>	
14	15 Cal. 3d 162 (1975)	15
15	<i>Ramos v. Countrywide Home Loans, Inc.,</i>	
16	(2000) 82 Cal. App. 4th 615	6
17	<i>Serrano v. Priest, ("Serrano III")</i>	
18	20 Cal. 3d 25 (1977)	6, 11, 14
19	<i>Sommers v. Erb,</i>	
20	2 Cal. App. 4th 1644 (1992)	11
21	<i>Thon v. Thompson ,</i>	
22	29 Cal. App. 4th 1546 (1992)	16
23	STATE STATUTES	
24	California Civil Procedure Code	
25	§14:145.1	14
26	§§ 1033.5(a)(3), (9), (11)	17
27	MISCELLANEOUS	
28	CFLI Sample Legal Services and Arbitration Agreement	18
	New York City Bar Association, Formal Opinion 2000-2	19

1 MEMORANDUM

2 **I. INTRODUCTION**

3 Following almost a decade of hard-fought litigation, the parties have agreed to a
4 \$70 million monetary settlement, including creation of the Fund for the Future, which
5 will provide money to assist class members in several different types of self-help
6 programs. This result came as a result of the expertise, perseverance, and dedicated
7 effort of Class Counsel, as well as their completely contingent expenditure of over
8 100,000 hours of time and over \$2 million in cash advances on behalf of their clients and
9 the settlement classes.

10 Class Counsel request approval of an award equal to one-third of the monetary
11 settlement as attorneys' fees and reimbursement of the out-of-pocket advances they
12 made. The fee request of about \$23.3 million, plus allocable accrued interest, represents
13 an average hourly fee of about \$230 for the work performed over 10 years. If the fee
14 award were to be based on actual rates charged by or awarded to plaintiffs' counsel, the
15 average rate would be substantially higher, about \$410 per hour. However, the 157 living
16 plaintiffs bargained for and received a limitation of one-third as the percentage cap on
17 fees. Moreover, Class Counsel agreed with defendants in the Settlement Agreements that
18 they would not seek more than one-third of the settlement for payment of attorneys' fees.

19 **II. FACTS**

20 Class Counsel commenced their industry-wide investigation of age discrimination
21 against television writers in 1999. P. Sprenger Decl., ¶ 2. In the course of their
22 investigation, they (1) interviewed in person and by telephone hundreds of television
23 writers, talent agents and others associated with the television industry; (2) reviewed
24 hundreds of media articles and other publicly available materials regarding the role of age
25 in the hiring of television writers; and (3) researched the corporate structure of the
26 various defendants and identified key decision-makers. *Id.* They filed the first class
27 charges of age discrimination against the Settling Defendants with the United States
28

1 Equal Employment Opportunity Commission and the California Department of Fair
2 Employment and Housing in the Summer of 2000. *Id.*, ¶ 3. Upon receiving “right to
3 sue” notices for many of their clients, Class Counsel filed a single suit against the Settling
4 Defendants and others in the United States District Court for the Central District of
5 California in October 2000. *Id.*, ¶ 4.

6 At the time of filing suit, Class Counsel named 50 clients as plaintiffs.
7 Eventually, they were retained by more than 180 clients. Each agreed that Class Counsel
8 would be entitled to 1/3 of any award plus reimbursement of case expenses. *Id.*, ¶ 5.

9 In January 2002, Judge Stephen Wilson issued an order granting defendants’
10 motions to sever and dismiss without prejudice to certain claims being re-filed against
11 individual defendants. *Id.* Undeterred, Class Counsel re-filed the litigation as 23
12 separate class actions in the Superior Court for the County of Los Angeles in February
13 2002. *Id.*, ¶ 6. Since then, Class Counsel has obtained writ relief from the Court of
14 Appeal on three occasions: first, in connection with Judge McCoy’s decision sustaining
15 of a demurrer filed by the employer defendants; second, in connection with Judge
16 Mortimer’s failure to abide by peremptory strikes in two cases; and, more recently, in
17 connection with Judge Mortimer’s ruling on privacy. *Id.*, ¶ 7. Class Counsel also
18 prevailed on their clients’ appeal from Judge McCoy’s order granting a demurrer filed by
19 the talent agency defendants. *Id.* Without the appellate victories on the demurrers and on
20 privacy, the class claims in the litigation would have been over.

21 In addition to these appellate victories, Class Counsel has vigorously prosecuted
22 these and the related actions in the trial court by, among other things: propounding
23 discovery requests upon the Settling Defendants and various third-parties; responding to
24 discovery requests propounded upon their clients, including answering more than
25 454,000 interrogatories (including subparts) and producing hundreds of thousands of
26 pages of documents; taking or defending 30 days of deposition testimony; negotiating
27 stipulations covering everything from discovery phasing to the issuance of a privacy
28

1 rights notice; briefing and arguing numerous legal issues; attending scores of status
2 conferences; contacting scores of potential third party witnesses; and engaging and
3 conferring with potential expert witnesses. *Id.*, ¶ 8.

4 Class Counsel commenced settlement discussions with the Settling Defendants in
5 the late fall of 2006. *Id.*, ¶ 9. These discussions were facilitated at different times by two
6 nationally renowned mediators, Hunter Hughes of Rogers & Hardin and Linda Singer of
7 JAMS. *Id.* Toward the end, this Court also appointed The Honorable Anthony Mohr to
8 conduct mandatory settlement negotiations with one group of Settling Defendants. *Id.*
9 Class Counsel participated in countless in-person mediation sessions, conference calls
10 and email exchanges with the private mediators, Judge Mohr and the Settling Defendants,
11 including their respective outside litigation counsel, coverage counsel and insurance
12 representatives. *Id.* Class Counsel's settlement positions with respect to both monetary
13 and non-monetary relief were informed primarily by research into the industry generally
14 and the Settling Defendants in particular; information communicated by the Settling
15 Defendants prior to and during the mediation sessions; information from Plaintiffs'
16 Liaison Committee of six clients; and information gathered from the 157 living plaintiffs
17 in response to defendants' discovery requests. *Id.* After almost 3 ½ years of intense
18 negotiation, Class Counsel and the Settling Defendants signed off on a proposed
19 Settlement Agreement in January, 2010. *Id.*

20 This Court granted preliminary approval of the Agreement on January 22, 2010,
21 including an order directing notice to the class. *See* Preliminary Approval Order dated
22 January 22, 2010. The notice, which was published in print and on-line, and individually
23 mailed and emailed, informs class members that Class Counsel would seek an award of
24 attorneys' fees of one-third of the total settlement plus reimbursement of actual expenses
25 in an amount not to exceed 6.7% of the \$70 million common fund created by the
26 settlement. *See* Court-Approved Mailed Form of Notice, ¶ 23.¹ Over 1,500 settlement

27 ¹ Actual expenses to date are approximately \$3.25 million, of which about \$1.2
28 million are notice and claims administration costs paid directly from the Settlement Fund.

1 class members have filed claim forms and to date none has objected to either the fee
2 award or the expense reimbursement. P. Sprenger Decl., ¶ 10.

3 Several private law firms (principally Sprenger + Lang, PLLC (“S+L”), Kator,
4 Parks & Weiser, PLLC, and Schwartz, Steinsapir, Dohrmann & Sommers LLP), several
5 private lawyers not in formal firms (Lead Class Counsel Paul Sprenger, Jane Lang and
6 Daniel Wolf), and AARP Foundation Litigation have devoted substantial time in
7 connection with the prosecution of this litigation. *Id.*, ¶ 11. Under the terms of their co-
8 counsel agreement, each firm or lawyer has been required “to keep detailed,
9 contemporaneous records of all billable time expended ... and Common and Individual
10 Expenses (together “Expenses”) incurred in this case.” *Id.* Each party to the co-counsel
11 agreement also has been required to submit the time and expense records periodically
12 (originally monthly and later changed to quarterly) to Lead Counsel. He delegated the
13 accounting responsibility to S+L, which compiled the records and made them available to
14 members of the Steering Committee, including at least one person from each of the firms
15 or lawyers listed above.

16 A lawyer from each of the firms or lawyer groups reviewed the timekeepers’
17 entries for that firm or group. P. Sprenger Decl., ¶ 15; S. Sprenger Decl., ¶ 6; Caplan
18 Decl., ¶ 4; Wolf Decl., ¶ 11; Willis Decl., ¶ 3; Osborne Decl., ¶ 10; Edelman Decl., ¶ 7;
19 Payne Decl., ¶ 2. These lawyers eliminated time charged to the previously settled cases
20 against ICM and Broder Kurland, the case against the Irv Schechter Company and the
21 ongoing litigation against CAA. S. Sprenger Decl., ¶ 9. Using billing judgment, they
22 also eliminated thousands of hours of other time recorded to the litigation for various
23 reasons. *Id.*, ¶ 9; P. Sprenger Decl., ¶ 26. As thus reviewed, the declarations of counsel
24 reflect that, over the period of ten years, more than 100,000 hours were charged to these

25
26 Class Counsel anticipates that less than 6.7% (\$4.69 million) of the Settlement Fund will
27 be needed to reimburse Class Counsel for case expenses and to pay notice and claims
28 administration expenses. After future claims administration expenses are paid,
Administrative Order No. 3 provides that the excess in the expense allocation will be
deposited in the Fund for the Future for the benefit of class members.

1 cases. (S. Sprenger Decl., Ex. B (compiling time from all timekeepers as reported by
2 each declarant).

3 Additionally, during the first three months of 2010, S+L and Paul Sprenger and
4 Jane Lang spent over 1,000 additional hours on work associated with the settlement of
5 these cases. They completed the editing of settlement documents, created the websites
6 for the settlement, supervised mailed and published notification of class members about
7 the settlement, answered questions about the settlement, assisted about 600 class
8 members in filling out claim forms, supervised the Claims Administrator in processing
9 the claim forms received, and developed the first draft of a claim distribution formula,
10 with advice from experts in tax and economics.. P. Sprenger Decl., ¶ 25; S. Sprenger
11 Decl., ¶ 7. Class Counsel estimate that they will spend more than 2,000 additional hours
12 after March 31, 2010 on similar tasks, including the distribution of awards. P. Sprenger
13 Decl., ¶ 25. The blended rate for work done on the case would be the blended rate that
14 Class Counsel will actually receive if awarded one-third of the settlement amount,
15 \$23,333,333 plus allocable interest of over \$200,000. *Id.*

16 Each declarant also has verified the hourly rates for all of the timekeepers in each
17 firm or entity. With the exception of AARP,² these rates are based either on billings to
18 and collections from hourly paying clients or hourly rates awarded by a court. P.
19 Sprenger Decl., ¶ 14; S. Sprenger Decl., ¶¶ 2-5; Caplan Decl., ¶ 2; Wolf Decl., ¶¶ 12-14;
20 Willis Decl., ¶¶ 6-8; Edelman Decl., ¶¶ 4-6; Payne Decl., ¶¶ 3-4. In addition, S+L bases
21 its rates on published surveys of rates at other firms. S. Sprenger Decl., ¶¶ 2-3.

22 Class Counsel, primarily S+L and Paul C. Sprenger and Jane Lang, have incurred
23 and advanced case expenses attributable to the litigation, notice and settlement
24 administration through March 15, 2010, totaling \$2,062,810.26. These case expenses are
25 summarized by category in the supporting declarations. S Sprenger Decl., ¶ 11 & Ex. C;

26 _____
27 ² Most of AARP's work does not involve receipt of fees, and is calculating its
28 lodestar rates primarily based on a review of market rates. Osborne Decl., ¶¶ 5, 22.

1 P. Sprenger Decl., ¶ 17; Osborne Decl., ¶ 11; Caplan Decl., ¶ 5. Additional expenses
2 relating to claims administration are expected to accrue through the summer of 2010. P.
3 Sprenger Decl., ¶ 17.

4 **III. LEGAL ARGUMENT**

5 **A. An Attorneys' Fee Award of One-Third of the Common Fund is Fair** 6 **and Reasonable in Light of the Benefit Conferred on the Class.**

7 California courts use two methods to determine an attorneys' fee award in
8 common fund cases, cases that result in the creation of a fund for the benefit of plaintiffs
9 and class members. For many years they have used the "percentage of recovery" or
10 "percentage of the benefit" method, under which counsel is awarded a fair percentage of
11 the recovery. *See, e.g., Glendale City Employees' Ass'n, Inc. v. City of Glendale* (1975)
12 15 Cal.3d 328, 341 n.19; *Melendres v. City of Los Angeles* (1975) 45 Cal. App. 3d 267,
13 278. Since *Serrano v. Priest* (1977) 20 Cal.3d 25 ("*Serrano III*"), courts have tended to
14 use the percentage of benefit methodology in conjunction with the lodestar method.
15 *See, e.g., Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 45 & n.12;
16 *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal. App. 4th 615, 628.

17 In the lodestar method, courts multiply the reasonable hours worked times a
18 reasonable rate per hour. Courts using the percentage of benefit methodology typically
19 check their results using the lodestar methodology. *See, e.g., Lealao*, 82 Cal. App. 4th at
20 45 & n.12; *Ramos*, 82 Cal. App. 4th at 628.

21 The Court should use the same methodology in this case: determine an
22 appropriate percentage of the benefits and cross-check through the lodestar methodology.
23 Using this approach, class counsel's request for an award of attorneys' fees in the amount
24 of one-third of the settlement fund, including allocable interest, is fair and reasonable.

1 **1. The Requested Fee Award is Justified Under the Percentage of**
2 **Benefits Methodology.**

3 Class Counsel’s fee request is equal to 1/3 of the \$70 million common fund
4 created by the settlement, or \$23,333,333, together with 1/3 of the interest earned by the
5 fund. Section IX.C.2 of the Settlement Agreement provides that Class Counsel’s
6 application for attorneys’ fees may not exceed 1/3 of the Settlement Fund, plus an
7 allocable share of accrued interest, and that reimbursement of expenses, plus all expenses
8 for notice and administration of the Settlement, may not exceed 6.7% of the Settlement
9 Fund. A corresponding amount is designated and set aside as the Legal and
10 Administrative Expense portion of the Qualified Settlement Fund under section III.B.3 of
11 Administrative Order 3.

12 The California Court of Appeal has observed, “Empirical studies show that,
13 regardless whether the percentage method or the lodestar method is used, fee awards in
14 class actions average around one-third of the recovery.” *Consumer Privacy Cases* (2009)
15 175 Cal. App. 4th 545, 557 n.13 (quoting *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th
16 43, 65, 66 n.11). In this ten year litigation, a fee award of that average is reasonable and
17 appropriate for seven reasons.

18 First, the goal of a percentage of the benefits approach is to award “what the
19 market would pay for comparable litigation services rendered pursuant to a fee
20 agreement.” *Chavez*, 162 Cal. App. 4th at 65. Where plaintiffs have retained class
21 counsel, the percentage award to which they agreed in their fee agreements provides the
22 best evidence of the market rate for the contingent services of Class Counsel. Here, more
23 than 180 clients who, based on current claim filing rates will likely comprise over 10% of
24 all claimants, agreed that counsel should receive 1/3 of any award. P. Sprenger Decl., ¶
25 5.

26 Second, employment discrimination class action litigation is both risky and
27 expensive. Plaintiffs’ lawyers must engage expert statisticians and/or labor economists, as
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1 well frequently as other experts. Typically, out-of-pocket costs for plaintiffs’ lawyers in
2 employment discrimination class action cases run into the millions of dollars. *Id.*, ¶ 12.
3 Because of these risks and costs, very few lawyers and firms across the country specialize
4 in this type of litigation. The reasons are illustrated by this litigation: Class Counsel (1)
5 advanced millions of dollars out-of-pocket for litigation expenses and paid millions more
6 in salaries and overhead associated with work performed in this litigation, all of which
7 could have been lost in any of the legal minefields through which Class Counsel trod, and
8 (2) had to be familiar with all of the legal issues raised in the litigation, become familiar
9 with hiring and representation practices in a unique industry, and have a comprehensive
10 grasp of statistics and labor economics. *Id.*, ¶¶ 12-13, 20-21.

11 Third, even within the risky genre of employment discrimination class action
12 cases, this litigation was especially high-risk. This litigation presented numerous legal
13 issues of first impression, as shown by the two published decisions of the California
14 Court of Appeal resolving several issues never previously addressed under California
15 law. The opposition was formidable. In the employment field, it is unprecedented to sue
16 all major companies in an industry, but because of the unique nature of the hiring
17 practices in Hollywood, Class Counsel concluded it was essential to avoid the “empty
18 chair” defense, i.e., that the missing party not named as a defendant “did it”. Goldstein
19 Decl., ¶¶ 17-21. This powerful and well-financed industry engaged the finest legal talent
20 available. The complaints were dismissed thrice, and Judge Mortimer’s ruling on
21 privacy would have had the same devastating impact on the claims as dismissal. Yet
22 ultimately Class Counsel prevailed on these novel issues, obtaining writ relief on three
23 occasions and succeeding on an appeal of a grant of a demurrer. Class Counsel is
24 unaware of any other class cases that have required such persistent efforts to reach the
25 current stage of this litigation. The riskiness of the litigation would have required a
26 higher fee in the market than would more typical class action litigation. *See Vizcaino v.*
27 *Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-49 (affirming award based on
28

1 percentage of benefits in part because case was “extremely risky for class counsel ...
2 [t]wice plaintiffs lost in the district court - once on the merits, once on the class definition
3 - and twice counsel succeeded in reviving their case on appeal”).

4 Fourth, it was foreseeable at the time of filing this litigation that it would require a
5 massive commitment of resources. That has occurred. This litigation has taken a huge
6 amount of Lead Counsel’s available time over the past decade – time which he could
7 have spent on other class litigation. P. Sprenger Decl., ¶¶ 15, 18-22. S+L’s time in the
8 TV Writers Cases represents more than fifty percent of its total work-in-progress and this
9 commitment also has precluded the firm from taking on other major litigation. S.
10 Sprenger Decl., ¶ 6. This type of commitment necessary to prosecute such a huge case
11 would require a premium on the open market.

12 Fifth, Class Counsel achieved a settlement providing substantial benefits to the
13 Settlement Classes. *See Vizcaino*, 290 F.3d at 1048 (affirming award based on
14 percentage of benefits in part because class counsel “achieved exceptional results for the
15 class” considering the lack of supporting precedents and the vigorous opposition of
16 defendant). Despite the several adverse decisions along the way, ultimately defendants
17 agreed to make a gross payment of \$70 million, on which, by the Effective Date, interest
18 of over \$800,000 is likely to accrue. The Settlement also creates the Fund for the Future,
19 described at www.tvwritersfundforthefuture.com. Governed by a board of settlement
20 class members, the FFF will underwrite class member projects and conduct activities that
21 will enhance opportunities for their television writing careers. A portion of the FFF will
22 also be available for emergency low-interest loans to settlement class members in need.
23 This creative form of relief, conceived by Lead Class Counsel Paul Sprenger with input
24 from the Plaintiffs’ Liaison Committee, will provide on-going benefits and opportunities
25 to large numbers of settlement class members for years, perhaps decades, to come. P.
26 Sprenger Decl., ¶ 21; Goldstein Decl., ¶ 25.

1 Sixth, despite the huge risks undertaken by Class Counsel and the substantial
2 benefits they achieved for the Settlement Classes, the percentage of the benefit
3 methodology results in a “negative multiplier” for Class Counsel, *i.e.*, ***Class Counsel will***
4 ***receive less, indeed far less, than their lodestar in this litigation.*** See *Young v. Polo*
5 *Retail, LLC* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 27269, at *22 (percentage fee in
6 excess of benchmark fee justified by “negative multiplier” of .56). As more fully
7 explained in subsection III.A.2 below, this methodology results in a negative multiplier
8 very similar to that in *Young*.

9 Finally, the Settlement Classes and plaintiffs support a fee award of 1/3 of the
10 settlement amount. With the postmark deadline for objections of April 23 fast
11 approaching, there have been no objections received to Class Counsel’s proposed award
12 (or, indeed, to any aspect of the settlement). P. Sprenger Decl., ¶ 10. The plaintiffs most
13 knowledgeable about the conduct of the litigation and achievement of the settlement, the
14 six members of Plaintiffs’ Liaison committee, fully support the award. See Plaintiffs’
15 Memorandum in Support of Final Approval, Declaration of Arthur Eisenson (“class
16 counsel in these cases has been thoroughly professional, admirably scrupulous, and
17 uniformly of the highest quality”), Declaration of Larry Mintz (Class Counsel’s
18 representation “completely altered [my] negative preconceptions” of trial lawyers) and
19 Declaration of Ron Friedman (noting Class Counsel’s “unwavering, highest quality
20 professionalism and determination”).

21 Taken as a whole, this case is very similar to *Vizcaino*, cited twice above, but with
22 one critical difference. In that case, class counsel was able to negotiate a \$97 million
23 settlement in an ERISA case against formidable opposition after twice losing at the
24 district court, once on the merits and once on class certification, and having those
25 decisions overturned on appeal. The district court awarded counsel 28% of the
26 settlement, about \$27 million, as attorneys’ fees. *Vizcaino*, 290 F.3d at 1046. The
27 critical difference between that case and this one is that, *in Vizcaino*, the attorneys
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1 received a 3.65 multiplier, i.e., the \$27 million was 3.65 times their lodestar of about \$7.4
2 million. *Id.* at 1050-51. Nonetheless, the Ninth Circuit affirmed the award. Here, where
3 a 33 1/3% fee award results in award of only about 57% of lodestar, as discussed below,
4 that award is fully justified. Goldstein Decl., ¶ 4 (“it is my professional opinion that ...
5 the difficulty and complexity of this litigation, the novelty of the issues raised, the
6 substantial risk undertaken by Class Counsel and the substantial results obtained strongly
7 support Class Counsel’s request for a fee award that is one-third of the settlement fund”).

8 **2. The Requested Fee Award Is Easily Justified Under the**
9 **Lodestar Methodology.**

10 The lodestar methodology requires the Court to identify the “touchstone or
11 lodestar figure based on a careful compilation of the time spent and reasonable hourly
12 compensation for each attorney.” *Serrano III*, 20 Cal. 3d at 48-49. Although the court
13 must be informed as to how the lodestar amount is calculated, it need not engage in the
14 tedious task of reviewing class counsel’s billing records and underlying backup detail:
15 “California case law permits fee awards in the absence of detailed time sheets.” *Sommers*
16 *v. Erb* (1992) 2 Cal. App. 4th 1644, 1651.

17 Expenditure of the resources associated with a line-by-line review of attorneys’
18 time records is especially unnecessary when, as here, it should be used only as a cross-
19 check of the fairness of an award based on a percentage-of-the-benefits method. When
20 the percentage of benefits method is appropriate for use in a class case, courts typically
21 use the lodestar methodology only to check their results. *See, e.g., In re Rite Aid Corp.*
22 (3d Cir. 2005) 396 F.3d 294, 306-07 (“The lodestar cross-check calculation need entail
23 neither mathematical precision nor bean-counting.”); *Goldberger v. Integrated*
24 *Resources, Inc.* (2nd Cir. 2000) 209 F.3d 43, 50 (“Of course, where [the lodestar method
25 is] used as a mere cross-check, the hours documented by counsel need not be
26 exhaustively scrutinized.”); *Di Giacomo v. Plains All Am. Pipeline* (S.D. Tex. Dec. 18,
27 2001) 2001 U.S. Dist. LEXIS 25532, at *31 (“conduct[ing] detailed analysis of charged
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1 hours and hourly rates” in cases involving the percentage of fund method for determining
2 fees “would undermine the utility of [that] method”).

3 Because Class Counsel believe that a detailed review of time records is
4 unnecessary in this litigation, and because those records are voluminous, Class Counsel
5 have refrained from burdening the Court with those records at this time. Class Counsel’s
6 summary time records would, if printed out, consume over 2,000 pages of small type. S.
7 Sprenger Decl., ¶ 9. Some timekeepers have retained much of their work as it is
8 performed, which serves as backup records. For example, Lead Class Counsel Paul
9 Sprenger’s email records of work he performed during one month alone comprise over
10 1,000 pages (about 8 inches high). P. Sprenger Decl., ¶ 15. Instead, Class Counsel have
11 submitted eight declarations describing each firm’s time keeping procedures, the time
12 recorded to the litigation, the hourly rates for their attorneys and non-lawyers who
13 worked on the case, and the bases for those rates. They have described overall controls
14 over work on the litigation, *id.*, ¶¶ 18-22, as well as how the time records of the various
15 firms were collected and maintained. S. Sprenger Decl., ¶ 8. This submission creates a
16 sufficient record to determine an appropriate attorneys’ fee award, regardless whether the
17 Court chooses to use the lodestar methodology as a cross-check or as the primary
18 methodology for establishing fees in this litigation. In addition, Class Counsel are
19 prepared to produce their time summaries and their detailed backup documentary records
20 for *in camera* review if the Court so requests.

21 Based on these voluminous records, the requested attorneys’ fee award is fully
22 justified – indeed, more than justified. Class Counsel first calculated their hours worked
23 on the litigation. They eliminated hours for a variety of reasons, including hours worked
24 on cases not covered by this settlement, hours worked by persons who billed under 50 or
25 100 hours to the litigation (depending on the firm), all hours worked by persons primarily
26 engaged in administrative or support roles (even if they also performed some legal work),
27 and other hours eliminated as a result of billing judgment or otherwise. S. Sprenger
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1 Decl., ¶ 9; P. Sprenger Decl., ¶ 15 n.1. Even after all these reductions, which eliminated
2 over 5,000 hours of recorded time, Class Counsel still worked collectively over 100,000
3 hours. S. Sprenger Decl., ¶ 9. Thus, the request comes to a blended average rate of
4 approximately \$230 per hour, which is very low for such complex, risky litigation.

5 Class Counsel then multiplied each timekeeper's hours worked on the litigation
6 by that individual's current rate per hour. Courts generally use current rates in lodestar
7 calculations to account for the passage of time. *See Graham v. DaimlerChrysler Corp.*
8 (2004) 34 Cal. 4th 553, 583-84 (explaining that to account for the passage in time between
9 when work is performed and paid, courts may calculate the lodestar based on historical
10 rates and then increase that lodestar by a percentage or base its lodestar calculation "on
11 the present hourly rate rather than the lesser rate applicable when the services were
12 rendered," in which case the need for a percentage adjustment is reduced or eliminated).
13 The current rates verified by counsel range from \$500 to \$750 per hour for partners or
14 owners in the various firms, from \$350 to \$500 for associates, from \$185 to \$305 for
15 paralegals and legal assistants, and from \$125 to \$195 for law clerks. S. Sprenger Decl.,
16 ¶ 9 & Ex. B. The \$750 per hour rate is charged by Lead Class Counsel Paul Sprenger.
17 According to an attorney whose practice focuses largely on attorney fee disputes, Mr.
18 Sprenger's rates and the rates of the three other attorneys about whom he was asked to
19 opine, are within the bounds of customary rates for lawyers with their experience in
20 matters of this complexity. Warin Decl. ¶¶ 14-24. S+L, which expended more time than
21 any other firm, sets its rates based on reputable surveys of rates in each market. S.
22 Sprenger Decl., ¶¶ 2-5. In addition, the firms are familiar with the rates that other similar
23 firms charge for their time. For example, the rates of Goldstein, Demchak, Baller,
24 Borgen & Dardarian, a firm in Oakland that also litigates primarily large employment
25 class actions, are virtually identical to S+L's. S. Sprenger Decl., ¶ 5.

26 Summing the products of the hours times the rate for each timekeeper yields a
27 total lodestar of about \$41,170,000. But for the various adjustments to their hours to be
28

1 made by Class Counsel, the lodestar would have been over \$3 million higher. S.
2 Sprenger Decl., ¶ 9. And Class Counsel expect their collective lodestar to increase by as
3 much as \$1 million before their work on these cases comes to a conclusion – none of
4 which will be compensated with additional fees. This \$41,170,000 lodestar is the fee
5 requested for ten years of work. It is 75% higher than the requested fee of one-third of
6 the settlement. Thus, even if the hours were reduced by 30%, and even if the rates were
7 reduced by another 30%, the lodestar would fully justify an award of 1/3 of the
8 Settlement Fund, including an allocable share of interest.

9 Under *Serrano III*, the “touchstone” or lodestar fee may be increased or
10 diminished by taking various relevant factors into account. Those factors include: (1) the
11 novelty and difficulty of the questions involved, and the skill displayed in presenting
12 them; (2) the extent to which the nature of the litigation precluded other employment by
13 the attorneys; and (3) the risk of loss of time and costs advanced in contingent
14 representation, based on the uncertainty of prevailing on the merits and of establishing
15 eligibility for the award. 20 Cal. 3rd at 48-49; *see also* Cal. Practice Guide, Civil
16 Procedure Before Trial § 14:145.1 (2006). A fourth factor is the benefit produced for the
17 class. *See Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 46
18 (“California courts have evaluated lodestar as a percentage of the benefit”).

19 As discussed in the previous section, an increase to the lodestar would be fair and
20 reasonable under these factors. *See Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43,
21 66 (approving multiplier of 2.5 as “in line” with prevailing case law). However, under
22 the Settlement Agreement, the retainer agreements, and the percentage of the benefit
23 methodology generally, Class Counsel do not seek an increase; instead, they accept a
24 significant reduction in the lodestar. Thus the factors considered by the courts, which
25 would fully justify an enhancement to the lodestar fees, instead must be regarded as
26 further support for the fee request that is about half of the “touchstone.”

1 **B. Payment of Expenses of About \$2 Million is Fair and Reasonable.**

2 California courts have long recognized and applied the equitable principle of
3 apportionment in common fund cases: “one who expends fees in winning a suit creating a
4 fund from which others derive benefit may require those passive beneficiaries to bear a
5 fair share of the litigation costs.” *Quinn v. State* (1975) 15 Cal. 3d 162, 167-69 & n.9;
6 *see also Vincent v. Hughes Air West* (9th Cir. 1977) 557 F.2d 759, 769-70; *In re Heritage*
7 *Bond Litigation* (C.D. Cal. June 10, 2005) 2005 U.S. Dist. LEXIS 13555, *75. In
8 common fund cases such as this one, “an award of expenses should be limited to typical
9 out-of-pocket expenses that are charged to a fee paying client and should be reasonable
10 and necessary.” *In re Immune Response Sec. Litig.* (S.D. Cal. May 31, 2007) 497 F.
11 Supp. 2d 1166, 1177 (citing *Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19); *cf.*
12 *Bussey v. Affleck* (1990) 225 Cal. App. 3d 1162, 1166 (applying same standard in
13 collection action on promissory note). The parties themselves have agreed to specific
14 reasonable and customary categories of reimbursable litigation expenses incurred in these
15 cases for which approval of payment is sought from the Legal and Administrative
16 Expense portion of QSFII. Settlement Agreement, IX.C.1. Such expenses are ordinarily
17 and customarily billed by defense counsel to hourly based clients. California federal
18 courts³ agree with the parties’ list, and have ordered reimbursement of the following
19 types of litigation expenses in the context of common fund settlements:

- 20 • **Travel**, including air fare, cab fare and meals away from home, *e.g.*, *In re*
21 *Media Vision Technology Secs. Litig.* (N.D. Cal. 1995) 913 F. Supp. 1362,
22 1362-63 (“California courts seem inclined to allow travel expenses, as
23 long as they are ‘reasonable and necessary’”; “travel expenses are
24 particularly important in the litigation given that the majority of the firms
25

26 ³ Class Counsel did not find controlling state court authority and, therefore, relies
27 almost exclusively on California federal court cases. *See Knight v. Hayward Unified*
28 *School Dist.* (2005) 132 Cal. App. 4th 121, 129 (California courts look to federal law
when appropriate).

1 retained as counsel for plaintiffs reside outside of California”); *Wallace v.*
2 *Valdez AFT* (D. Alaska Dec. 20, 2005) 2005 U.S. Dist. LEXIS 41456,
3 **13-14 (awarding cab fare); *cf. Thon v. Thompson* (1994) 29 Cal. App.
4 4th 1546, 1548-49 (awarding commercial airfare, but not charter expenses,
5 in context of prevailing party statute).

- 6 • **Photocopying**, *see, e.g., In re Media Vision Technology Secs. Litig.* (N.D.
7 Cal. 1995) 913 F. Supp. 1362, 1362-63 (“Requests for reimbursement for
8 photocopying are regularly reimbursed”); *In re Omnivision Technologies,*
9 *Inc.* (N.D. Cal. 2007) 559 F. Supp. 2d 1036, 1048-49; *In re Brooktree Sec.*
10 *Litig.* (S.D. Cal. 1996) 915 F. Supp. 193, 200-01.
- 11 • **Experts and consultants**, *e.g., Immune Response*, at 1177; *In re:*
12 *Broadcom Corp. Sec. Litig.* (C.D. Cal. September 12, 2005) U.S. Dist.
13 LEXIS 41993, at **27-28; *Omnivision*, at 1049.
- 14 • **Claims administration**, *e.g., In re Heritage Bond Litig.* (C.D. Cal. June
15 10, 2005) 2005 U.S. Dist. LEXIS 13555, *75.
- 16 • **Mediation**, *e.g., Immune Response*, at 1177 (finding mediation fees
17 reasonable and necessary in case involving “protracted litigation, which
18 would not have come to an end prior to trial without the assistance of a
19 mediator”).
- 20 • **Computerized legal research**, *e.g., Immune Response*, at 1177 (finding
21 “computerized legal research ‘is an essential tool of a modern efficient law
22 office’ and given the complexity of [] case, costs of online legal research
23 services are [] reasonable”); *Media Vision*, at 1370-71; *In re Omnivision*,
24 at 1048.
- 25 • **Long distance telephone**, *e.g., Media Vision*, at 1368-69 (“Ninth Circuit
26 supports reimbursement of expenses for telephone use connected with
27 litigation”).

- 1 • **Postage**, *Media Vision*, at 1368 (“There seems to be a general consensus
2 among jurisdictions to reimburse counsel for postage expense.”); *Immune*
3 *Response*, at 1177; *Omnivision*, at 1048-49.
- 4 • **Court filing, witness and service fees**, e.g., *Media Vision*, at 1371 (“A
5 filing or service fee is unquestionably a necessary expense of every
6 litigation. It seems reasonable that filing fees are reimbursable as long as
7 the fees are billed to the client(s) as separate expenses.”); *Immune*
8 *Response*, at 1177; *see also* C.C.P. §§ 1033.5(a)(1), (4), (7).
- 9 • **Messengers**, *Immune Response*, at 1177; *Omnivision*, at 1048-49.
- 10 • **Class notice**, e.g., *Broadcom*, at *27; *Immune Response*, at 1177.
- 11 • **Court reporting and depositions**, e.g., *Broadcom*, at *27; *see also* C.C.P.
12 §§ 1033.5(a)(3), (9), (11).

13 Class Counsel seek reimbursement of payments made to rent **meeting space** in
14 the Los Angeles area sufficiently large to gather with over 150 clients. In addition, Class
15 Counsel has disbursed payments to lease Class B **office space** of 2-3,000 square feet
16 consisting of four small offices and a conference room large enough to host depositions
17 and meetings attended by approximately 25 individuals. Such space was necessary
18 because Class Counsel are located on the East Coast and local counsel’s office space was
19 not large enough to accommodate the unusually large number of attorneys in these cases.
20 Class Counsel are *not* requesting reimbursement of rent payments attributable to their
21 regular business overhead; the only rent payments requested are for conference rooms
22 and office space used *exclusively* for the TV Writers litigation. To our knowledge, no
23 California court has refused to reimburse rent payments unrelated to the attorneys’
24 regular home-office overhead costs, which were reasonably necessary to the litigation
25 and reasonable in amount. *Cf. Dowdell v. City of Apopka* (11th Cir. 1983) 698 F.2d
26 1181, 1192 (except for **routine** office overhead, allowing reimbursement for all
27 reasonable expenses incurred in case preparation). Other courts have approved
28

1 reimbursement of rent payments in similar circumstances. *See, e.g., In re “Agent*
2 *Orange” Product Liability Litig.* (E.D.N.Y. 1985) 611 F. Supp. 1296, 1330-31
3 (approving expenses incurred renting and operating a Brooklyn office space devoted to
4 the litigation); *In re: Complaint of Kirby Inland Marine, L.P.* (M.D. La. 2008) 2008 U.S.
5 Dist. LEXIS 82353, *65 (allowing rent charges related to claims processing). In the
6 “*Agent Orange*” *Product Liability Litigation*, in addition to reimbursement of rent paid
7 for office space, the Court approved reimbursement for the rental of furniture and office
8 equipment. *Agent Orange*, at 1330 Here, Class Counsel seeks only reimbursement of
9 rent paid for office space, even though they also rented or purchased furniture and
10 equipment to furnish the space.

11 Finally, Class Counsel seek reimbursement of the **interest** they paid to banks to
12 borrow the money necessary to advance the above-referenced litigation expenses, which
13 they began to incur almost ten years ago. *Meyer v. Citizens & Southern Nat’l Bank*
14 (M.D. Ga. 1987) 117 F.R.D. 180, 183 n.4 (allowing reimbursement of interest paid on
15 loan obtained by class counsel to pay litigation expenses). In a sense, Class Counsel
16 have acted as a lender to plaintiffs and settlement class members; however, unlike a bank
17 they do not seek to earn a profit on their advancement of litigation expenses. Rather, they
18 seek reimbursement of the *interest actually paid to banks* on those expenses. Moreover,
19 the rate of interest they seek is likely far less than plaintiffs would otherwise have been
20 charged because of guarantees and collateral made available for this purpose. For
21 example, as of February 2010, S+L’s borrowing rate, which fluctuates with LIBOR, was
22 less than 1.5%.⁴ Seeking interest on disbursements is analogous to the well accepted

23 _____
24 ⁴ It is common practice in California for attorneys to charge their clients interest on
25 unpaid legal services invoices at substantially higher interest rates. In fact, the sample
26 retainer agreement published by the California Family Law Institute in Santa Monica
27 includes the following provision: “Bills are payable immediately when received. Bills
28 not paid within thirty (30) days will be charged a late charge at a simple interest rate of
eighteen percent (18%) per year.” *See S. Sprenger Decl.*, ¶ 11 n. 5, Ex. D, CFLI Sample
Legal Services and Arbitration Agreement. Moreover, the overwhelming number of bar
authorities that have addressed the propriety of charging interest on unpaid legal fees in

1 practice of awarding attorneys' fees to prevailing parties at current, rather than historical,
2 hourly billing rates. See, e.g., *Norwood v. Charlotte Mem'l Hosp. and Med. Ctr.*
3 (W.D.N.C. 1989) 720 F. Supp. 543, 559 (approving interest on litigation expenses to
4 counterbalance the effect of inflation and foregone interest) (citing *Daly v. Hill* (4th Cir.
5 1986) 790 F.2d 1071, 1081); *Muehler v. Land O'Lakes, Inc.* (D. Minn. 1985) 617 F.
6 Supp. 1370, 1381 (approving 11% interest to plaintiffs on money advanced for out-of-
7 pocket costs and expenses). Class Counsel does not seek reimbursement for opportunity
8 cost, which is the rationale underlying *Norwood* and *Daly*; instead Class Counsel seeks
9 only the actual cost of borrowing money advanced to support this litigation on behalf of
10 plaintiffs and settlement class members.

11 During the ten years of litigation, before the costs of notice and claims
12 administration, Class Counsel advanced case expenses of over \$2 million through
13 December 31, 2009. This amount was attributable and necessary to the prosecution and
14 resolution of the cases against the Settling Defendants. S. Sprenger Decl., ¶¶ 10-11.
15 Expenses incurred exclusively to litigate the cases against ICM, Broder Kurland, CAA
16 and Irv Schechter are excluded, as are common expenses that Class Counsel allocated to
17 ICM and Broder Kurland and this Court ordered paid in connection with the settlement of
18 those cases.⁵ Accordingly, Class Counsel seek reimbursement and approval of case
19 expenses of \$2,062,810.26. This does not include the notice and administrative expenses
20 payable from SFII pursuant to Administrative Order No. 1 which, to date, amount to
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24 the absence of an express retainer provision have likewise approved of this practice. *Id.*
25 *at Ex. E, New York City Bar Association, Formal Opinion 2000-2 at pp. 2-3 & n.4.*

26 ⁵ Because other common expenses would have been incurred without regard to the
27 pending case against CAA, and because the class members in all cases substantially
28 overlap, Class Counsel have excluded only expenses that were incurred exclusively in
connection with that case.

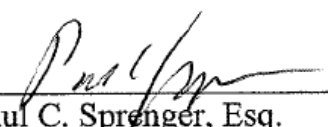
1 almost \$1.2 million. An accounting of additional expenses of claims processing and
2 settlement administration will be submitted to the Court in the future.⁶

3 **IV. CONCLUSION**

4 For all of the foregoing reasons, Class Counsel respectfully request that the Court
5 grant their motion, and award them (a) one-third of the common fund (about \$23.333
6 million), plus an allocable share of interest earned by the fund, for all past and future
7 attorneys' fees, and (b) reimbursement of litigation expenses in the amount of
8 \$2,062,810.26, from the Legal & Administrative Portion of the TV Writers Age
9 Discrimination Settlement Fund.

10
11 Respectfully submitted,

12
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⁶ For the sake of clarity, we underscore that no additional attorneys' fees will be requested by Class Counsel for their ongoing legal work in settlement administration.

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