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

15 IN RE: TV WRITERS CASES

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

16
17 THIS DOCUMENT RELATES TO:

- 18 **Case No. 268 836** – Alch, et al. v. Time Warner Entertainment Company, L.P., et al.;
- 19 **Case No. 268 837** – Neal, et al. v. Viacom Inc. and United Paramount Network;
- 20 **Case No. 268 838** – Young, et al. v. DreamWorks SKG TV LLC;
- 21 **Case No. 268 839** – Bast, et al. v. Fox Broadcasting Company, et al.;
- 22 **Case No. 268 840** – Levy, et al. v. The Gersh Agency, Inc.;
- 23 **Case No. 268 841** – Edwards, et al. v. The Carsey-Werner Co., et al.;
- 24 **Case No. 268 842** – Wynn, et al. v. National Broadcasting Company, Inc., et al.;
- 25 **Case No. 268 843** – Brooks, et al. v. William Morris Agency, Inc.;
- 26 **Case No. 268 844** – Brett, et al. v. Walt Disney Company, et al.;

18 **LEAD CLASS COUNSEL'S**
19 **RECOMMENDATIONS**
20 **CONCERNING AWARD**
21 **CHALLENGES; MEMORANDUM OF**
22 **POINTS AND AUTHORITIES**

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

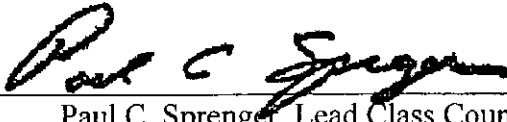
1 **LEAD CLASS COUNSEL'S RECOMMENDATIONS**
2 **CONCERNING AWARD CHALLENGES**

3 Pursuant to paragraph 3 of the Court's Order of July 1, 2010, and paragraph 8 of
4 Administrative Order No. 5, filed November 5, 2010, Lead Class Counsel recommends that: (a)
5 the awards of 137 claimants (3.1% of all claimants) who challenged their awards ("challengers")
6 be increased, as set forth in Addendum C and described below; (b) 16 class members not
7 previously approved for awards receive awards, also as set forth in Addendum C; and (c)
8 \$225,000.00 of the Class Claims Portion of the Settlement Fund and \$221,000.00 from the
9 Expense Portion be used to supplement the Claimant Challenge Reserve to provide awards to
10 challengers who successfully challenged their awards based on mistakes that occurred during the
11 review process through no fault of their own. All of the class members recommended for awards
12 or increased awards timely submitted challenges to their awards or ineligibility, and satisfied one
13 or more of the bases for challenges to awards set out in paragraph 3 of the Order of July 1, 2010.

14 The Memorandum of Points and Authorities below explains Lead Class Counsel's
15 recommendations. The addenda to the Memorandum described below are lodged with the Court
16 rather than filed in order to protect the confidentiality of the awards, as required by the
17 Settlement Agreement.

18 Lead Class Counsel requests that the Court approve each of his recommendations.
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20 DATED: April 4, 2011
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23 Paul C. Sprenger, Lead Class Counsel and
24 Co-Trustee, Qualified Settlement Fund II
25 On behalf of all Class Counsel and QSF II Co-Trustee
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Over 4,300 professional and aspiring television writers submitted claim forms to share in
4 the \$39,600,000 available for distribution to class members under the settlement of the above-
5 referenced 19 class action cases (“TV Writers Cases”). These claimants were notified of their
6 awards (or ineligibility for awards) by notices mailed January 11, 2011. Only 270 claimants
7 (about 6% of all claimants) availed themselves of the opportunity created by the settlement to
8 submit written challenges to their awards. Over 90% of the non-challenging claimants have
9 already submitted W-9 or equivalent tax forms and received their award checks.¹

10 Over a period of five weeks, Class Counsel reviewed each of the 270 challenges
11 individually and completely, including supporting documentation. Of these, 137 (50.7%) were
12 deemed meritorious in that they satisfied one or more of the challenge criteria set out in
13 paragraph 3 of the Order of July 1, 2010; these criteria, including calculation and processing
14 mistakes, as well as new information from the challenger, were spelled out in the award notices
15 sent to all claimants in January 2011.

16 Meritorious challenges were awarded additional points based on the court-approved
17 formula. The Court’s Orders of July 1, 2010 and November 5, 2010 require that the Claimant
18 Challenge Reserve of \$175,000.00 (the “Reserve”) be allocated proportionately to the successful
19 challengers based on these points. The funds in the Reserve are insufficient to make all of the
20 meritorious challengers “whole”; hence, Lead Class Counsel recommends that the Reserve be
21 supplemented by unallocated money in the Class Claims Portion (“Claims Portion”) of the
22 Settlement Fund totaling \$225,000.00, and \$221,000.00 from the Expense Portion. These
23 supplemental funds would be paid only to challengers whose original awards should be increased
24 primarily because of mistakes made in the initial processing of their claims through no fault of
25 the challenger (as opposed to increases based primarily on new information). Adoption of these
26

27 ¹ Through March 31, 2011, the Claims Administrator, Garden City Group, has sent checks to
28 3,620 claimants who did not challenge their awards. An updated report on distributions will be
filed on April 18, 2011, as previously ordered by the Court.

1 recommendations will permit claimants who filed meritorious challenges to be fairly and
2 appropriately compensated.

3 ARGUMENT

4 **I. THE COURT SHOULD INCREASE THE AWARDS OF 137 CLAIMANTS**

5 **A. The Court Should Increase the Awards of 93 Professional Television Writers**

6 One hundred and eight (108) claimants whom the Claims Administrator had classified as
7 “professional television writers” challenged their awards; eight claimants misclassified as ATWs
8 have been added to the PTW challengers. After painstaking review, Lead Class Counsel
9 recommends that 93 of them receive increases in their gross awards.

10 Most of the suggested increases are attributable to mistakes made during the initial
11 processing of 4,300 claims.² For example, eight professional writers were misclassified and
12 mistakenly received minimum awards. This particular error arose because the Claims
13 Administrator did not receive income information for them from the Writers Guild of America
14 (WGA); in those circumstances, the claimants were mistakenly grouped with those entitled only
15 to minimum awards.

16 The bulk of the other recommended award increases result from Class Counsel’s more
17 intensive review of claimants’ original supporting declarations and other materials submitted in
18 the challenge process. This supplemental documentation sometimes warranted larger awards
19 than did the answers on the claim forms considered alone.³ In addition, errors occasionally crept
20 into the scoring of the answers on the claim forms, especially in calculating the span of the high
21 five years of income and in the development of the claims of non-plaintiffs, two of the many
22 factors included in the formula.

23 _____
24 ² Given the complexity of the formula, the number of claimants (over 4300), the length of the
25 claim form and the supplemental materials filed by claimants (often in excess of 100 pages), the
26 number of errors found during the challenge process was small as a proportion of the total
number of claims.

27 ³ Some claimants submitted declarations or other supporting materials that were at odds with the
28 answers on their claim forms, sometimes because they misinterpreted the questions on the claim
forms. During the challenge process, Class Counsel were able to sort through these
discrepancies and credit evidence that was documented.

1 Additionally, some claimants, for a multitude of reasons, provided incorrect or
2 incomplete answers on their claim forms initially and have corrected or augmented their
3 information with their challenges. Their points were adjusted where the new information was
4 verifiable. In some instances, Class Counsel have also made judgments about ambiguous
5 information that differed from those of the Claims Administrator. These individuals who
6 corrected their own errors, or provided ambiguous information, would receive a proportionate
7 share of the Challenge Reserve, but will not receive a “make whole” allocation from the
8 proposed Supplement.

9 As shown in Addendum A (discussed below), Lead Class Counsel recommends that 93 of
10 the 116 professional writer challengers receive increased awards.⁴ These increases should be
11 funded proportionately from the Challenge Reserve and, in those cases where non-claimant
12 mistakes such as those described above resulted in the lower awards, the aggregate difference
13 between this amount and making “whole” their loss would be covered by an allocation from the
14 Supplement discussed below.

15 **B. The Court Should Increase the Awards of 44 Aspiring Television Writers**

16 Claimants classified as “aspiring TV writers” include a wide range of individuals. While
17 some are new to writing, many others have had considerable experience and success in writing
18 fiction, non-fiction, poetry and news. Thus this category is not limited to novice writers
19 generally, but to all of those *who have not been paid to write for television*. It in no way
20 demeans the accomplishments of writers in other fields; nor is it intended to trivialize the efforts
21 of writers to sell their television scripts, treatments and ideas.

22 All 2,039 members of the aspiring television writers settlement class (“ATWs”) who filed
23 timely (or excusably late) claims have received at least minimum awards. Of these, 138, or
24 6.7%, filed challenges objecting to a minimum award. Many of these pointed to their success in
25 writing in other fields, while acknowledging they had never been paid to write for television.
26 Others pointed to repeated efforts to submit scripts, only to be told that unsolicited scripts are not

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28 ⁴ Lead Class Counsel determined that three of the challengers were entitled under the formula to increases of under ten dollars. Lead Class Counsel recommends that these challenges be denied as *de minimis*.

1 read or accepted by any of the settling defendants – or most of the television industry. A third
2 group felt that they should have been compensated for their expenses in applying to studios and
3 writing competitions and attending seminars. No increases in awards to those claimants are
4 recommended as the formula for awards from the settlement fund did not cover such situations.

5 However, increases are proposed for three other groups of ATWs:

6 (1) ATWs who were misclassified as “without talent agency representation” even
7 though they had it. ATWs represented by talent agents in their efforts to obtain employment as
8 television writers were eligible to receive points under the formula and thus received more than
9 minimum awards. Several challengers demonstrated that they met this criterion but were not
10 given points. These mistakes have been corrected and they are included among those
11 recommended for increased awards.

12 (2) In a very small number of cases Lead Class Counsel concluded that ATWs had
13 demonstrated an equivalent proxy for TV writing ability, such as having a producer actively
14 marketing their proposed television programming. Although these challenges were not entitled
15 to awards under the formula, Lead Class Counsel believes that they should receive increased
16 awards as a matter of fairness.

17 (3) Some ATWs documented a personal incident of age discrimination that precluded
18 them from obtaining professional representation or employment as a television writer. *If the*
19 *individual reported an incident of age discrimination that he or she personally experienced and*
20 *that precluded him or her from agency representation or employment*, an increased award was
21 recommended on the grounds of fairness. Otherwise, no change was recommended.

22 As shown in Addendum A, Lead Class Counsel recommends that 44 of the 138 ATW
23 challengers receive increased awards.

24 **II. THE COURT SHOULD GRANT AWARDS TO 16 WRITERS WHO** 25 **PREVIOUSLY HAD NO AWARD**

26 **A. Recommendations for Claimants Previously Denied Awards**

27 In June and November 2010, Lead Class Counsel recommended, and the Court approved,
28 the denial of awards to claimants on various grounds. This determination was challenged by 21

1 of those claimants. Some of them were initially denied awards because they failed to cure errors
2 or omissions from their claim forms. However, ATWs who were eligible only for minimum
3 awards were not required to cure omissions that had no impact on their awards. Several of these
4 individuals were nevertheless erroneously found to be ineligible; this error has been corrected.
5 In addition, several claimants who were deemed ineligible for failure to provide explanations for
6 filing late claims have now provided valid explanations. Overall, Lead Class Counsel
7 recommends that the claims of twelve previously ineligible claimants be allowed, as reflected in
8 Addendum A.

9 **B. Recommendations for Writers Whose Claims Had Not Been Scored by the**
10 **Claims Administrator Prior to November 5, 2010**

11 Eight class members whose claim forms had not ever been scored by the Claims
12 Administrator – whether because they had not submitted a claim form, it had been lost in the
13 mail, or been misprocessed by the Claims Administrator – submitted challenges. As shown in
14 Addendum A, Lead Class Counsel recommends that four of them who submitted credible
15 evidence that they had timely mailed a claim form receive awards.

16 **III. THE COURT SHOULD SUPPLEMENT THE CHALLENGE RESERVE TO**
17 **PERMIT ADDITIONAL ADJUSTMENTS TO AWARDS CALCULATED BASED**
18 **ON THIRD-PARTY ERROR**

19 **A. In Addition to the Challenge Reserve, \$225,000 Is Available for Distribution**
20 **in the Class Claims Portion of the Settlement Fund**

21 The Court approved claimant awards, including income and payroll taxes attributable to
22 those awards, on November 5, 2010 (“Award List”), calculated on the basis of the available sum
23 of \$39.6 million for this purpose (the “Claims Portion”).⁵ For several reasons, approximately
24 \$225,000.00 will remain in the Claims Portion, even after all awards and correlative taxes have
25 been disbursed.

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28 ⁵ The Court established the amount of the Settlement Fund to be paid to and on behalf of
claimants at \$39.6 million. Order of November 5, 2010, par. 2.

1 These residual funds in the Claims Portion are derived in large part from unallocated
2 employer payroll taxes with respect to writers who have operated through separate business
3 entities (“loan-out companies”) throughout their careers. These Claimants have requested that
4 their awards be paid to those entities instead of directly to them. Tax Counsel for the Settlement
5 Fund approved these substitutions where claimants met and verified certain criteria. Addendum
6 B, lodged but not filed with the Court, identifies all of these substitutions. In those cases, it
7 was unnecessary to withhold or pay income or payroll taxes since the loan-out companies would
8 bear those responsibilities. Accordingly, \$129,521.47 that is not necessary for employer taxes
9 has been retained in the Claims Portion of the Settlement Fund.

10 In addition, one claimant has renounced her claim and one claim was listed twice on the
11 Award List, once in the name of a deceased writer and the second time in the name of his
12 daughter. (Sprenger Decl., ¶ 7) The total of the renounced award and the duplicate award is
13 \$15,136.00, which amount has also been retained in the Settlement Fund. Addendum C, lodged
14 but not filed with the Court, identifies these two claimants. Lead Class Counsel recommends
15 that they be removed from the Award List.

16 Finally, interest in the amount of approximately \$81,000.00 that has accrued on the
17 Settlement Fund is allocable to the Claims Portion. (*Id.*)

18 **B. \$225,000.00 of Available Funds in the Claims Portion Should Supplement the**
19 **Challenge Reserve to Correct Non-Claimant Errors in Awards**

20 The money to pay awards to claimants and to fund reserves comes from the Claims
21 Portion. (*Id.*, § III.B.1.) Administrative Order No. 3 specifies the purposes of the Claims
22 Portion: “to pay awards to Eligible Claimants”; “to pay all required income and employment
23 taxes attributable to distributions made by, or on behalf of, QSF II”; and to “provide the funds to
24 be set aside for the various reserves specified below”. (*Id.*) The Court on November 5, 2010
25 directed that \$39.6 million from this portion be used for awards to or on behalf of claimants.
26 Thus, it is consistent with the Court’s Order, as well as the purposes of Administrative Order No.

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1 3, to use the approximately \$225,000.00⁶ currently available in the Claims Portion to supplement
2 the awards to challengers whose awards were compromised by non-claimant mistakes made
3 during the initial processing of claims (“Challenge Supplement”).

4 **C. The Challenge Supplement Should be Augmented by \$221,000.00 from the**
5 **Expenses Portion of the Settlement Fund.**

6 Lead Class Counsel believes that 83 challengers whose awards were compromised
7 primarily by errors in the evaluation of their forms are entitled to receive awards equal to the
8 amounts they would have received but for these errors. This category of claimants bears no
9 responsibility for the errors and should not be prejudiced by those mistakes. Available funds in
10 the Claims Portion are insufficient to correct those errors fully. Accordingly, Lead Class
11 Counsel recommends that \$221,000.00 be disbursed from the Expense Portion and added to the
12 Supplement for this purpose.

13 **IV. LEAD CLASS COUNSEL’S RECOMMENDATIONS ARE SUMMARIZED IN**
14 **ADDENDUM A LODGED WITH THE COURT.**

15 A spreadsheet summarizing the recommended awards to the challengers is lodged with
16 the Court as Addendum A. Each of the columns is captioned to identify the data listed, including
17 names, claimant category, original points and recommended increases. The spreadsheet also
18 shows whether the recommended increase was primarily attributable to non-claimant error in
19 claims processing or other reasons.

20 Finally, Addendum A shows the conversion of points to dollars for each challenger. For
21 each claimant for whom the recommended increase was primarily attributable to non-claimant
22 error, the amount of the recommended increase in points was multiplied by \$15.60 per point.
23 (This is the value of a point in the initial round of awards.) These claimants received a
24 proportionate share of the Challenge Reserve and a supplementary amount from the Supplement.

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26 ⁶ Interest, albeit at low rates, continues to accrue on the Claims Portion. Thus it is likely that
27 there will be a small additional amount of money remaining that would ultimately go to the Fund
28 for the Future. “In the event there are funds remaining in QSF II at the time of its termination,
those funds shall be transferred to a non-profit organization specifically created to perform the
functions of the FFF.” (Id., § III.F.2.)

1 Claimants for whom the recommended increase was primarily attributable to other factors will
2 receive a proportionate share of the Challenge Reserve, but will not receive an allocation from
3 the Supplement. The value of each of their points is \$3.25. Lead Class Counsel believes that the
4 recommended award increases are consistent with the Court's prior Orders and appropriately
5 allocate the available funds among the challengers.⁷

6 **CONCLUSION**

7 For the reasons set forth above, the Court should enter the accompanying proposed Order
8 (1) authorizing the use of \$225,000.00 in the Claims Portion, and \$221,000.00 in the Expense
9 Portion as the Supplement to the Challenge Reserve to correct non-claimant mistakes in awards;
10 (2) approving the recommended increases in the awards to challengers; and (3) approving the
11 recommendations regarding eligibility, rescissions and substitutions. Lead Class Counsel will
12 submit an allocation of the increased awards among interest, agency claims, wages and
13 employment taxes within five business days.

14 DATED: April 4, 2011

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17 Paul C. Sprenger, Lead Class Counsel and
18 Co-Trustee, Qualified Settlement Fund II
19 On behalf of all Class Counsel and QSF II Co-Trustee
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28 ⁷ Upon the Court's request, Lead Class Counsel will provide the analysis of each of the 269 challenges and the over 10,000 pages of materials submitted by the challengers.

1 **PROOF OF SERVICE**

2 **WILLIAM BAST, et al. v. FOX ENTERTAINMENT GROUP, et al.**
3 **Case No. BC 268 839**

4 ELIZABETH BEAUDINE certifies as follows:

5 I am employed in the County of Los Angeles, State of California; I am over the
6 age of eighteen years and am not a party to this action; my business address is 6300
7 Wilshire Boulevard, Suite 2000, Los Angeles, California 90048-5268. Our e-mail address
8 is **mail@ssdslaw.com**.

9 On April 4, 2011, I caused the foregoing document(s) described as:

10 **(1) LEAD CLASS COUNSEL'S RECOMMENDATIONS CONCERNING AWARD**
11 **CHALLENGES; MEMORANDUM OF POINTS AND AUTHORITIES;**
12 **DECLARATION OF PAUL SPRENGER; AND PROPOSED ORDER**

13 **(2) DECLARATION OF PAUL C. SPRENGER, LEAD CLASS COUNSL; and**

14 **(3) PRPOSED FINDINGS AND ORDER APPROVING LEAD CLASS COUNSEL'S**
15 **RECOMMENDATIONS ON CLAIMANT CHALLENGES**

16 to be served on the interested parties in this action, by transmission to LexisNexis File &
17 Serve, pursuant to the Order Requiring Electronic Service of Documents on file in this
18 case, on the attorneys listed below:

19 Seth E. Pierce, Esq. sep@msk.com
20 Patricia H. Benson, Esq. phb@msk.com
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25 (Attorneys for Defendants Fox Broadcasting Company, Fox Entertainment Group, Inc.,
26 Greenblatt Janollari Studio, Inc., Regency Television, LLC, Twentieth Century Fox Television,
27 a division of Twentieth Century Fox International Television, Inc., Twentieth Television, Inc.)

28 I declare under penalty of perjury under the laws of the State of California that
the foregoing is true and correct. Executed on April 4, 2011, at Los Angeles, California.


ELIZABETH BEAUDINE