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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
18 _____

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

19 THIS DOCUMENT RELATES TO:

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

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

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

24 **Case No. 268 839** – Bast, et al. v. Fox
Broadcasting Company, et al.;

25 **Case No. 268 840** – Levy, et al. v. The Gersh
Agency, Inc.;

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

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

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**NOTICE OF MOTION AND MOTION
FOR (1) PRELIMINARY APPROVAL
OF SETTLEMENT AGREEMENTS;
(2) ENTRY OF ADMINISTRATIVE
ORDER NOS. 1-4; AND (3) ENTRY OF
PRELIMINARY APPROVAL ORDER;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

DATE: January 22, 2010
TIME: 11:00 a.m.
DEPT: 324

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- 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-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.

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TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Plaintiffs, by and through their counsel and pursuant to C.C.P. § 382, C.C.P. § 473, Rule 3.769 of the California Rules of Court, and governing case law, hereby move the Court for: preliminary approval of the Settlement Agreements in the 19 cases captioned above; provisional certification of the two Settlement Classes; entry of accompanying proposed Administrative Order Nos. 1-4 applicable to all 19 cases; and entry of the accompanying proposed Order Preliminarily Approving Class Action Settlements and Directing Notice.

PLEASE ALSO TAKE NOTICE that that Plaintiffs will present the motion orally on January 22, 2010 at 11:00 a.m., or as soon thereafter as the parties may be heard, in Department 324 of the above-entitled court located at 600 S. Commonwealth Avenue, Los Angeles, California.

A memorandum containing the points and authorities justifying this motion follows. Factual support is contained in the accompanying Declarations of Paul Sprenger, Thomas Osborne, and Todd Hilsee (the latter is attached as Exhibit D to the Declaration of Mr. Sprenger).

Dated: January 10, 2010

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INTRODUCTION

After more than two years of negotiations, the parties in 19 of the 20 remaining TV Writers Cases have agreed to settlements, subject to Court approval. Although there are 19 separate settlement agreements, the operative terms are identical, and the settlements will be noticed and administered together. Plaintiffs are therefore filing a single motion and memorandum in support of the settlements in all of the cases, which are referred to together as the “Settlement.” Combined with the separate settlements of two of the other cases to which this Court gave final approval early this year (ICM and Broder-Kurland Agencies), and a third case that was separately settled with preliminary approval (Irv Schechter Agency), this Settlement, if finally approved, will finally resolve 22 of the 23 class action cases. The Creative Artists Agency (“CAA”) is the defendant in the only unsettled lawsuit.

Under all applicable standards the proposed Settlement is fair and reasonable. The Settling Defendants in the 19 Settling Cases (or, as applicable, their insurance companies) have agreed to pay collectively a total of \$70,000,000 to settle the claims against them in these cases. This sum and the other Settlement terms are the product of extremely hard bargaining and material compromise by both sides. The Settlement provides the two proposed settlement classes with substantial monetary relief for both individual awards and for endowing an independent body charged with funding activities to enhance future opportunities for older writers. The Settlement therefore should be preliminarily, and ultimately finally, approved.

Four Administrative Orders accompany the 19 Settlement Agreements. They govern the provision of notice to Settlement Class Members and the administration of the funds paid pursuant to the Settlement. These four orders and the order preliminarily approving the Settlement should be entered to initiate the notice and claims administration processes.

PROCEDURAL BACKGROUND

On February 25, 2002, over 150 members of the Writers Guild of America, East and West (“WGA”), filed 23 proposed class action suits in this court against the major television networks, production studios and talent agencies. In their suits, Plaintiffs claim that defendants

1 maintain a pattern or practice of failing to represent, and/or hire, writers 40 years of age and
2 older, in violation of the Fair Employment and Housing Act (“FEHA”), Cal. Gov’t Code §§
3 12920 *et seq.*, the Unruh Civil Rights Act, Cal. Civ. Code § 51 and § 51.5 of the California Civil
4 Code, and/or the Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200 *et seq.*
5 Plaintiffs also claim that the practices of the Defendants have a disparate impact on older writers.
6 The history of these actions is largely set forth in *Alch v. Superior Court* (2004) 122 Cal. App.
7 4th 339 (“*Alch I*”), and *Alch v. Superior Court* (2008) 165 Cal. App. 4th 1412 (“*Alch II*”).

8 Twelve of the 19 suits subject to the proposed Settlement are against so-called “Employer
9 Defendants,” including ABC, CBS, Columbia TriStar Television, Inc., DW SKG TV LLC
10 (formerly known as DreamWorks SKG TV LLC), Fox Broadcasting Company, NBCU Studios,
11 Inc., Paramount Studios, Inc., The Carsey-Werner Company LLC, The WB Television Network
12 Partners, L.P., Twentieth Century Fox Television, UPN, and Warner Bros. Television, for age
13 discrimination in their hiring decisions. The other seven cases are against talent agencies,
14 specifically William Morris, UTA, Endeavor, Gersh, Paradigm, APA and Shapiro-Lichtman.
15 All Defendants have vigorously denied Plaintiffs’ allegations throughout the litigation and
16 continue to do so.

17 The settlement process began in 2006. Over the course of the next three years, plaintiffs
18 had hundreds of in-person and telephonic negotiating sessions consuming tens of thousands of
19 lawyer hours with various combinations of defendants over the monetary and non-monetary
20 terms of the settlement. The negotiations were complex and often contentious as well as
21 protracted. (Declaration of Paul Sprenger (“Sprenger”), ¶¶ 11-12.) At various times, the
22 negotiations were facilitated by two leading mediators of class action employment discrimination
23 cases in the country, Hunter Hughes, Esq., of Atlanta, Georgia, and Linda Singer of Washington,
24 DC, as well as the Honorable Anthony Mohr, whom this Court appointed on June 25, 2009,
25 pursuant to Rule 3.1380 to conduct mandatory settlement conferences in cases involving seven
26 talent agency defendants. (*Id.*, ¶ 9.)

27 Finally, in December 2009, the parties reached agreement on the final settlement terms
28

1 and language. (*Id.*, ¶ 13.) This Settlement is currently before the Court and the parties seek
2 preliminary approval of the terms, including the class notice procedures.

3 **SUMMARY OF THE SETTLEMENT TERMS**

4 **A. Settlement Class Members**

5 Settlement Class Members¹ are persons who meet the criteria of one of the following two
6 classes:

7 **1. “Professional Television Writers Settlement Class” (or “PTW**
8 **Settlement Class”)** means all Persons, except Excluded Persons ..., (i) who
9 performed television writing Work covered by the Writers Guild of America
10 Minimum Basic Agreement or who performed for compensation television
11 writing Work not covered by that Agreement, (ii) who were 40 years of age or
12 older at any time during the Class Period, and (iii) who, while 40 years of age or
13 older, had an interest in securing Television Writing Opportunities and/or talent
14 agency representation for the purpose of securing Television Writing
15 Opportunities during the Class Period.

16 **2. The “Aspiring Television Writers Settlement Class” (or “ATW**
17 **Settlement Class”)** means all Persons, except Excluded Persons ... and members
18 of the Professional Television Writers Settlement Class, (i) who were 40 years of
19 age or older at any time during the Class Period, and (ii) who, while 40 years of
20 age or older, had an interest in securing Television Writing Opportunities and/or
21 talent agency representation for the purpose of securing Television Writing
22 Opportunities during the Class Period.

23 (Settlement Agreement (“SA”), ¶ V.A.)² Certain writers employed as industry executives, agents
24 and executive producers between October 22, 1996 and the date of preliminary approval are
25

26 ¹ Capitalized terms are defined in the Settlement Agreements or Administrative Orders,
27 and have the same meanings as in those documents.

28 ² The language in each of the Settlement Agreements to which plaintiffs refer is identical.

1 “Excluded Persons” as defined in both of these classes. (Settlement Agreement, ¶ V.B.)

2 The difference between the two settlement classes is that members of the first have
3 performed television writing work for which they were compensated, while members of the
4 second have not. (Sprenger Decl., ¶¶ 17-18.) Based on WGA membership and associate
5 membership, the PTW settlement class is estimated to include over 10,000 members who have
6 sought or filled at least one of about 3,000 writing jobs each season. (*Id.*, ¶ 17.) Based on the
7 volume of submissions registered by aspiring writers with the WGA West and East and other
8 information, the ATW settlement class is estimated to be larger than the PTW class, although the
9 number of members is unknown. (*Id.*, ¶ 18.)³

10 **B. The Settlement Fund and the Qualified Settlement Fund**

11 The Settlement provides that the Settling Defendants, either directly or through their
12 insurers, together will pay \$70 million into a settlement fund. (Settlement Agreement, § IX.A;
13 Administrative Order No. 1, ¶ I.A.1.) At that point, the Trustees of the Settlement Fund may
14 invest all of the moneys in U.S. government guaranteed instruments and non-pooled bank
15 certificates of deposit. (Administrative Order No. 1, ¶ II.A.5, II.B.1.) The only allowable
16 disbursements from the settlement fund are those incurred to provide notice of and to administer
17 the Settlement. (*Id.*, ¶ II.A.1.b, II.A.4.) Proposed Administrative Order No. 1 governs the
18 administration of the Settlement Fund.

19 Within five days after the Effective Date of the Settlement Agreement, the money will be
20 transferred from the Settlement Fund to a “Qualified Settlement Fund” (“QSF”) within the
21 meaning of the Internal Revenue Code. (Administrative Order No. 3, ¶ III.A.1.) The Trustees of

22 _____
23 ³ To qualify for an award, a member of the ATW Settlement Class must show (among
24 other things) evidence of one or more of the following: (a) registration of literary material with
25 the WGAE, WGAW, or similar registration service; (b) entry of literary material in a script
26 writing competition; (c) written material prepared for commercial exploitation (*e.g.*, stories,
27 teleplays, bibles, treatment, synopsis; (d) correspondence or other documentation evidencing
28 submission of written material; and/or (e) a sufficiently detailed written declaration setting forth
attempts to secure television writing employment or reasons for deterrence, on account of
perceived age discrimination, from doing so. (Administrative Order No. 4, ¶ II.A.2(a)(3).) If any
of the preceding literary material was not prepared for television, a claimant must also present
evidence of interest in writing for television, including details of action taken in furtherance of
that interest. (*Id.*)

1 the QSF (Paul Sprenger and his partner Jane Lang) (*id.*, ¶ III.E.1) may disburse moneys from the
2 QSF to pay for notice and administration of the Settlement, and also to pay the claims of
3 Settlement Class Members, including Plaintiffs, endow the "Fund for the Future," set aside the
4 specified reserves, and pay attorneys' fees and litigation expenses, with the approval of the court.
5 (*Id.*, § III.B.) These types of disbursements are described in sections C through F below. The
6 QSF will remain under the jurisdiction of the Court until the QSF may be closed consistent with
7 IRS regulations. Proposed Administrative Order No. 3 governs the administration of and
8 expenditures from the QSF.

9 **C. Notice to Settlement Class Members**

10 The Settlement calls for notice through a combination of mailing, emailing, publication in
11 print and internet media outlets, and publication on two dedicated websites. The parties arrived
12 at this notice program in close collaboration with Todd Hilsee, an expert in the provision of
13 notice who has helped design notice programs in hundreds of cases. (Hilsee Decl., ¶¶ 1-3, 7-17.)
14 Mr. Hilsee, who advised the Federal Judicial Center on readable "plain English" forms of
15 published and mailed notice, has opined that the proposed notice content and program meets due
16 process standards and will reach "likely upward of 90% of the PTW members and "at least 70%"
17 of the ATW members. (Hilsee Decl., ¶¶ 5-6, 18-19.) Proposed Administrative Order No. 2
18 governs the notice process.

19 The Settlement requires the Claims Administrator (a company engaged in the business of
20 administering class action settlements) to mail the notice attached as Exhibit 1 to Administrative
21 Order No. 2 to persons shown on the records of the WGA East and West as members and
22 associate members of the WGA who are age 40 or over, or of unknown age.⁴ (Administrative
23 Order No. 2, ¶ III.A.1.) It also requires the Claims Administrator to email or mail copies of a
24 shorter version of that notice (Exhibit 4 to Administrative Order No. 2) to non-members who are
25 listed in the script registration databases of the WGA East and West documenting that they
26 registered scripts, treatments or similar literary materials with the WGA, unless it can be

27 _____
28 ⁴ Reports issued by the WGA West from time to time indicate that its records are missing
date of birth information for about 10% of current members.

1 ascertained that the registrants are under the age of 40. (Administrative Order No. 2, ¶¶ III.A.2,
2 III.B.1.)

3 Notices in the print and internet media will be the main method of notice of the
4 Settlement to members of the ATW Settlement Class, and will supplement mailed notice to
5 members of the PTW Settlement Class. The notice attached as Exhibit 4 to Administrative Order
6 No. 2 will be published in print media and banner headlines in niche websites of interest to (a)
7 consumer audience (*e.g.*, NEWSWEEK and PEOPLE Magazines); (b) writers (*e.g.*,
8 WritersDigest.com and Creative Screenwriting.com); and (c) persons involved in the
9 entertainment industry (*e.g.*, Variety.com, Hollywoodreporter.com). All of the headlines will
10 link to dedicated websites maintained by the Claims Administrator and/or Class Counsel (see
11 below). (Administrative Order No. 2, Exhibit 3.)

12 The websites of the WGA East and West will also provide information regarding the
13 Settlement, but are listed separately from the “niche” outlets on the exhibit to Administrative
14 Order No. 2, because the parties cannot and will not control the content or duration of those
15 notices and the Settlement Fund will not pay for notices on them. Because the two WGA entities
16 view the settlement of special importance to their members, two-thirds of whom may be
17 Settlement Class Members, they voluntarily have decided to run an announcement of the
18 Settlement on the front page of their Websites. (Sprenger Decl., ¶ 34.) This willingness is
19 significant because these websites are heavily visited by members of the PTW Settlement Class
20 as well as many persons who aspire to become professional writers.

21 All of these various notices direct readers to dedicated websites maintained by the Claims
22 Administrator and by Class Counsel. Those websites will contain copies of the Settlement
23 documents and additional information about the Settlement and the litigation generally.
24 (Administrative Order No. 2, ¶¶ III.F.1, 2.) Counters will track the number of hits on the
25 websites. (Sprenger Decl., ¶ 35.) In addition, the mailed and published notices and the websites
26 contain toll-free telephone numbers and email addresses for the Claims Administrator and Class
27 Counsel to provide further information and answer questions from Settlement Class Members.
28

1 (Administrative Order No. 2, ¶¶ III.F.3-4, Exhibits 1, 4.)

2 These various forms of notice contain, refer and/or link to all essential information about
3 the Settlement. The mailed notice, for example, informs Settlement Class Members about the
4 background of the litigation, the amount of the Settlement, the Fund for the Future, notice and
5 administration costs, attorneys' fees and expenses, the means and deadlines for filing claims, the
6 procedure to be followed in evaluating claims, the means and deadlines for opting out of the
7 Settlement, the means and deadlines for commenting on the Settlement, and the date of a final
8 fairness hearing. (Administrative Order No. 2, Exhibit 1.) They are organized in the format
9 recommended by the Federal Judicial Center, and the parties consulted repeatedly with Mr.
10 Hilsee about the language of the notices in an effort to make them fully comprehensible to lay
11 readers. (Hilsee Decl., ¶ 5.c.) The websites will contain still more information for any interested
12 Settlement Class Member, including copies of the Settlement Agreements and each
13 Administrative Order, and this memorandum and accompanying declarations. (Sprenger Decl., ¶
14 35.)

15 In total, Class Counsel anticipate that more than \$1 million in out-of-pocket costs will be
16 disbursed from the Settlement fund to provide published and mailed notice to Settlement Class
17 Members. (*Id.*, ¶ 36.)

18 **D. Awards to Settlement Class Members**

19 Over \$43 million will be disbursed from the QSF to pay awards to Settlement Class
20 Members who timely submit valid claim forms, including the appropriate taxes and benefits (if
21 any) payable on the awards, to fund reserves associated primarily with the awards to Settlement
22 Class Members and to fund prospective activities under the aegis of the Fund for the Future.
23 (Administrative Order No. 3, § III.B; Sprenger Decl., ¶ 25.)

24 The allocation of awards among eligible Settlement Class Members will be based on a
25 formula. The mailed notice sets forth a non-exclusive list of factors that will be included in the
26 formula, *i.e.* (i) past television writing income, (ii) attempts to obtain, or bases for deterrence
27 from seeking, television writing work or talent agency representation between October 22, 1996
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1 and the date of preliminary approval, (iii) writing qualifications, (iv) television genres and types
2 of positions in which interested, (v) anecdotal evidence of alleged age discrimination, (vi)
3 evidence developed in support of the individual and class allegations, and (vii) documented
4 physical and emotional injuries, medical expenses and financial losses related to alleged age
5 discrimination claims. (Ex. 1 to Administrative Order No. 2, qu. 18; *see* Administrative Order
6 No. 4, ¶ III.A.1.) Class Counsel will review the claim forms before finalizing the proposed
7 formula, notify Settlement Class Members who submitted claim forms of the proposed formula,
8 afford them an opportunity to comment, and present it to the Court for approval.

9 Using the approved allocation formula and the information provided by claimants, or
10 obtained by Class Counsel or Claims Administrator pursuant to the procedures specified in the
11 Settlement, Class Counsel will calculate and submit final awards to the Court for approval. No
12 awards may be disbursed until the Court has approved the formula and the list of awards, and the
13 Effective Date of the settlement has passed. (Administrative Order No. 4, § III.A.2 h-j.)

14 The reserves will be used primarily to pay (a) any additional taxes a taxing authority
15 finds due on the awards, in light of the allocation of a portion of the awards to non-wage income;
16 and (b) amounts agreed or determined to be payable to the WGA pension and health plans
17 attributable to the awards. The parties have agreed to processes governing the amounts of the
18 reserves and disbursements from the reserves. (Administrative Order No. 3, § VI; *see also* note
19 3 below.)

20 Any amounts not claimed by awardees, and unexpended reserves, will be contributed to
21 the Fund for the Future (“FFF”), discussed below, or an entity qualified under Internal Revenue
22 Code § 501(c)(3) to carry on the FFF programs after the QSF is terminated. (Administrative
23 Order No. 3, ¶ III.F.2.)

24 **E. The Fund for the Future.**

25 The sum of \$1.5 million dollars is initially earmarked to endow the “Fund for the
26 Future,” and Class Counsel estimate that an additional \$1million dollars will be paid into the FFF
27 from the Legal Fees and Expenses portion of QSF II after a final accounting of such expenses.
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1 (*Id.*, ¶ III.B.2; Sprenger Decl., ¶ 25.) All monies remaining upon the closing of QSF II also will
2 be paid to the FFF or its successor.

3 The FFF will be governed by a Board of Governors composed of Settlement Class
4 Members, who shall select an Executive Director. (Settlement Agreement, ¶¶ VIII.B.2-4.) Until
5 the QSF is terminated, disbursements from the FFF must be approved by the QSF trustees. (*Id.*,
6 ¶ VIII.B.1.) Defendants will have no involvement in, or responsibility for, administering the
7 FFF.

8 Pursuant to criteria to be established by the Board of Governors, the FFF will provide
9 three main types of benefits for Settlement Class Members. It will sponsor networking activities
10 to help further the careers and contacts of Settlement Class Members; make grants and loans to
11 Settlement Class Members to support individual and collaborative writing projects; and create an
12 emergency loan fund for Settlement Class Members facing life crises. (*Id.*, ¶ VIII.B.7.)

13 **F. Legal Fees and Expenses for Litigation, Class Notice, and Settlement**
14 **Administration**

15 At the final approval hearing, Class Counsel will seek an award of attorneys' fees equal
16 to the percentage specified in their contingent fee contracts with the Plaintiffs, 1/3 of the
17 settlement amount (including accrued income), or about \$23,333,000. (Settlement Agreement, ¶
18 IX.C.3; Sprenger Decl., ¶ 38.) The Settlement Agreement provides for the reimbursement of
19 expenses actually incurred by Class Counsel in litigating these cases, as well as out-of-pocket
20 expenses incurred in connection with noticing and administering the settlement (including part of
21 the cost of Defendants' Liaison Counsel⁵); in all, reimbursement of these expenses is limited to
22 6.67% of the Settlement amount. (Settlement Agreement, ¶ IX.C.1-2.) Class Counsel will
23 contribute a portion of the expense allocation to the FFF which Lead Class Counsel estimates
24 will be about \$1 million. (*Id.*, ¶ III.F.2.)

25 _____
26 ⁵ The Settlement contemplates Defendants performing a number of administrative and
27 supervisory functions in connection with implementation of the Settlement. Settling Defendants
28 have appointed one lawyer, Defendants' Liaison Counsel, to coordinate all such activities on
behalf of all of them and the parties have agreed that Defendants' Liaison Counsel's fees and
costs for undertaking such tasks shall be split 50/50 by the Settling Defendants and the
Settlement Class, up to an agreed cap.

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G. Releases

Settlement Class Members are entitled to exclude themselves from the Settlement. Unless they do, the Settlement will bar their age discrimination claims, regardless whether they file claim forms and receive awards, as set out more fully in Section VII.B.1 of the Settlement Agreements:

- Settlement Class members will release any past age discrimination claims they may have against Defendants and their corporate affiliates;
- Settlement Class members will release any past age discrimination claims against **everyone** (not just the Defendants and their corporate affiliates) as to any television projects in which a named defendant or one of its corporate affiliates was creatively, financially, or otherwise involved;
- Settlement Class members will give up the right to bring a collective action against Defendants and their corporate affiliates under the federal Age Discrimination in Employment Act, as amended by the Older Workers Benefit Protection Act, with respect to age discrimination claims;
- Settlement Class members will release claims that CAA aided and abetted the alleged age discrimination of the Defendants and their corporate affiliates or otherwise is jointly liable with the Defendants and their corporate affiliates (including claims that CAA failed to take reasonable steps to prevent age discrimination from occurring at the Defendants and their corporate affiliates or in connection with the Television Writing Opportunities covered by the releases);
- Except to the extent otherwise provided by law, class members will be barred from introducing any purported evidence of age discrimination that occurred prior to the preliminary approval date in making any future age discrimination claim against any Defendant or corporate affiliate.

The releases do not preclude Plaintiffs and the Settlement Classes from pursuing their direct discrimination claims against CAA. (Settlement Agreement, ¶ VII.B.1.e.)

1 Unlike in many settlements, class members who receive a monetary award do not have to
2 sign an individual release of claims; rather, such claims are released by operation of the
3 Settlement Agreement and associated Judgment.

4 **ARGUMENT**

5 **I. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

6 **A. The Court Should Evaluate Whether the Settlement Is in the Range of** 7 **Reasonableness**

8 A class action may not be dismissed, compromised, or settled without approval of the
9 Court. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 240; Cal. Civ. Code §
10 1781(f).) Proper review and approval of a class action settlement requires three steps: (1)
11 preliminary approval of the proposed settlement; (2) dissemination of notice to all affected
12 Settlement Class Members; and (3) a final fairness hearing at which Settlement Class Members
13 may be heard regarding the settlement, and at which evidence and argument concerning the
14 fairness, adequacy, and reasonableness of the settlement is presented. (Cal. Rules of Court, Rule
15 1859; MANUAL FOR COMPLEX LITIGATION (FOURTH) § 21.63 (2004).)

16 The decision to approve or reject a proposed settlement is committed to the sound
17 discretion of the court (*Wershba*, 91 Cal. App. 4th at 234-35), which should determine whether a
18 proposed settlement is fair under the circumstances of the case. (*Wershba*, 91 Cal. App. 4th at
19 234-35; *Mallick v. Superior Court* (1979) 89 Cal. App. 3d 434, 438 (1979).)

20 In determining whether a class settlement is fair, adequate and reasonable,
21 the trial court should consider relevant factors, such as “the strength of plaintiffs’
22 case, the risk, expense, complexity and likely duration of further litigation, the
23 risk of maintaining class action status through trial, the amount offered in
24 settlement, the extent of discovery completed and the stage of the proceedings, the
25 experience and views of counsel, the presence of a governmental participant, and
26 the reaction of the class members to the proposed settlement.”

27 (*Wershba*, 91 Cal. App. 4th at 244-45 (quoting *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th
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1 1794, 1801.) This list of factors is “not exclusive”; the trial court should balance the appropriate
2 factors given the circumstances of the cases before it. (*Wershba*, 91 Cal. App. 4th at 245; *Dunk*,
3 48 Cal. App. 4th at 1801.) A decision approving a class action settlement may be reversed only
4 on a showing of clear abuse of discretion. (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d
5 1011, 1027.)

6 Plaintiffs request that this Court now take the first step in the settlement approval process
7 and grant preliminary approval of the proposed Settlement. The same factors identified above
8 are relevant, and are satisfied if the terms are in the “reasonableness range.” (*North County*
9 *Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal. App. 4th 1085, 1089-1090;
10 ALBA CONTE & HERBERT NEWBERG, *NEWBERG ON CLASS ACTIONS* § 11.25 (4th ed. 2002.)

11 In addition, a “presumption of fairness exists where: (1) the settlement is reached through
12 arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
13 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage
14 of objectors is small.” (*Wershba*, 91 Cal. App. 4th at 245 (quoting *Dunk*, 48 Cal. App. 4th at
15 1802).) The first three of these factors apply at the preliminary approval stage; the percentage of
16 objectors is determinable only at the final approval stage. As a preliminary matter, however, it is
17 worth noting that the six lead named plaintiffs who are members of the Plaintiffs’ Liaison
18 Committee support the settlement and urge its approval. (Sprenger Decl., ¶ 15 and Ex. C.)

19 **B. The Court Should Presume that the Settlement Is Fair and Reasonable.**

20 Based on the three factors identified in *Wershba* relevant at the preliminary approval
21 stage, the Court should presume that the Settlement is fair and reasonable.

22 **1. The Settlement Was Reached Through Arms-Length Bargaining.**

23 The parties began mediation in 2006, and, as noted above, have had scores of negotiating
24 sessions, over both the fundamental terms and the language of the settlement documents. Many
25 sessions were face-to-face, in addition to thousands of telephone and email communications with
26 one or more parties. (Sprenger Decl., ¶ 11.) The negotiations were difficult and tense
27 throughout, and many times differences between the parties appeared to be irreconcilable in light
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1 of vastly different and often polarized positions. (*Id.*, ¶ 12.)

2 Most of the mediation sessions were facilitated by mediator Hunter Hughes, and others
3 by Linda Singer, who are widely regarded the two leading mediators of employment class
4 actions resolutions throughout the country. (*Id.*, ¶ 9; *Wershba*, 91 Cal. App. 4th at 245 (“Two
5 well-respected retired judges served as neutral mediators during critical stages of the
6 negotiations.”); *Dunk*, 48 Cal. App. 4th at 1802-03 (“The independent mediator, a retired
7 superior court judge and appellate justice with substantial experience and respect in the legal
8 community, recommended the settlement.”).) Other negotiations occurred in the context of
9 mandatory settlement conferences under the auspices of the Honorable Anthony Mohr.
10 (Sprenger Decl., ¶ 9.) Despite their assistance, the sheer number of parties and lawyers engaged
11 in this process created a level of complexity and contentiousness that was unprecedented in Lead
12 Class Counsel’s 45 years of litigation experience. (*Id.*, ¶ 12.)

13 **2. Investigation and Discovery Were Sufficient for the Parties to**
14 **Evaluate the Risks Intelligently.**

15 Employment pattern or practice cases typically involve three types of evidence: evidence
16 concerning the policies and practices that plaintiffs are challenging; statistical evidence; and
17 anecdotal evidence concerning the discrimination that class members have experienced. (*Alch I*,
18 122 Cal. App. 4th at 380-81; *see Stephens v. Montgomery Ward & Co., Inc.* (1987) 193 Cal.
19 App. 3d 411, 421 (commonality supported by statistical data).) Class Counsel had sufficient
20 access to all three types of evidence to evaluate the claims accurately.

21 Even before commencing litigation, Class Counsel had substantial information about
22 practices in Hollywood applicable to the hiring of writers: the industry is well-covered in public
23 media. For example, plaintiffs had evidence that neither the employers nor the talent agencies
24 had formal application processes. The evidence instead showed that generally writers are
25 considered for employment by networks and studios only if a talent agent “pitches” them. To the
26 extent that Class Counsel had questions about any industry policies, practices, and structure, the
27 interrogatory answers of most of the Defendants, along with input from the Plaintiffs’ Liaison
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1 Committee members and other plaintiffs, provided the necessary information. (Sprenger Decl., ¶
2 10.)

3 Second, Class Counsel had access to statistical information in support of plaintiffs’
4 claims. The reports issued periodically by the WGA West and employment data obtained during
5 the negotiation process provided Class Counsel and their statistical experts adequate data with
6 which to evaluate the claims. (*Id.*)

7 Finally, publicly available information and information provided by the over 150
8 plaintiffs (along with non-plaintiffs who consented to talk with Class Counsel) provided Class
9 Counsel with extensive anecdotal information regarding their claims, further helping them
10 evaluate those claims. (*Id.*, ¶ 20.)

11 These three categories of information were more than sufficient for Plaintiffs to assess
12 the strength of their claims and thus the reasonableness of the potential settlement.

13 3. Class Counsel’s Experience in Similar Litigation

14 The Settlement Classes are represented by a litigation team supremely experienced in
15 employment class action litigation. Lead Class Counsel Paul Sprenger is one of the preeminent
16 plaintiffs’ employment class action lawyers in the country, having prosecuted such cases for over
17 forty years. (*Id.*, ¶¶ 21-23.) His partner Jane Lang has over 30 years of experience in
18 employment class action litigation, including defense representation in the AT&T and steel
19 industry consent decrees. Both Sprenger and Lang have been recognized and honored by civil
20 rights advocacy groups and neutral trial lawyer rating systems. The team of class counsel
21 collectively has over 150 years of employment and class action litigation experience. (*Id.*, ¶¶ 6,
22 23.) Finally, Class Counsel include lawyers from AARP Foundation Litigation, some of the
23 foremost legal experts in the country in the area of age discrimination law. (*Id.*, ¶¶ 6, 23;
24 Osborne Decl., ¶ 11.)

1 **C. The Settlement Amount is Within the Range of Reasonableness.**

2 Even without that presumption of fairness and reasonableness, the Settlement clearly is
3 within the range of reasonableness. With the presumption, there simply is no room for dispute
4 about the reasonableness of the Settlement.

5 The Settlement will provide meaningful relief to the Settlement Classes as whole. The
6 amount of the Settlement, \$70,000,000, speaks for itself. Based on the law, the history of the
7 litigation, the available evidence, and the analyses performed by the statistical consulting firm of
8 Drogin, Kakigi & Associates, whose principals frequently have been qualified to testify in
9 employment discrimination class action cases, Lead Class Counsel believes the Settlement
10 amount represents a fair, reasonable, and adequate settlement for the Settlement Classes.
11 (Sprenger Decl., ¶¶ 16, 25.)

12 The settlement amount is unallocated among defendants, consistent with Plaintiffs’
13 claims. Whether it is assessed as a total amount, or allocated among the defendants in theory, the
14 amount paid is considerably greater than the exposure projected by the defendants, who continue
15 to maintain that the scope of a class (if any) certified for trial purposes would be limited and that,
16 even if a class were certified, they would not be adjudged liable to the class. (*Id.*, ¶¶ 14, 30.)

17 Settlement Class Members also will benefit from the FFF, which, to the best of Lead
18 Class Counsel’s knowledge, is a unique provision in employment discrimination settlement
19 agreements designed to respond to the circumstances facing Settlement Class Members. It is an
20 independent body and fund run by Settlement Class Members, under the supervision of the
21 Trustees of QSF II, for the benefit of Settlement Class Members. The FFF will engage activities
22 designed to further the writing careers and projects of Settlement Class Members and provide
23 financial support for Settlement Class Members facing life crises. It empowers Settlement Class
24 Members themselves to fashion programs for the benefit of the Settlement Classes. (Sprenger
25 Decl., ¶ 26; Declaration of Thomas Osborne, ¶ 9.)

26 Other factors identified by the California appellate courts reinforce the conclusion that
27 the amount of the Settlement is within the range of reasonableness:

28

- 1 • Although the theories underlying plaintiffs' claims are well-established under
2 federal law and were endorsed by the California Court of Appeal in its 2004
3 decision in these cases, neither side can be certain of whether a class would be
4 certified, the scope of any certified class, whether liability could be established to
5 the class, and the amount of damages that could be proved. (*Id.*, ¶ 27);
- 6 • Despite over nine years of hard-fought litigation, including five trips to the Court
7 of Appeal and two petitions to the Supreme Court, formal discovery is still at an
8 early stage. Nineteen cases are included in the Settlement. They could not be
9 tried all at once. (*Id.*, ¶ 29.) If these cases are not settled, it is reasonable to
10 believe that they could proceed for at least ten years or more. And all the while,
11 plaintiffs and Settlement Class Members would continue to age. Already 21 of
12 the plaintiffs named in the original complaint have died. (*Id.*; Osborne Decl., ¶
13 10.)
- 14 • Class Counsel, whose many years of experience are discussed above, are
15 convinced that the Settlement is in the interest of the Settlement Class Members.
16 (*Id.*, ¶¶ 3-4, 25; Osborne Decl., ¶¶ 2-3, 8.) Given the time and resources already
17 spent on the litigation, and the risks of losing some or all of the class-wide claims,
18 a settlement of this magnitude is an excellent result for Settlement Class
19 Members. (*Wershba*, 91 Cal. App. 4th at 244-45; *Dunk v. Ford Motor Co.*, 48
20 Cal. App. 4th at 1801.)

21 **D. The Notice Provisions Are Adequate and Meet Due Process Requirements**
22 **and the Claims Allocation Provisions Are Fair to Settlement Class Members.**

23 To be fair, a settlement must treat unnamed class members fairly in two ways. It must
24 provide adequate notice to settlement class members so that they can file timely claims, object,
25 or exclude themselves from the class. It must also provide a process to distribute the settlement
26 benefits as a whole among class members, including named plaintiffs. The proposed Settlement
27 passes muster on both scores.
28

1 **1. The Proposed Method of Giving Notice and the Form of Notice Are**
2 **Adequate.**

3 For a proposed method of notice of a proposed Settlement to be fair, adequate and
4 reasonable, it must have “a reasonable chance of reaching a substantial percentage of the class
5 members.” (*Cartt v. Superior Court* (1975) 50 Cal. App. 3d 960, 974.) Notice may be given
6 through mail (or e-mail), through publication, or through both. The purpose is to provide
7 affected parties with the right to be heard at a meaningful time and in a meaningful manner.

8 The parties have devised a sophisticated notice plan. Indisputably, in these 19 cases, the
9 mailed notice alone has “a reasonable chance of reaching a substantial percentage” of the
10 members of the PTW Settlement Class. Undoubtedly most of the members of the PTW
11 Settlement Class are members of the WGA. Notice will be mailed to all WGA members who are
12 40 or over according to the records of the WGA or whose age is not listed at the addresses shown
13 in the records of the WGA West and East, as those addresses may be updated through at least
14 two databases. (Administrative Order No. 2, ¶¶ III.A.3-4.) In addition, there will be
15 comprehensive efforts to reach Settlement Class Members through published notice and through
16 publication on Internet sites. Finally, although not required by the Settlement, the WGA West
17 and East have decided to announce the Settlement on the first pages of their respective websites
18 throughout the period prior to the final approval hearing and to provide links to Class Counsel’s
19 website where Settlement Class Members can find all of the settlement documents and other
20 information about the cases and the Settlement. (Sprenger Decl., ¶¶ 34-35.)

21 The Settlement requires that, with a few narrow exceptions, mailed or emailed notice be
22 sent to non-WGA members who registered scripts and other materials with the WGA East or
23 West. That is the only data source available to the parties concerning the identity and addresses
24 of possible members of the ATW Settlement Class. (Sprenger Decl., ¶ 32.) Because the ATW
25 settlement class is not limited to script registrants, the provisions for published notice are even
26 more important as to the ATW Settlement Class than as to the PTW Settlement Class. (*Id.*, ¶
27 33.)

1 Mr. Hilsee, the expert whom the parties consulted about the adequacy of notice, opines
2 that through notice published in the media and on the Internet, over 70% of ATW Settlement
3 Class Members will be exposed to notice of the Settlement. (Hilsee Decl., ¶ 19.) There is no
4 reason to doubt his estimate. Experts in the field regard 70% as an adequate benchmark (Hilsee
5 Decl., ¶ 19.b), but courts also approve settlements in which the reach of notice was much less
6 than 70% of class members. (*See Larson v. Sprint Nextel Corp.*, 2009 U.S. Dist. LEXIS 39298,
7 at *38 (D.N.J. Apr. 30, 2009) (“No case stands for the proposition that publication notice reach
8 of 49-53 percent is disallowed.”).)

9 Mr. Hilsee also opines that the language of the various notices adequately informs
10 Settlement Class Members of the essential terms of the Settlement and of how to access
11 additional information. The notices are written in the question-and-answer format of the
12 recommended notices available on the Federal Judicial Center website, and Mr. Hilsee, who
13 wrote those exemplar forms, ensured that the language was comprehensible to lay persons.
14 (Hilsee Decl., ¶¶ 20-21.) And the Settlement requires all Settlement documents to be made
15 available on the dedicated settlement websites of both Class Counsel and the Claims
16 Administrator.

17 **2. The Process for Devising the Award Allocation Formula Is Fair.**

18 As explained above, the awards will be allocated among Settlement Class Members on an
19 individualized basis pursuant to a single formula to be approved by the Court that will apply to
20 all members of both classes, including named Plaintiffs. All Settlement Class Members will
21 have a chance to comment on the formula before the Court considers it. As mentioned above,
22 the factors that Class Counsel will propose for inclusion in the formula are identified in the
23 notice. Those factors are reasonably related to the strength of the claims of each Settlement
24 Class Member and his/her lost television writing income. But it is the second notice and
25 opportunity to comment on the actual formula, and the requisite Court review, that insures the
26 fairness of the process for arriving at the formula and making individual awards.

1 **E. The Provisions Governing Attorneys' Fees and Expenses Are Fair.**

2 The Settlement Agreement contemplates that, from the Legal and Administrative
3 Expense Portion of the settlement fund, Class Counsel will seek one-third of the Settlement
4 amount as attorneys' fees. In addition, this portion of the fund will be used to reimburse
5 expenses incurred and to be incurred in the litigation, settlement, notice and administration of the
6 settlement of these cases.

7 As Class Counsel will detail in their requests, about 160 lawyers, paralegals, legal
8 assistants and law clerks have worked more than 120,000 hours on the various TV Writers Cases
9 over the years, according to Class Counsel's contemporaneously maintained records. (Sprengr
10 Decl., ¶ 38.) That amount of work is equal to sixty 2,000-hour years, i.e., 40 hours/week for 50
11 weeks/year for 60 years. Despite this massive effort, the retainer agreements with the 184 named
12 plaintiffs limit Class Counsel's attorneys' fees to 1/3 of the amount of any recovery. (*Id.*)
13 Awards of this proportion are appropriate not only given the time devoted to the case, but also to
14 the risks associated with the litigation: the Court of Appeal has twice reversed Superior Court
15 decisions that, if not reversed, would have doomed the litigation. (*Id.*, Ex. B.)

16 The only costs for which Class Counsel will petition this Court are for costs actually
17 incurred for the purposes of this litigation. Class Counsel anticipate that the request will be in
18 excess of \$2,000,000. (*Id.*, ¶ 39.) In addition, the costs of notice and claims administration in
19 amounts exceeding \$1,000,000 will be paid by the Trustees out of the Legal and Administrative
20 Expense Portion.

21 Settlement Class Members have an opportunity to object to Class Counsel's requests for
22 fees and expenses from the Court. More important, no amounts will be paid to Class Counsel
23 except to the extent that the Court approves. These provisions ensure that Settlement Class
24 Members will be treated fairly as to fees and expenses.

25 **F. The Releases Are Limited to Age Discrimination Claims.**

26 Another element of the Settlement that makes it fair, reasonable and adequate is the scope
27 of the release. Unlike in some settlements, the release in this case is limited to the type of claim
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1 brought: age discrimination claims. No other claims are barred. Granted, the release provisions
2 are somewhat complicated in language because of the necessity of dealing with the ongoing
3 lawsuit against CAA and because of the nature of the industry in which several entities may
4 impact the hiring decisions of a different company, but the scope of those provisions are clearly
5 limited to age discrimination.

6 In sum, the Settlement Classes will benefit from both a large monetary settlement and the
7 Fund for the Future. In return, they will release only the types of claims brought. The parties
8 have gone to great lengths and expense to provide adequate notice. The Court can ensure that
9 attorneys' fees and expense reimbursements are fair and reasonable. For all these reasons,
10 plaintiffs clearly meet the relatively low burden necessary to show that the Settlement should be
11 preliminarily approved, and will be able to meet the higher standards associated with final
12 approval at the time of the final approval hearing.

13 **II. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASSES IS**
14 **APPROPRIATE**

15 Plaintiffs further request that the Court provisionally and conditionally certify the two
16 proposed Settlement Classes at this time. Provisional certification is appropriate at the
17 preliminary approval stage where, as here, the classes are defined in the parties' Settlement
18 Agreement and have not previously been certified by the Court, and where the requirements are
19 met. (4 NEWBERG § 11.22 *et seq.*) The practical purpose of provisional and conditional
20 certification is to facilitate distribution to the class of notice of the terms of the proposed
21 settlement and the date and time of the final approval hearing. (Rule of Court 3.769; MANUAL
22 FOR COMPLEX LITIGATION (FOURTH) § 21.63 (2004).)

23 California courts are authorized to adjudicate class-wide claims based on a common
24 course of conduct. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 331.)
25 California law and policy favor the fullest and most flexible use of the class action procedure, so
26 any doubt as to the appropriateness of certification should be resolved in favor of certification.
27 (*Id.* at 339-340; *Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 821.)

1 Class certification is appropriate when (1) the class is ascertainable; and (2) the parties to
2 be represented share a well-defined community of interest in the questions of law and fact
3 involved. (*Sav-On*, 34 Cal. 4th at 326; *Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 435.)
4 The community of interest element is comprised of three factors: (a) predominant common
5 questions of law or fact; (b) class representatives with claims typical of the class; and (c) class
6 representatives who can adequately represent the class. (*Sav-On*, 34 Cal. 4th at 326.) The Court
7 must also determine that a class action proceeding is the superior means for fair and efficient
8 adjudication of the claims. (*Id.*; *Dunk*, 48 Cal. App. 4th at 1806.)

9 These requirements do not have to be strictly satisfied in the context of settlement
10 classes. A settlement class may be approved, if after a “careful fairness review,” the settlement
11 is found to be “fair and reasonable” to the settlement class. (*Wershba*, 91 Cal. App. 4th at 239-
12 40 (rejecting argument that superior court did not adequately “determine[e] that class
13 prerequisites were met” because, in the context of a settlement, the concern to protect absent
14 settlement class members can be “satisfied by a careful fairness review of the settlement by the
15 trial court”).)

16 In these cases, the Settlement Classes should be provisionally approved for two reasons.
17 First, the analysis in Part I above shows that, at least for purposes of preliminary approval, the
18 Settlement is “fair and reasonable” to the members of each Settlement Class. Second,
19 independently of the fairness analysis, the Settlement Classes meet the standards for certification.

20 **A. The Settlement Is “Fair and Reasonable” to Each Settlement Class.**

21 As discussed above, under California law (unlike federal law), a settlement class may be
22 approved even if it does not satisfy all of the requirements applicable to litigation classes, if the
23 Court finds the settlement to be “fair and reasonable” to the settlement class. (*Wershba*, 91 Cal.
24 App. 4th at 239-40.) Both Settlement Classes should be approved under this rationale.

25 For the most part, the Settlement treats the members of the two Settlement Classes
26 identically. The amount of the settlement to be distributed to eligible claimants will be
27 distributed to the members of each Settlement Class without any prescribed division between the
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1 two classes. The benefits of the FFF are available to members of both classes. The scope of the
2 release is the same as to both classes. Published and Internet notice will be equally available to
3 the members of both classes.

4 The only two differences in treatment of the two classes are relatively minor and are fully
5 justified. First, members of the ATW settlement class must provide evidence of interest in
6 television writing positions in order to receive a monetary award that members of the PTW
7 settlement class are not required to provide. This difference is justified by the fact that PTW
8 Settlement Class Members have prior television writing experience which in itself provides that
9 evidence for them. Second, a far larger percentage of PTW Settlement Class Members will
10 receive mailed notice than will members of the ATW settlement class. The parties had no choice
11 as to this distinction: they are mailing or emailing notice to ATW Settlement Class Members to
12 the extent that they have contact information for them.

13 As shown in Part I above, the Settlement is fair, reasonable and adequate as to the
14 Settlement Classes as a whole. Because, with these two minor exceptions, the members of the
15 two Settlement Classes are treated identically, the Settlement also is fair, reasonable and
16 adequate as to the members of each Settlement Class. Each of the Settlement Classes should be
17 certified on this basis.

18 **B. Each Settlement Class Meets the Detailed Criteria for Class Certification**

19 The two Settlement Classes should be approved on a second, independent basis. They
20 meet all of the statutory and common law criteria for class certification.

21 **1. Each Proposed Class Is Ascertainable.**

22 The proposed PTW Settlement Class is defined to include persons who meet three
23 objective criteria: (i) they performed television writing Work covered by the MBA or were paid
24 to perform other television writing Work not covered by the MBA, (ii) they are at least 40 years
25 old, and (iii) they had an interest in television writing work between October 22, 1996 and the
26 date of preliminary approval while they were 40 or older. Because this class is defined by
27 objective criteria, its membership is ascertainable. (*Global Minerals & Metals Corp. v. Superior*
28

1 *Court* (2003) 113 Cal. App. 4th 836, 858; *Hicks v. Kaufman & Broad Homes Corp.* (2001) 89
2 Cal. App. 4th 908, 915 (“As explained in the leading treatise on class actions, ascertainability
3 can be better achieved by defining the class in terms of objective characteristics”) (citing 2
4 NEWBERG ON CLASS ACTIONS (3d ed. 1992), § 6.14, at 6-61).)

5 Membership in the proposed ATW Settlement Class is defined by three characteristics:
6 (i) the person is not a member of the PTW; (ii) s/he had a demonstrable interest in securing
7 writing work for television; and (iii) s/he had that interest between October 22, 1996 and the date
8 of preliminary approval at a time when s/he was 40 years of age or older. Administrative Order
9 No. 4 sets out the objective means by which a person can demonstrate an interest in securing a
10 television writing position, *e.g.*, registered a television script in a script registration database.
11 Those requirements are reiterated in the proposed Claim Form. See also n.2 above. As fleshed
12 out through the Administrative Order and Claim Form, this class also is defined by objective
13 criteria, and hence its membership is ascertainable.

14 Each class also excludes certain industry executives, agents and producers who were
15 regularly employed in those positions between October 22, 1996 and the date of preliminary
16 approval. These exclusions also are defined by completely objective criteria.

17 **2. The Proposed Settlement Classes Are Sufficiently Numerous.**

18 The numerosity requirement is met if a class is so large that joinder of all members would
19 be impracticable. (*Gay v. Waiters' & Dairy Lunchmen's Union* (N.D. Cal. 1980) 489 F. Supp.
20 282, *aff'd*, (9th Cir. 1982) 694 F.2d 532.) Plaintiffs believe that there are over 10,000 PTW
21 Settlement Class Members (Sprenger Decl, ¶ 17) and that there are more ATW Settlement Class
22 Members, as noted earlier. (*Id.*, ¶ 18.) Regardless of the actual numbers, joinder of all of these
23 individuals would be staggeringly impracticable. (Osborne Decl., ¶ 7.a; *cf. Rose v. City of*
24 *Hayward* (1981) 126 Cal. App. 3d 926, 934 (class of 42 sufficiently numerous).)

25 **3. Both Settlement Classes Meet the Commonality Requirement.**

26 The commonality requirement is met where there are questions of law or fact common to
27 a class. (*Lockheed Martin Corp. v. Superior Court* (2003), 29 Cal. 4th 1096 at 1104, 1106;

1 *Hanlon*, 150 F.3d at 1019.) To show this, Plaintiffs need not prove that they will prevail on these
2 questions. “[A]t the certification stage the court is not to examine the merits of the case, i.e., to
3 attempt to determine whether the claimed discrimination actually exists.” (*Stephens v*
4 *Montgomery Ward & Co., Inc.*(1987), 193 Cal. App. 3d at 411, 418.) Rather, Plaintiffs only
5 need show that their “theory of recovery ... is, as an analytical matter, likely to prove amenable
6 to class treatment.” (*Sav-On Drug Stores*, 34 Cal. 4th at 327.) Put another way, Plaintiffs must
7 show that their “theory of recovery” “may be jointly tried.” (*Id.* at 326, 335, 339.)

8 This amenability to joint trial must be shown through “substantial evidence.” (*Id.* at 326.)
9 “Reviewing courts consistently look to the allegations of the complaint and the declarations of
10 attorneys representing the plaintiff class to resolve this question.” (*Id.* (quoting *Richmond v.*
11 *Dart Ind., Inc.* (1981) 29 Cal. 3d 462, 478.)

12 Each class asserts the same two “theories of recovery” as to each Defendant: the
13 Defendant engaged in a pattern or practice of age discrimination and the Defendants’ facially
14 neutral practices had a disparate impact on older writers.

15 Pattern or practice proof is “amenable to class treatment”:
16 a class action is, by definition, a pattern or practice claim. “Pattern-or-practice
17 suits, by their very nature, involve claims of classwide discrimination. Such
18 claims involve an allegation that the defendant’s actions constitute a pattern of
19 conduct in which the defendant intentionally has discriminated against the
20 plaintiff’s protected class.”

21 (*Alch*, 122 Cal. App. 4th at 379 (quoting 1 LINDEMANN & GROSSMAN, EMPLOYMENT
22 DISCRIMINATION LAW (3d ed. 1996), at 44 n.168); *accord Sav-On*, 34 Cal. 4th at 333 (“California
23 courts and others have in a wide variety of contexts considered pattern and practice evidence,
24 statistical evidence, sampling evidence, expert testimony . . . to evaluate whether common
25 behavior towards similarly situated plaintiffs makes class certification appropriate”); *Capitol*
26 *People First v. State Dep’t of Developmental Servs.* (2007) 155 Cal. App. 4th 676, 693-95
27 (reversing denial of class certification where plaintiffs presented pattern or practice evidence on
28

1 claim of unlawful failure to place people with developmental disabilities in community living
2 arrangements).)

3 Plaintiffs' pattern or practice and disparate impact claims present common claims under
4 California law sufficient to satisfy the commonality requirement for purposes of provisional
5 certification.

6 **4. The Representatives of Both Classes Satisfy the Typicality**
7 **Requirement.**

8 Class representatives' interests need not be identical to other settlement class members; to
9 be typical, class representatives and class members need only be similarly situated. (*B.W.I.*
10 *Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal. App. 3d 1341, 1347.) The typicality
11 requirement does not focus on the personal characteristics of the putative class representatives or
12 their individual circumstances with respect to the class, but rather on the typicality of the
13 proposed representatives' claims as they relate to the defendants' conduct and activities.
14 (*Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46.) A representative plaintiff's claim is typical
15 if it arises from the same event, practice or course of conduct that gives rise to the claims of other
16 class members, and if his or her claim is based on the same legal theory. (*Id.*)

17 All plaintiffs claim that they were rejected or deterred from employment by the Employer
18 Defendants and from representation by the Talent Agency Defendants by the same practices as
19 the other proposed Settlement Class Members. The plaintiffs who at one time secured television
20 employment thus have claims typical of the other members of the PTW Settlement Class, while
21 the two plaintiffs who were unable despite their interest to secure television employment have
22 claims typical of the other members of the ATW Settlement Class.

23 **5. The Representatives of Both Settlement Classes Satisfy the Adequacy**
24 **of Representation Requirement.**

25 Plaintiffs who are represented by qualified counsel and have interests aligned with a class
26 are adequate representatives of the class. (*McGhee v. Bank of America* (1996) 60 Cal. App. 3d
27 442, 450.) Vigorous prosecution of class claims also supports a showing of adequacy. (*Kelley v.*
28

1 *SBC, Inc.* (N.D. Cal. 1998) 5 Wage & Hour Cases 2d 16 (BNA).)

2 The “typicality” analysis above shows that the interests of the representative Plaintiffs are
3 aligned with the interests of the members of the two Settlement Classes. In addition, the
4 plaintiffs have retained attorneys to represent the Settlement Class who are well qualified to do
5 so, having collectively spent well over 100 years working on class action employment litigation.
6 (Sprenger Decl., ¶ 21; *see* Osborne Decl., ¶ 9.d.) These lawyers have vigorously prosecuted the
7 litigation on behalf of older television writers for about nine years. (*Id.*, ¶ 29, Ex. B.) In
8 addition, the lead Plaintiffs have been actively engaged in the prosecution of these cases. They
9 have answered voluminous interrogatories and produced extensive documents, and six of the
10 lead Plaintiffs have served on the Plaintiffs Liaison Committee. (Sprenger Decl., ¶ 17.) The
11 adequacy of representation requirement is thus met.

12 **6. Common Issues Predominate and Class-Wide Settlement is Superior**
13 **to Other Available Methods of Resolution.**

14 If these cases were not settled, they would be tried in two stages. The first would focus
15 on the existence of a pattern or practice of discrimination, which Plaintiffs would seek to prove,
16 as discussed in the Commonality section above, with common evidence. If plaintiffs prevailed,
17 “class-wide liability would be established and plaintiffs would be, *ipso facto*, “entitled to
18 injunctive and perhaps other class-wide relief.” (*Alch I*, 122 Cal. App. 4th at 382 (citing *Cooper*
19 *v. Federal Reserve Bank* (1984) 467 U.S. 867, 876, and *Teamsters*, 431 U.S. at 361).) “[T]he
20 question whether [an applicant or] a deterred applicant will be able to obtain individual relief . . .
21 will not arise until and unless the [Plaintiffs] prove the [Defendants] have enforced a company-
22 wide policy of discrimination. . . . *It is only at this point that individual claims of class*
23 *members become germane.* (*Id.* at 383 [emphasis added].)

24 Given this two-stage approach to employment discrimination class actions, the
25 predominant issue at the first stage is whether each Defendant engaged in a pattern or practice of
26 age discrimination. And as discussed above, Plaintiffs would seek to prove this based on
27 evidence common to Settlement Class Members, not individualized evidence. Under this
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