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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17 IN RE ANIMATION WORKERS ANTITRUST
LITIGATION

Master Docket No. 14-CV-4062-LHK

18 PLAINTIFFS' NOTICE OF MOTION
19 AND MOTION FOR ATTORNEYS'
20 FEES, EXPENSES AND SERVICE
AWARDS

21 THIS DOCUMENT RELATES TO:

Date: November 10, 2016
Time: 1:30 p.m.
Courtroom: Room 8, 4th Floor
22 Judge: The Honorable Lucy H. Koh
23

24 ALL ACTIONS
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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on November 10, 2016 at 1:30 p.m., or as soon thereafter as this matter may be heard, before the Honorable Lucy H. Koh, United States District Judge of the Northern District of California, located in Courtroom 8, 4th Floor, 280 S. First Street, San Jose, CA 95113, plaintiffs and class counsel will, and hereby do, move for an award of attorneys’ fees, expenses, and service awards to the named plaintiffs. This motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the declarations in support of the motion, argument by counsel at the hearing before this Court, any papers filed in reply, such oral and documentary evidence as may be presented at the hearing of this motion, and all papers and records on file in this matter.

STATEMENT OF ISSUES

Whether this Court should approve (1) an award of attorneys’ fees in the amount of \$4,737,500 to plaintiffs’ counsel, which equals 25 percent of the \$18,950,000 in total settlements; (2) reimbursement of \$1,561,700.47 in expenses incurred by counsel on behalf of the class, and payment of \$36,062.92 in notice and claims administration fees; and (3) participation awards of \$10,000 for each of the three named plaintiffs – Robert Nitsch, David Wentworth, and Georgia Cano.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The plaintiffs settled with two groups of defendants – Sony Pictures Imageworks Inc. and Sony Pictures Animation Inc. (collectively, “Sony Pictures”), and Blue Sky Studios, Inc. (“Blue Sky”). Sony Pictures will pay \$13,000,000, and Blue Sky will pay \$5,950,000, for a total of \$18,950,000. These settlements are an excellent result for the class. Class members will be paid directly, with no requirement that they submit claim forms. And no money will revert to the defendants. Class members will be paid *pro rata* based on their employment income during the class period.

Consistent with the notice sent to the class, class counsel are limiting their fee request to 25 percent of the settlement fund, or \$4,737,500. Twenty-five percent is the Ninth Circuit’s benchmark for attorneys’ fees. Class counsel also request reimbursement of \$1,561,700.47 in expenses, \$36,062.92 in expenses to the claims administrator, and service awards of \$10,000 to each of the three named plaintiffs, Robert Nitsch, David Wentworth, and Georgia Cano.

This request is reasonable given the results thus far, class counsel’s dedication and zealous advocacy on behalf of the class, the risks faced in litigating this case, and the vigorous opposition posed by corporate defendants who are represented by sophisticated defense counsel.

II. THE WORK UNDERTAKEN BY CLASS COUNSEL

A. Co-Lead Counsel Conduct a Thorough Pre-Complaint Investigation

During their pre-complaint investigation, class counsel invested substantial time and effort into researching the claims, analyzing the industry, and investigating the scope of the conspiracy. Although the investigation of the case was spurred by documents and testimony eventually unsealed in *In re High-Tech*, it reached far beyond that information. Before the first complaint was filed, counsel expended significant investigative resources to develop the theory of the case and the allegations, as well as learn the economics underlying the industry. Plaintiffs’ counsel unearthed one method by which defendants’ conspiracy to suppress competition was achieved – coordination on compensation – solely through independent investigation. These allegations were not developed in *High-Tech*.

B. The Court Initially Grants Defendants' Motion to Dismiss

On December 2, 2014, plaintiffs filed their Consolidated Amended Class Action Complaint against DreamWorks Animation SKG, Inc., ImageMovers Digital LLC, Lucasfilm Ltd., LLC, Pixar, Sony Pictures Animation, Inc., Sony Pictures Imageworks, Inc., The Walt Disney Company, and Blue Sky Studios, Inc.¹ On January 9, 2015, defendants filed a motion to dismiss.² The motion raised a host of issues, including statute of limitations, fraudulent concealment, wage-fixing allegations, standing, and specific allegations against three of the defendants.³ In particular, the motion comprehensively addressed unsettled issues in the Ninth Circuit concerning the discovery rule and its application in the antitrust context. As the Court knows from its extensive analysis, the discovery rule has been applied inconsistently by different courts within the Ninth Circuit and across different federal circuits. Although plaintiffs lost before this Court, plaintiffs believe their efforts have assisted in further developing the law in this area.

Also on January 9, 2015, defendants filed a motion to compel arbitration and stay proceedings as to plaintiff Nitsch.⁴ The motion sought an order compelling Nitsch to arbitrate his claims against DreamWorks, his former employer, compelling Nitsch to arbitrate his claims against the other defendants based on an equitable estoppel theory, and staying the proceedings of Nitsch's claim pending the arbitration. On April 24, 2015, the Court ruled that the arbitrator should decide whether he/she has jurisdiction over Nitsch's claims against DreamWorks, and stayed Nitsch's claims against DreamWorks pending that decision. The Court denied the motion for Nitsch to arbitrate his claims against the other defendants.⁵

On April 17, 2015, this Court granted defendants' motion to dismiss, without prejudice.⁶ The Court held that plaintiffs had not sufficiently alleged acts of fraudulent concealment by

¹ Consolidated Amended Class Action Complaint, Dec. 2, 2014, ECF No. 63.

² Defendants' Notice of Motion and Motion to Dismiss the Consolidated Amended Complaint, Jan. 9, 2015, ECF No. 75.

³ *Id.*

⁴ Defendants' Notice of Motion and Motion to Compel Arbitration, Jan. 9, 2015, ECF No. 71.

⁵ Order Granting in Part and Denying in Part Motion to Compel Arbitration, Apr. 24, 2015, ECF No. 116.

⁶ Order Granting Motion to Dismiss, ECF No. 105.

1 defendants such that the four-year statute of limitations should be tolled. On May 15, 2015,
 2 plaintiffs filed the Second Consolidated Amended Class Action Complaint (“SAC”), alleging
 3 additional and more detailed acts of fraudulent concealment by defendants.⁷ Defendants promptly
 4 filed a motion to dismiss the SAC,⁸ arguing in part that plaintiffs’ new allegations regarding
 5 fraudulent concealment were deficient. Following briefing by the parties, the Court denied
 6 defendants’ second motion to dismiss on August 20, 2015.⁹ It should be noted that plaintiffs’
 7 allegations in the SAC were far more detailed than in a parallel case involving a no-poach
 8 agreement, which this Court dismissed due to inadequate pleading of fraudulent concealment.¹⁰

9 On February 1, 2016, plaintiffs filed their motion for class certification,¹¹ and about ten
 10 weeks later filed their reply brief in support of their motion.¹² On May 6, 2016, the Court held a
 11 hearing on plaintiffs’ class certification motion.¹³ On May 25, 2016, the Court granted in part and
 12 denied in part the motion.¹⁴ The Court certified the following class:

13 All animation and visual effects employees employed by defendants
 14 in the United States who held any of the jobs listed in Ashenfelter
 15 Reply Report Amended Appendix C during the following time
 16 periods: Pixar (2004-2010), Lucasfilm Ltd., LLC (2004-2010),
 17 DreamWorks Animation SKG, Inc. (2004-2010), The Walt Disney
 18 Company (2004-2010), Sony Pictures Animation, Inc. and Sony
 19 Pictures Imageworks, Inc. (2004-2010), Blue Sky Studios, Inc.
 20 (2005-2010) and Two Pic MC LLC f/k/a ImageMovers Digital LLC
 21 (2007-2010). Excluded from the Class are senior executives,
 22 members of the board of directors, and persons employed to perform
 23 office operations or administrative tasks.¹⁵

24 ⁷ Second Consolidated Amended Class Action Complaint, May 15, 2015, ECF No. 121.

25 ⁸ Defendants’ Notice of Motion and Motion to Dismiss the Second Consolidated Amended Class Action
 26 Complaint, May 21, 2015, ECF No. 126.

27 ⁹ Order Denying Motion to Dismiss, Aug. 20, 2015, ECF No. 147.

28 ¹⁰ *See Garrison v. Oracle Corp.*, 159 F. Supp. 3d 1044, 1073-1081 (N.D. Cal. 2016).

¹¹ Plaintiffs’ Notice of Motion and Motion for Class Certification, Feb. 1, 2016, ECF No. 203.

¹² Plaintiffs’ Reply Brief in Support of Motion for Class Certification, Apr. 14, 2016, ECF No. 262.

¹³ Minute Entry for Proceedings Held Before Hon. Lucy H. Koh, May 6, 2016, ECF No. 276.

¹⁴ *See Nitsch v. DreamWorks Animation SKG Inc.*, 315 F.R.D. 270 (N.D. Cal. 2016).

¹⁵ *See id.* at 317.

1 The Court denied the motion without prejudice as to class members who worked at Pixar
2 and Lucasfilm from 2001-2003, and who worked at Dreamworks in 2003.¹⁶ The Court ruled that
3 the SAC did not sufficiently allege acts of fraudulent concealment during those years.¹⁷

4 **C. The Discovery Process**

5 Plaintiffs have engaged in extensive, but targeted, discovery: drafting and responding to
6 requests for production and interrogatories, reviewing thousands of plaintiffs' documents for
7 responsiveness and privilege, reviewing defendants' voluminous document productions (almost
8 350,000 documents), preparing for and taking over 20 depositions,¹⁸ defending five additional
9 depositions, obtaining relevant employment data and working with plaintiffs' expert to evaluate
10 that data and calculate damages on a class-wide basis.¹⁹

11 The parties also had several discovery disputes during this litigation. Plaintiffs filed a
12 motion to compel Pixar and Lucasfilm to produce unredacted copies of expert and class
13 certification materials from *High-Tech*.²⁰ Plaintiffs filed an additional motion to compel documents
14 that Pixar and Lucasfilm were withholding on the basis of attorney-client privilege.²¹ Magistrate
15 Judge Grewal granted in part and denied in part the motion.²²

16 In addition, plaintiffs are involved (unfortunately) in a dispute with The Croner Company,
17 which administered the industry-wide salary surveys, to which defendants linked salaries. These
18 surveys are a key component of plaintiffs' claims that defendants' compensation was driven in part

19
20 ¹⁶ *See id.*

21 ¹⁷ *See id.*

22 ¹⁸ These depositions have included George Lucas, the former CEO of Lucasfilm; Jeffrey Katzenberg,
23 the CEO of DreamWorks Animation; Jim Morris, the President of Pixar; Micheline Chau, the former
24 President of Lucasfilm; and Ed Catmull, the President of Walt Disney and Pixar Animation Studios. *See*
25 Declaration of Jeff D. Friedman in Support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service
26 Awards ("Friedman Decl."), ¶ 3 n.1, concurrently filed herewith.

27 ¹⁹ *Id.* ¶ 3.

28 ²⁰ Plaintiffs' Motion to Compel Discovery from Defendants Pixar and Lucasfilm, Dec. 8, 2015, ECF
No. 171. This dispute was resolved by the parties without Court intervention. *See* Notice of Withdrawal of
Motion to Compel, Dec. 22, 2015, ECF No. 180.

²¹ Plaintiffs' Motion to Compel Non-Privileged Documents from Pixar and Lucasfilm, Feb. 10, 2016,
ECF No. 213.

²² Order Denying Motion to Compel, Mar. 30, 2016, ECF No. 248.

1 by considerations of internal and external equity, such that defendants' conspiracy would have a
 2 market-wide impact. Croner filed a motion seeking reimbursement of attorneys' fees.²³ Plaintiffs
 3 opposed, on the grounds that the fees were not justified and the amount claimed was excessive in
 4 light of the issued subpoena.²⁴ In addition, on August 29, 2016, the parties filed a joint letter brief
 5 regarding defendants' request to obtain discovery from 500 absent class members.²⁵ Both of these
 6 matters are currently pending before Magistrate Judge Howard R. Lloyd.

7 **D. Class Certification**

8 Litigating plaintiffs' motion for class certification was extensive and voluminous.
 9 Plaintiffs' motion for class certification was supported by 139 exhibits and a 70-page expert report
 10 from Dr. Ashenfelter.²⁶ Defendants' opposition included 67 exhibits and a 161-page expert report
 11 from Dr. Keeley.²⁷ Plaintiffs responded with a 93-page reply report from Dr. Ashenfelter.²⁸

12 This Court, in granting in part and denying in part plaintiffs' class certification motion,
 13 issued an 80-page opinion,²⁹ in which it noted the "extensive documentary evidence, economic
 14 theory, data, and expert statistical modeling" that plaintiffs had assembled.³⁰

15 **E. Defendants Unsuccessfully Petitioned the Ninth Circuit for Interlocutory Appeal**

16 On June 8, 2016, defendants filed a Rule 23(f) petition with the Ninth Circuit.³¹ The Appeal
 17 contended that "[t]his closely watched case raises an important question on a recurring issue
 18 impacting a wide range of class actions: Under what circumstances is class certification

19 _____
 20 ²³ Notice of Motion and Motion of Non-Party The Croner Company for Reimbursement of Significant
 Costs Expended Responding to Subpoena, May 20, 2016, ECF No. 285.

21 ²⁴ Plaintiffs' Memorandum of Points and Authorities in Opposition to The Croner Company's Motion
 for Reimbursement, July 1, 2016, ECF No. 304.

22 ²⁵ Discovery Dispute Joint Report, Aug. 29, 2016, ECF No. 321.

23 ²⁶ ECF Nos. 205-210.

24 ²⁷ ECF Nos. 240-241.

25 ²⁸ Reply Report of Orley Ashenfelter, Apr. 14, 2016, ECF No. 265.

26 ²⁹ Order Granting-in-Part and Denying-in-Part Plaintiffs' Motion for Class Certification, May 25, 2016,
 ECF No. 289.

27 ³⁰ *Nitsch*, 315 F.R.D. at 292.

28 ³¹ *See* Petition for Permission to Appeal from the United States District Court for the Northern District
 of California, *Nitsch v. DreamWorks Animation SKG, Inc.*, No. 16-80077 (9th Cir. June 8, 2016) ("*Nitsch I*"
 or "Appeal").

1 appropriate where, as here, all class members' claims are time-barred unless they can establish
 2 tolling through fraudulent concealment?"³² The Appeal argued that the Ninth Circuit had not yet
 3 addressed the question, and the other circuits had reached "conflicting results."³³ Defendants also
 4 claimed that the consideration of individualized issues could not be managed at a class trial, citing
 5 *Comcast Corp. v. Behrend* in support.³⁴

6 After plaintiffs filed their opposition,³⁵ defendants filed a reply.³⁶ Plaintiffs filed a response
 7 in opposition to defendants' motion for leave to file reply on the ground that defendants' proposed
 8 reply improperly raised two new arguments.³⁷ In particular, defendants cited two new district court
 9 cases to support their claim of an intra-circuit split on the statute of limitations issue. They also
 10 alleged, for the first time, that a "lengthy and costly class trial" should weigh in favor of review.³⁸
 11 On August 29, 2016, the Ninth Circuit granted defendants' motion for leave to file a reply, but
 12 denied their Rule 23(f) Petition in a summary order.³⁹

13 III. ARGUMENT

14 A. Plaintiffs Request a Reasonable Amount of Attorneys' Fees and Expenses

15 Rule 23 of the Federal Rules of Civil Procedure provides that "[i]n a certified class action,
 16 the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or
 17 by the parties' agreement."⁴⁰ "[A]wards of attorneys' fees serve the dual purpose of encouraging
 18 persons to seek redress for damages caused to an entire class of persons and discouraging future
 19

20 ³² *Id.* at 1.

21 ³³ *Id.*

22 ³⁴ *Comcast Corp. v. Behrend*, U.S., 133 S.Ct. 1426 (2013); *see* Appeal at 2; 18.

23 ³⁵ *See* Answering Brief in Opposition to Petition for Permission to Appeal Pursuant to Rule 23(f),
 24 *Nitsch I*, June 20, 2016, ECF No.3.

25 ³⁶ *See* Reply in Support of Petition for Permission to Appeal Pursuant to Rule 23(f), *Nitsch I*, June 30,
 26 2016, ECF No. 5. Parties must petition the Ninth Circuit to file a reply in support of a Rule 23(f) petition,
 27 which the defendants did here. *See Nitsch I*, Motion for Leave to File Reply in Support of Petition for
 28 Permission to Appeal Pursuant to Rule 23 (f), June 30, 2016, ECF No. 4.

³⁷ Response in Opposition to Motion for Leave to File Reply at 1, *Nitsch I*, July 8, 2016, ECF No. 6.

³⁸ *Id.* at 2.

³⁹ Order at 1, *Nitsch I*, Aug. 29, 2016, ECF No. 7.

⁴⁰ Fed. R. Civ. P. 23(h).

1 misconduct.”⁴¹ In “common fund” cases, such as this, the district court has the discretion to award
 2 attorneys’ fees as either a percentage of the common fund, or by using the lodestar method.⁴²
 3 Importantly, “the question on appeal ‘is not whether the district court should have applied some
 4 other percentage, but whether in arriving at its percentage it *considered all the circumstances of*
 5 *the case* and reached a *reasonable* percentage.’”⁴³

6 In the Ninth Circuit, the “benchmark” award in common fund cases is 25 percent of the
 7 recovery obtained,⁴⁴ although awards of 30 percent or more of the common fund are not
 8 uncommon.⁴⁵ The court may also apply the lodestar method to determine a reasonable attorney’s
 9 fee by multiplying the number of hours reasonably expended by a reasonable hourly rate.⁴⁶ The
 10 fee amount calculated under the lodestar method is presumptively reasonable, and in appropriate
 11 circumstances can be enhanced by a multiplier.⁴⁷ In common fund cases, the lodestar method may
 12 also be used as a cross-check of the percentage-of-fund method.⁴⁸

13 Class counsel here seek an award of \$4,737,500 for attorneys’ fees. Plaintiffs’ fee request
 14 represents 25 percent of the \$18.95 million settlement fund and is well within the range approved
 15 by the Ninth Circuit. Further, the reasonableness of plaintiffs’ fee request is confirmed when cross-
 16 checked against their lodestar, which through the end of July is \$7,942,034.50, resulting in a
 17 negative multiplier of .60. Accordingly, under either the percentage of the common fund or
 18 lodestar approach, plaintiffs’ requested fee award is reasonable.

19
 20 ⁴¹ *In re Apollo Group Inc. Secs. Litig.*, No. CV 04-2147, 2012 U.S. Dist. LEXIS 55622, at *19 (D. Ariz.
 21 Apr. 20, 2012).

22 ⁴² *See In re High-Tech Emp. Litig.*, Case No. 11-cv-02509 LKH, 2015 WL 5158730, at *6 (N.D. Cal.
 23 Sept. 2, 2015) (“*High-Tech Fees Order*”) (citing *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935,
 942 (9th Cir. 2011)); *In re Wachovia Corp. “Pick-A-Payment” Mortg. Mktg. & Sales Practices Litig.*
 (“*Wachovia*”), No. 5:09-md-02015, 2011 U.S. Dist. LEXIS 55351, at *23-*24 (N.D. Cal. May 17, 2011).

24 ⁴³ *Glass v. UBS Fin. Servs.*, 331 Fed. Appx. 452, 456 (9th Cir. 2009) (internal citation omitted; emphasis
 in original).

25 ⁴⁴ *See High Tech Fees Order*, 2015 WL 5158730, at *6.

26 ⁴⁵ *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002).

27 ⁴⁶ *See Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).

28 ⁴⁷ *See High-Tech Fees Order*, 2015 WL 5158720, at *9 (quoting *Bluetooth*, 654 F.3d at 941-42).

⁴⁸ *See Wachovia*, 2011 U.S. Dist. LEXIS 55351, at *24.

1 **1. Plaintiffs’ Fee Request Is Reasonable under the “Common Fund” Percentage**
 2 **of Recovery Analysis**

3 Plaintiffs seek an award of 25 percent of the settlement fund, squarely in line with the Ninth
 4 Circuit’s benchmark.⁴⁹ Courts routinely award attorneys’ fees and expenses totaling 25 percent or
 5 more of the common fund provided under the settlement.⁵⁰ A 25% fee award is “presumptively
 6 reasonable,”⁵¹ although this depends in part on the size of the fund itself.⁵² For example, the Court
 7 awarded a 25 percent fee in connection with the initial set of settlements in the *High-Tech* case.⁵³

8 Plaintiffs’ fee request is fully supported by the particular circumstances of this case. In *In*
 9 *re Online DVD-Rental Antitrust Litig.*,⁵⁴ the Ninth Circuit outlined a number of factors that courts
 10 may consider in setting an appropriate fee, including:

11 [1] The extent to which class counsel “achieved exceptional results for
 12 the class,” [2] whether the case was risky for class counsel,
 13 [3] whether counsel’s performance “generated benefits beyond the
 14 cash settlement fund,” [4] the market rate for the particular field of law
 15 (in some circumstances), [5] the burdens class counsel experienced
 16 while litigating the case (e.g., cost, duration, foregoing other work),
 17 and [6] whether the case was handled on a contingency basis.⁵⁵

18 Taking all the relevant circumstances and factors into account, plaintiffs’ requested fees in the
 19 amount of 25 percent of the \$18.95 million common fund are reasonable here.

20 First, class counsel achieved an exceptional result on behalf of the plaintiffs and the class.
 21 The settlement negotiated by class counsel provides valuable financial relief to the thousands of

22

 23 ⁴⁹ See *Vizcaino*, 290 F.3d at 1047.

24 ⁵⁰ See, e.g., *Morris v. Lifescan, Inc.*, 54 Fed. Appx. 663, 664 (9th Cir. 2003) (affirming fee award of 33
 25 percent of settlement fund); *Singer v. Becton Dickinson & Co.*, No. 08- CV-821, 2010 U.S. Dist. LEXIS
 26 53416, at *20-*24 (S.D. Cal. June 1, 2010) (fee award of 33.3 percent of settlement fund); *Wachovia*, 2011
 27 U.S. Dist. LEXIS 55351, at *24 (fee award of one-third of settlement fund); *In re Nuvelo, Inc. Secs. Litig.*,
 28 No. C 07-04056, 2011 U.S. Dist. LEXIS 72260, at *10 (N.D. Cal. July 6, 2011) (fee award of 30 percent of
 settlement fund); *Thieriot v. Celtic Ins. Co.*, No. C 10-04462, 2011 U.S. Dist. LEXIS 44852, at *15 (N.D.
 Cal. Apr. 21, 2011) (fee award of 33 percent of settlement fund); see also *Glass*, 331 Fed. Appx. at 457
 (noting that district court’s calculation of 25 percent of total award rather than 25 percent of amount actually
 collected by the class was proper and in line with Ninth Circuit precedent).

⁵¹ See *High-Tech Fees Order*, 2015 WL 5158730, at *6.

⁵² See *id.*, at *11.

⁵³ See *id.*, at *2.

⁵⁴ *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934 (9th Cir. 2015).

⁵⁵ *Id.* at 954-55 (citing *Vizcaino*, 290 F.3d at 1048-50).

1 workers who had their compensation suppressed as a result of the defendants' conspiracy.
2 Pursuant to the settlement, Blue Sky, the smallest defendant in this case, and the first defendant to
3 settle, agreed to a \$5.95 million payment. Blue Sky's payment is approximately 25 percent of
4 plaintiffs' expert's calculation of the damages attributable to Blue Sky employees in the class (as
5 calculated based on Dr. Ashenfelter's original expert report in support of class certification).
6 Similarly, the Sony Agreement provides for a thirteen million dollar payment to the settlement
7 fund, which represents approximately 16.7 percent of the damages attributable to Sony Pictures
8 employees during the relevant time period.

9 These figures compare very favorably with the percentages cited by this Court in the *High-*
10 *Tech* case. Initially, the Court rejected a \$324.5 million settlement with Adobe, Apple, Google, and
11 Intel.⁵⁶ The Court noted that the total proposed settlement of \$344.5 million was 11.29 percent of
12 the expert's calculation,⁵⁷ but the "procedural posture of the case swung dramatically in Plaintiffs'
13 favor after the initial settlements were reached," and the parties were a month from trial.⁵⁸ The
14 Court ultimately approved a settlement at that late posture in the case representing 14.26 percent of
15 the total damages calculated by plaintiffs' expert. Here, the proposed settlements were reached
16 before the Court's class certification opinion, summary judgment, and well before trial – but
17 nevertheless exceed in percentage terms the results obtained in *High-Tech*.

18 *Second*, class counsel assumed a high degree of risk in bringing and pursuing this action. A
19 recovery in this litigation was far from certain when counsel initially decided to bring these claims,
20 and indeed, plaintiffs' initial consolidated complaint was dismissed. Nonetheless, each firm
21 committed its resources, including the outlay of significant expert costs that each might not recover
22 unless successful, to vigorously pursue these claims before knowing the potential for significant
23 recovery for the class. Moreover, despite the success of the plaintiffs in *High Tech*, class counsel
24 knew they would face the unique challenges inherent in antitrust cases involving employee

25 ⁵⁶ *See In re High-Tech Emp. Litig.*, No.11-cv-02509, 2014 WL 3917126, at *5 (N.D. Cal. Aug. 8, 2014)
26 (*"High-Tech IP"*).

27 ⁵⁷ *See id.* The total settlement figure included the previously approved \$20 million settlement with
Intuit, Lucasfilm, and Pixar.

28 ⁵⁸ *Id.*

1 compensation – which are not present in typical price-fixing cases. In addition, class counsel faced
2 an additional risk not present in *High-Tech*. The *High-Tech* plaintiffs sued all the targets – but *only*
3 the targets – of the DOJ investigation.⁵⁹ Here, in contrast, plaintiffs brought suit against additional
4 defendants (Sony Pictures, Dreamworks Animation, Blue Sky Studios, IMD, and The Walt Disney
5 Company), which required plaintiffs to collect additional evidence, rebut additional legal
6 arguments, and confront additional defenses not present in the *High-Tech* case.

7 From the outset, class counsel confronted these challenges and other complexities. As
8 recounted above, initially the Court granted defendants’ motion to dismiss based on the statute of
9 limitations issue. After conducting additional discovery, including substantial document review in
10 a short time frame, plaintiffs filed an amended complaint, which included further allegations of
11 fraudulent concealment by the defendants. Defendants aggressively opposed this as well, and
12 claimed that the fraudulent concealment allegations were insufficient. Although the Court
13 ultimately denied the second motion to dismiss, this outcome was far from certain as the plaintiffs
14 drafted the SAC and the opposition to the motion to dismiss.

15 Similarly, in opposition to plaintiffs’ motion to certify the class, defendants attempted to
16 undermine plaintiffs’ factual claims about the conspiracy, including submitting declarations in an
17 attempt to persuade the Court that knowledge of the conspiracy was widespread. Defendants also
18 opposed certification by arguing that evidence of fraudulent concealment is not subject to common
19 proof. After this Court certified the class, defendants pressed the point again in their petition to the
20 Ninth Circuit.

21 *Third*, class counsel undertook a notable burden in pursuing this case. As recounted above,
22 class counsels’ lodestar through the end of July 2016 stands at \$7,942,034.50, and they have
23 incurred an additional \$1,561,700.47 in unreimbursed expenses. Class counsel incurred this
24 expense without any guarantee of being compensated. *Fourth*, and relatedly, class counsel accepted
25 this case on a purely contingent basis, with no ability to recoup their costs without an approved
26 settlement or judgment from this court.

27
28 ⁵⁹ See *Nitsch*, 315 F.R.D. at 275-76.

1 **2. Plaintiffs' Fee Request Is Reasonable Under the Lodestar Cross-Check Method**

2 Plaintiffs' fee request of \$4,737,500 for attorneys' fees is also reasonable when cross-
3 checked using the lodestar method.⁶⁰ Under the lodestar method, a presumptively reasonable fee
4 award can be determined by multiplying the number of hours reasonably expended by plaintiffs'
5 counsel by their reasonable hourly rate.⁶¹

6 **a. The Number of Hours that Plaintiffs' Counsel Devoted to This
7 Litigation Is Reasonable**

8 Under the lodestar method, courts first look at the number of hours spent by counsel on the
9 case.⁶² Here, in support of the lodestar determination, plaintiffs submit the declarations of class
10 counsel attesting to their total hours, hourly rates, experience, and efforts to prosecute this action.⁶³

11 As set forth in the supporting declarations, plaintiffs' counsel have collectively spent more
12 than 16,445.30 hours of attorney and litigation support time on this action.⁶⁴ The number of hours
13 that plaintiffs' counsel have devoted to pursuing this litigation is appropriate and reasonable, given:
14 (1) the extensive pre-complaint investigation; (2) the large number of documents produced by the
15 defendants, and the review of documents from plaintiffs' files in response to defendants' discovery
16 requests; (3) the extensive factual and legal research and analysis involved in filing an amended
17 complaint, an opposition to a motion to dismiss, a second amended complaint, and a second
18 opposition to a motion to dismiss, as well as an opposition to a motion to compel arbitration;
19 (4) substantial briefing at the class certification stage; (5) the number and breadth of expert reports;
20 (6) the depositions of over twenty witnesses, and defending an additional five depositions; and
21 (7) opposing defendants' Rule 23(f) petition. In addition, class counsel have spent numerous hours

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23 ⁶⁰ See *Wachovia*, 2011 U.S. Dist. LEXIS 55351, at *7.

24 ⁶¹ See *High-Tech Fees Order*, 2015 WL 5158720, at *9 (quoting *Bluetooth*, 654 F.3d at 941-42).

25 ⁶² *Id.*

26 ⁶³ See Friedman Decl. ¶¶ 5-15; Declaration of Daniel A. Small in Support of Plaintiffs' Motion for
27 Attorneys' Fees, Expenses, and Service Awards ("Small Decl."), ¶¶ 2-13; Declaration of Marc M. Seltzer in
28 Support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards ("Seltzer Decl."), ¶¶ 3-15,
filed concurrently herewith.

⁶⁴ See Friedman Decl., ¶ 12 (4,107.1 hours); Small Decl., ¶ 10 (6,911 hours); Seltzer Decl., ¶ 11
(5,427.3 hours).

1 working with the notice and claims administrator to answer the questions of class members, launch
2 the settlement website, address issues regarding notice and identify class members.⁶⁵

3 Furthermore, class counsel's responsibilities regarding these settlements will not end with
4 final approval. Class counsel will assist class members with inquiries and continue to work with the
5 notice and claims administrator and defendants on any issues that may arise with respect to the
6 settlement. Class counsel may also expend further time and effort to resolve any objections that are
7 lodged, and litigate any appeals that result therefrom. Past experience shows that this ongoing work
8 will add significant time to the work already undertaken in this case.⁶⁶

9 While the hours above are numerous, class counsel have been efficient and judicious in
10 how they invest their resources on behalf of the class, consistent with their initial commitments to
11 the Court.⁶⁷ They have also adhered to the procedures provided to the Court at the outset of the
12 litigation concerning the division of labor, the supervising attorney's review of time and expenses
13 and the additional measures to ensure efficiency.⁶⁸

14 In sum, the hours that plaintiffs' counsel devoted to this action were reasonable and
15 necessary. Counsels' hard work and commitment ultimately paid off, resulting in a comprehensive
16 settlement agreement that provides substantial relief to class members.

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18
19
20 ⁶⁵ See Friedman Decl., ¶¶ 2-3.

21 ⁶⁶ See *id.*, ¶ 4.

22 ⁶⁷ Class counsel explained our incentives in an initial filing requested by the Court: "And our enduring
23 success has been inextricably intertwined with our efficiency. Unlike hourly defense work by our
24 colleagues, where the model incentivizes a one-for-one return on every incremental hour billed – not
25 contingent on outcome – we are entirely tied to outcome risks, and the quality of our results dictate whether
26 and how much our firms get paid. The number of lawyers and hourly rates of the opposing counsel we face
27 almost always exceed ours. This is due to the efficiencies required and incentives that are built into the
28 differing models. And our class cases are entirely self-funded, making later cases dependent on the success
we achieve in those before. In sum, highly successful and durable firms such as ours are stewards over the
interests of class members, including the dedication of resources on their behalf. We must be – and are –
continuously mindful both as to overstaffing and understaffing. If too unbalanced on either side of the
ledger it will be counter-productive given the economics of contingency practice." Plaintiffs' Statement in
Further Support of Plaintiffs' Unopposed Motion for Appointment of Plaintiffs' Interim Co-Lead Class
Counsel at 1-2, Nov. 12, 2014, ECF No. 44.

⁶⁸ *Id.* at 9-10.

1 **b. Plaintiffs’ Counsel’s Hourly Rates Are Reasonable**

2 The hourly rates of class counsel as detailed in their declarations are also fair and
 3 reasonable. Under the lodestar method, counsel’s reasonable hourly rates are determined by the
 4 “prevailing market rates in the relevant community,” which are the rates a lawyer of comparable
 5 skill, experience and reputation could command in the relevant community.⁶⁹ An attorney’s actual
 6 billing rate is presumptively appropriate to use as the lodestar market rate.⁷⁰ “Affidavits of the
 7 plaintiffs’ attorney and other attorneys regarding prevailing fees in the community, and rate
 8 determinations in other cases, particularly those setting a rate for the plaintiffs’ attorney, are
 9 satisfactory evidence of the prevailing market rate.”⁷¹

10 Declarations from class counsel establish that the hourly rates are fair, reasonable, and
 11 market-based, particularly for the “relevant community” in which counsel work.⁷² Class counsel
 12 are highly-respected members of the bar with extensive experience in prosecuting high-stakes
 13 complex litigation, including class actions, and this Court appointed them class counsel under the
 14 criteria of Federal Rule of Civil Procedure 23(g).⁷³ With three exceptions, counsel’s hourly rates in
 15 this action range from \$275 to \$735, with rates varying based on experience.⁷⁴ The three most
 16 senior attorneys on the case, who serve as the lead attorney for each respective law firm, charge
 17 between \$845 to \$1,200 per hour.⁷⁵ Hourly rates for paralegals are \$290 or lower.⁷⁶ Overall, the
 18

19 ⁶⁹ *See Sw. Ctr. for Biological Diversity v. Bartel*, No. 98-CV-2234, 2007 U.S. Dist. LEXIS 64232, at
 20 *14 (S.D. Cal. Aug. 30, 2007); *Bellows v. NCO Fin. Sys., Inc.*, No. 07-CV-1413, 2009 U.S. Dist. LEXIS
 21 297, at *17-*18 (S.D. Cal. Jan. 5, 2009); *Hartless v. Clorox Co.*, 273 F.R.D. 630, 644 (S.D. Cal. 2011),
aff’d, 2012 U.S. App. LEXIS 10539 (9th Cir. May 24, 2012); *Moreno v. City of Sacramento*, 534 F.3d 1106,
 1111 (9th Cir. 2008).

22 ⁷⁰ *See People Who Care v. Rockford Bd. of Educ.*, 90 F.3d 1307, 1310 (7th Cir. 1996).

23 ⁷¹ *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990).

24 ⁷² *See* Friedman Decl., ¶ 11; Small Decl., ¶ 9; Seltzer Decl., ¶ 10.

25 ⁷³ *See* Friedman Decl., ¶¶ 5-10; Small Decl., ¶¶ 2-8; Seltzer Decl., ¶¶ 3-9.

26 ⁷⁴ *See* Friedman Decl., ¶ 12; Small Decl., ¶ 10; Seltzer Decl., ¶ 11; *see also High Tech Fee Order*, 2015
 27 WL 5158730, at *9 (“the billing rates submitted vary appropriately based on experience”).

28 ⁷⁵ *See* Friedman Decl., ¶ 12; Small Decl., ¶ 10; Seltzer Decl., ¶ 11. Mr. Seltzer’s \$1,200 hourly rate is
 the same rate that he charges all clients, including sophisticated corporations that are billed hourly, which
 provides a market-based cross-check. *See* Seltzer Decl., ¶ 10.

⁷⁶ *See* Friedman Decl., ¶ 12; Small Decl., ¶ 10; Seltzer Decl., ¶ 11.

1 rates charged by counsel here are comparable to the fees approved by the Court, over a year ago, in
2 the *High-Tech* case.⁷⁷

3 **c. Plaintiffs' Requested Fee Is Reasonable Considering the Time and**
4 **Labor Required, Novelty and Complexity of the Litigation, Counsel's**
5 **Skill and Experience and the Results Obtained**

6 Multiplying the hours spent by plaintiffs' counsel on the litigation by their respective
7 hourly rates yields a lodestar calculation of \$7,942,034.50. The requested \$4,737,500 is
8 substantially below the loadstar, and results in a negative multiplier of .60. This is markedly lower
9 than the range of multipliers accepted by the Ninth Circuit and district courts throughout the
10 country.⁷⁸

11 In deciding an appropriate fee under the lodestar method, district courts may consider a
12 number of factors, including the time and labor required, novelty and complexity of the litigation,
13 skill and experience of counsel, contingent nature of the case, and the results obtained.⁷⁹ All of
14 these factors weigh heavily in favor of granting the requested \$4,737,500 in fees here.

15 **(1) Plaintiffs' Counsel Invested a Significant Amount of Time and**
16 **Resources into This Case**

17 To date, plaintiffs' counsel have expended more than 16,445.3 hours, totaling more than
18 \$7,942,034.50 million in lodestar, and have incurred \$1,561,700.47 in out-of-pocket expenses in

19 ⁷⁷ In *High-Tech*, this Court found class counsel's rates "reasonable in light of prevailing market rates in
20 this district," including partner rates that ranged from \$490 to \$975 per hour; non-partner rates that ranged
21 from \$310 to \$800 per hour; and paralegals, law clerks, and support staff rates that ranged from \$190 to
22 \$430, "with most in the \$300 range." *High-Tech Fees Order*, 2015 WL 5158730, at *9.

23 ⁷⁸ See *id.* at *10-11; see also *Vizcaino*, 290 F.3d at 1051 n.6 (surveying class actions settlements
24 nationwide, and noting 54 percent of lodestar multipliers fell within the 1.5 to 3.0 range, and that 83 percent of
25 multipliers fell within the 1.0 to 4.0 range); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 369
26 (S.D.N.Y. 2002) (4.65 multiplier); *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 489
27 (S.D.N.Y. 1998) (3.97 multiplier: "'In recent years multipliers of between 3 and 4.5 have become common.'")
(internal citation omitted); *In re RJR Nabisco Secs. Litig.*, MDL No. 818, 1992 U.S. Dist. LEXIS 12702, at
28 *15-*23, (S.D.N.Y. Aug. 24, 1992) (6.0 multiplier); *In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 399
(S.D.N.Y. 1999) (2.5 multiplier); *In re Combustion, Inc.*, 968 F. Supp. 1116 (W.D. La. 1997) (3.0 multiplier);
Van Vracken v. Atl. Richfield Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995) (3.6 multiplier); *Rabin v. Concord
Assets Group*, No. 89 Civ 6130, 1991 U.S. Dist. LEXIS 18273, at *4, (S.D.N.Y. Dec. 19, 1991) (4.4 multiplier:
"multipliers of between 3 and 4.5 have been common"); *Behrens v. Wometco Enters. Inc.*, 118 F.R.D. 534, 549
(S.D. Fla. 1988) ("[T]he range of lodestar multiples in large and complicated class actions runs from a low of
2.26 . . . to a high of 4.5."); *In re Cenco, Inc. Secs. Litig.*, 519 F. Supp. 322, 327 (N.D. Ill. 1981) (4.0
multiplier); *Arenson v. Bd. of Trade*, 372 F. Supp. 1349, 1359 (N.D. Ill. 1974) (4.0 multiplier).

⁷⁹ *Blum v. Stenson*, 465 U.S. 886, 898-900 (1984); *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70
(9th Cir. 1975).

1 prosecuting this action for the benefit of the class.⁸⁰ Class counsel vigorously litigated this action
2 and were challenged by aggressive, skilled and well-funded defense counsel every step of the way.

3 To effectively prosecute this large and complex class action, class counsel had to commit a
4 significant amount of time, personnel and expenses to this litigation purely on a contingency basis
5 with absolutely no guarantee of being compensated in the end. Such efforts included, but were
6 certainly not limited to: (1) investigating the factual and legal claims and filing this action;
7 (2) amending the complaint, and successfully defeating a second motion to dismiss; (3) filing a
8 factually robust motion for class certification and reply in support of the same; (4) actively
9 engaging in discovery, including the taking and defending of depositions, written discovery, and
10 reviewing documents from both the defendants and third parties; (5) retaining and working with an
11 expert economist to develop a damages model and explain the impact on class members of
12 defendants' conspiracy to suppress wages; (6) disseminating notice after class certification to over
13 10,000 class members; (7) answering inquiries from class members regarding the litigation,
14 settlement, claim forms and other matters concerning their claims; and (8) assisting the claims
15 administrator with the settlement website, and notice issues. Despite the significant risks and
16 uncertainty, class counsel obtained an excellent result on behalf of class members.

17 (2) The Litigation Featured Complex Legal and Factual Issues

18 Plaintiffs faced a number of complex legal and factual issues in this litigation, including
19 overcoming defendants' argument that plaintiffs could not demonstrate fraudulent concealment on
20 a class-wide basis, and that the fraudulent concealment issues defeated class certification. *See*
21 *supra* section II.C-D.

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26 ⁸⁰ Friedman Decl. ¶ 14 (\$473,182.85 in expenses); Small Decl. ¶ 12 (\$575,743.16 in expenses); Seltzer
27 Decl. ¶ 14 (\$602,373.15 in expenses). The total across all three firms is \$1,651,299.16. However, class
28 counsel have a surplus in the litigation fund from assessments paid by each firm (*see* Seltzer Decl. ¶ 14);
this surplus of \$89,598.69 is deducted from the total out-of-pocket expenses of the three firms, yielding net
expenses of \$1,651,299.16 - \$89,598.69 = \$1,561,700.47.

1 ***Hagens Berman Sobol Shapiro LLP***

2 Hagens Berman is one of the most well-respected class action litigation firms in the country
3 and has litigated some of the largest class actions in history, including the tobacco litigation,⁸⁶ *In re*
4 *Visa MasterCard Litigation*,⁸⁷ and the *In re Toyota Motor Corp. Unintended Acceleration*
5 *Litigation*.⁸⁸ Hagens Berman has over 65 lawyers in offices across the country. Since its founding
6 in 1993, the firm has been recognized in courts throughout the United States for its ability and
7 experience in handling major class litigation efficiently and obtaining outstanding results for its
8 clients.⁸⁹

9 Similarly, Steve Berman, one of the founding partners of Hagens Berman, is widely
10 regarded as one of the most effective class action attorneys in the country. He served as lead
11 counsel for 13 states in the tobacco litigation, leading to a settlement of \$206 billion – the largest in
12 history. He, along with Marc Seltzer, was appointed *sua sponte* by Judge James V. Selna of the
13 Central District of California to serve as co-lead counsel in the *In re Toyota Motor Corp.*
14 *Unintended Acceleration MDL*. The \$1.6 billion settlement was the largest auto settlement, both in
15 terms of class members and recovery, in U.S. history. He has served as lead or co-lead counsel in
16 antitrust, securities, consumer, and products liability litigation, as well as other complex litigation,
17 including MDL actions, throughout the country. In addition, Mr. Berman was recently appointed to
18 the plaintiffs’ steering committee by Judge Breyer in the Volkswagen diesel litigation.⁹⁰

19 ***Susman Godfrey LLP***

20 Since the firm’s founding in 1980, Susman Godfrey has served as lead counsel in hundreds
21 of antitrust class actions and other complex commercial disputes in courts throughout the country.

22 _____
23 ⁸⁶ In the historic litigation against Big Tobacco, Hagens Berman represented 13 states and advanced
24 groundbreaking legal claims to secure a global settlement worth \$260 billion, the largest recovery in history.
25 Only two firms went to trial, and Hagens Berman served as co-lead trial counsel.

26 ⁸⁷ *In re Visa-MasterCard Litig.*, No. CV-96-5238 (E.D.N.Y.). Hagens Berman was co-lead counsel in a
27 case alleging antitrust violations by Visa and MasterCard. The case settled for \$3 billion in cash and
28 changes in practices valued at \$20 billion.

⁸⁸ *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices & Prods. Liab. Litig.*, No.
8:10ML2151 JVS (C.D. Cal.). Hagens Berman recovered \$1.6 billion for the class.

⁸⁹ See Friedman Decl., ¶ 5.

⁹⁰ *Id.*, ¶ 7.

1 The firm has represented clients in some of the largest and most complex cases ever litigated and
2 earned a reputation for handling those cases effectively and efficiently. Susman Godfrey has tried
3 more than a dozen significant antitrust cases to a jury, yielding over \$1 billion in verdicts, and has
4 been appointed to serve as lead or co-lead counsel in numerous antitrust class actions and other
5 class actions, including: *In re Toyota Motor Corp. Unintended Acceleration Marketing Sales*
6 *Practices, and Product Liability Litigation* (C.D. Cal.); *In re Automotive Parts Antitrust Litigation*
7 (E.D. Mich., appointed 2012); *In re Vitamin C Antitrust Litigation* (E.D.N.Y. 2006); *In re Crude*
8 *Oil Commodity Futures Litigation* (S.D.N.Y. 2012); *White v. Nat'l Collegiate Athletic Ass'n* (C.D.
9 Cal. 2006); *In re LIBOR-Based Fin. Instruments Antitrust Litigation* (S.D.N.Y. 2011); *In re Ready-*
10 *Mixed Concrete Antitrust Litigation* (S.D. Ind. 2005); *In re Municipal Derivatives Antitrust*
11 *Litigation* (S.D.N.Y. 2011); *In re Universal Serv. Fund Tel. Billing Practices Litigation* (D. Kan.
12 2004); *Behrend v. Comcast Corp.* (E.D. Pa. 2010); *In re Lease Oil Antitrust Litigation* (S.D. Tex.
13 1999); *In re Korean Air Lines Co. Antitrust Litigation* (C.D. Cal. 2008); *In re Vitamins Antitrust*
14 *Litigation* (D.D.C. 1999); *In re Processed Egg Products Antitrust Litigation* (E.D. Pa. 2008); and
15 *In re Commercial Explosives Antitrust Litigation* (D. Utah 1996).⁹¹

16 Marc Seltzer is one of Susman Godfrey's most senior partners and resident head of the
17 firm's Los Angeles office. He has practiced law for more than forty years, and has been appointed
18 to serve as lead counsel for plaintiffs in numerous antitrust and other class action cases, including
19 *In re Corrugated Container Antitrust Litigation* and the *In re Vitamin Antitrust Litigation*. The
20 latter was settled pursuant to agreements that made more than \$1.05 billion available to the class.
21 He was named a *Law360* "Class Action MVP," in recognition of, among other achievements,
22 serving as one of three co-lead counsel (along with Steve Berman) who helped to obtain an
23 unprecedented settlement valued at approximately \$1.6 billion in *In re Toyota Motor Corp.*
24 *Unintended Accelerated Litigation*.⁹²

27 ⁹¹ Seltzer Decl., ¶ 3.

28 ⁹² *Id.*, ¶ 5.

1 The reputation, experience and skill of class counsel were essential to the success in this
2 litigation.⁹³ From the outset, class counsel used their expertise and skill to obtain maximum
3 recovery for the class, given the particular factual and legal complexities of this litigation. Had the
4 parties not reached a settlement, they would have continued to litigate complex legal issues before
5 this Court. At no time have the defendants conceded liability (even as they insist that knowledge of
6 their conspiracy was widespread), the appropriateness of certification other than for settlement
7 purposes, or the existence of damages. Given the significant risks and uncertainty associated with
8 this complex class action, it is a testament to class counsel's skill, creativity and determination that
9 they were able to negotiate an excellent settlement providing substantial economic relief.⁹⁴

10 The quality of opposing counsel should also be considered.⁹⁵ Here, defense counsel for
11 defendants are all nationally recognized firms in the defense of antitrust class actions. Class
12 counsel vigorously litigated, and defense counsel vigorously defended against, the class wide
13 claims asserted by plaintiffs. Indeed, virtually every point in this litigation was relentlessly
14 disputed by defendants' zealous counsel.

15 **d. Class Counsel Obtained an Outstanding Settlement Result for Class**
16 **Members Nationwide**

17 In light of the looming risks and uncertain outcome of the litigation, the results obtained for
18 the class are exceptional. Class counsel have negotiated and achieved a meaningful settlement that
19 provides direct payments to class members on a *pro rata* basis. Based on data obtained from
20 defendants, class members will not have to submit a claim, or follow any other procedural steps, to
21 receive their share of the settlement fund. As described *supra* (see section III.A.1), Blue Sky's
22 payment represents at least 25 percent of the damages attributable to Blue Sky employees in the
23 class, and Sony's payment represents at least 16.7 percent of attributable damages. In either case,
24 these percentages are notably higher than those accepted in *High Tech*. Class counsel reached an
25 excellent result in this case.

26 ⁹³ See *In re Rite Aid Corp. Secs. Litig.*, 396 F.3d 294, 304 (3d Cir. 2005).

27 ⁹⁴ See, e.g., *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 281 (3d Cir. 2009) (considering skill and
28 efficiency of attorneys involved).

⁹⁵ See, e.g., *In re Equity Funding Corp. of Am. Secs. Litig.*, 438 F. Supp. 1303, 1337 (C.D. Cal. 1977).

1 **e. Plaintiffs' Fee Request Is Reasonable in Light of the Contingent Nature**
 2 **of the Fee and Class Counsel's Ongoing Work**

3 Class counsel's fee request is reasonable in light of the future work and expenses that will
 4 be incurred by class counsel under the settlement, which are not included in the current lodestar
 5 and reported expenses. This includes all pre- and post-approval work such as overseeing claims
 6 administration, communications with class members, disputes over claims, appeals, and any other
 7 issues that may arise under the settlements. This future work is substantial and could last for many
 8 months. This additional future work underscores the reasonable and fair nature of plaintiffs' fees
 9 request.

10 **B. Plaintiffs' Expenses Are Reasonable and Were Necessarily Incurred**

11 In addition to the \$4,737,500 sought by plaintiffs to be awarded to class counsel, plaintiffs
 12 seek an award of \$1,561,700.47 in expenses necessarily incurred in connection with the
 13 prosecution of this action. The Ninth Circuit allows recovery of pre-settlement litigation costs in
 14 the context of class action settlements.⁹⁶ All expenses that are typically billed by attorneys to
 15 paying clients in the marketplace are compensable.⁹⁷ With this motion, plaintiffs provide an
 16 accounting of the expenses incurred by their counsel.⁹⁸ This request for expenses is in addition to
 17 the \$36,062.92 for notice and claims administration.⁹⁹ The primary expense in this case is for
 18 experts, which accounts for nearly \$1.26 million, or about 80 percent, of the total.¹⁰⁰ Several
 19 additional categories account for the remainder, including filing fees, travel expenses, costs of
 20 court and deposition transcripts, and computer research expenses.¹⁰¹ All of these costs were
 21 necessarily and reasonably incurred to achieve these settlements, and they reflect market rates for
 22 the various categories of expenses incurred.¹⁰² Further, plaintiffs' counsel advanced these

23 ⁹⁶ See *Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003).

24 ⁹⁷ *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).

25 ⁹⁸ See Friedman Decl., ¶¶ 14-15; Small Decl., ¶¶ 12-13; Seltzer Decl., ¶¶ 13; 15.

26 ⁹⁹ See Declaration of Kenneth Jue Regarding Administration Costs ("Jue Decl."), ¶ 2, concurrently filed
 27 herewith.

28 ¹⁰⁰ See Seltzer Decl., ¶ 14.

¹⁰¹ See Friedman Decl., ¶¶ 14-15; Small Decl., ¶¶ 12-13; Seltzer Decl., ¶¶ 13; 15.

¹⁰² See Friedman Decl., ¶ 14; Small Decl., ¶¶ 12; Seltzer Decl., ¶¶ 13.

1 necessary expenses without assurance that they would even be recouped. Plaintiffs' request for
 2 expenses is reasonable.

3 **C. Plaintiffs Request Service Awards in the Amount of \$10,000**

4 Plaintiffs also request that the Court approve the service awards in the amount of \$10,000
 5 for the three named plaintiffs, to be deducted from the settlement fund. Service awards for class
 6 representatives are routinely provided to encourage individuals to undertake the responsibilities
 7 and risks of representing the class and to recognize the time and effort spent in the case. "Incentive
 8 *awards* are fairly typical in class action cases."¹⁰³ In the Ninth Circuit, service awards
 9 "compensate class representatives for work done on behalf of the class, to make up for financial or
 10 reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness
 11 to act as a private attorney general."¹⁰⁴ Courts have discretion to approve service awards based on,
 12 *inter alia*, the amount of time and effort spent, the duration of the litigation, and the personal
 13 benefit (or lack thereof) as a result of the litigation.¹⁰⁵

14 Here, the three named representatives, Robert Nitsch, David Wentworth, and Georgia Cano,
 15 have spent a significant amount of time assisting in the litigation of this case. Each plaintiff
 16 responded to written discovery and produced documents relating to their claims; they were each
 17 deposed by defense counsel all day regarding their claims in this case; they reviewed the SAC and
 18 other substantive pleadings; and they reviewed and approved the settlements.¹⁰⁶

19 The service awards of \$10,000 are consistent with service awards in other cases,¹⁰⁷ and are
 20 a fraction of the \$100,000 ultimately awarded in the *High-Tech* case. As the Court noted, *High-*
 21 *Tech* was a "megafund" case, so a better benchmark would likely be the initial service award of
 22 \$20,000 paid to class representatives as part of the initial *High-Tech* settlement with Pixar,

23 ¹⁰³ *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (emphasis in original).

24 ¹⁰⁴ *Id.* at 958-59.

25 ¹⁰⁵ *See Van Vracken*, 901 F. Supp. at 299.

26 ¹⁰⁶ *See* Declaration of Robert Nitsch in Support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and
 27 Service Awards, ¶¶ 8-12; Declaration of David Wentworth in Support of Plaintiffs' Motion for Attorneys'
 28 Fees, Expenses, and Service Awards, ¶¶ 8-12; Declaration of Georgia Cano in Support of Plaintiffs' Motion
 for Attorneys' Fees, Expenses, and Service Awards, ¶¶ 8-12, concurrently filed herewith.

¹⁰⁷ *See, e.g., Ins. Brokerage*, 579 F.3d at 253 (approving service award of \$10,000).

1 Lucasfilm, and Intuit. Even by that measure, the proposed service awards are half that initially
2 awarded in *High-Tech*.¹⁰⁸ Thus, plaintiffs and class counsel respectfully request that the Court
3 approve the modest service awards for each of the three named representatives.

4 **IV. CONCLUSION**

5 For the foregoing reasons, plaintiffs respectfully submit that this settlement represents an
6 excellent outcome for the class. Accordingly, plaintiffs request an award of \$4,737,5000 in
7 attorneys' fees, \$1,561,700.47 in expenses, \$36,062.92 to be paid to the Claims Administrator, and
8 a \$10,000 service award each for plaintiffs Robert Nitsch, David Wentworth, and Georgia Cano.

9 DATED: September 15, 2016

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28 ¹⁰⁸ *High-Tech Fees Order*, 2015 WL 5158730, at *16-*17.

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CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2016, I electronically filed the foregoing document using the CM/ECF system which will send notification of such filing to the e-mail addresses registered in the CM/ECF system, as denoted on the Electronic Mail Notice List, and I hereby certify that I have caused to be mailed a paper copy of the foregoing document via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice List generated by the CM/ECF system.

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