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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE ANIMATION WORKERS ANTITRUST
LITIGATION

Master Docket No. 14-CV-4062-LHK

[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, EXPENSES AND
SERVICE AWARDS

THIS DOCUMENT RELATES TO:

ALL ACTIONS

1 Before the Court is Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards
2 arising out of a settlement between individual and representative plaintiffs Robert Nitsch, David
3 Wentworth, and Georgia Cano, and the Class they represent (collectively, "Plaintiffs"), and Sony
4 Pictures Imageworks Inc. and Sony Pictures Animation Inc. (collectively, "Sony Pictures"), and
5 Blue Sky Studios, Inc. ("Blue Sky").

6 Having considered the submissions of the parties, the arguments made at the November 10,
7 2016 final approval hearing, the relevant law, and the record in this case, the Court hereby
8 GRANTS Plaintiffs' motion.

9 I. BACKGROUND

10 A. Initial Motions to Dismiss

11 On December 2, 2014, Plaintiffs filed their Consolidated Amended Class Action Complaint
12 against DreamWorks Animation SKG, Inc., ImageMovers Digital LLC, Lucasfilm Ltd., LLC,
13 Pixar, Sony Pictures Animation, Inc., Sony Pictures Imageworks, Inc., The Walt Disney Company,
14 and Blue Sky Studios, Inc. ECF No. 63. On January 9, 2015, defendants filed a motion to dismiss.
15 ECF No. 75. The motion raised a host of issues, including statute of limitations, fraudulent
16 concealment, wage-fixing allegations, standing, and specific allegations against three of the
17 defendants. *Id.* Also on January 9, 2015, defendants filed a motion to compel arbitration and stay
18 proceedings as to plaintiff Nitsch. ECF No. 71. The motion sought an order compelling Nitsch to
19 arbitrate his claims against DreamWorks, his former employer, compelling Nitsch to arbitrate his
20 claims against the other defendants based on an equitable estoppel theory, and staying the
21 proceedings of Nitsch's claim pending the arbitration. *Id.* On April 24, 2015, this Court ruled that
22 the arbitrator should decide whether he/she has jurisdiction over Nitsch's claims against
23 DreamWorks, and stayed Nitsch's claims against DreamWorks pending that decision. The Court
24 denied the motion for Nitsch to arbitrate his claims against the other defendants. ECF No. 116.

25 In addition, on April 17, 2015, this Court granted defendants' motion to dismiss, without
26 prejudice. ECF No. 105. The Court held that Plaintiffs had not sufficiently alleged acts of
27 fraudulent concealment by defendants such that the four-year statute of limitations should be tolled.
28 On May 15, 2015, Plaintiffs filed a Second Consolidated Amended Class Action Complaint

1 (“SAC”), alleging additional and more detailed acts of fraudulent concealment by defendants. ECF
2 No. 121. Defendants promptly filed a motion to dismiss the SAC, arguing in part that Plaintiffs’
3 new allegations regarding fraudulent concealment were deficient. ECF No. 126. Following briefing
4 by the parties, the Court denied defendants’ second motion to dismiss on August 20, 2015. ECF
5 No. 147.

6 **B. The Discovery Process**

7 Plaintiffs have engaged in extensive discovery in this case: conducting an intensive pre-
8 complaint investigation, drafting and responding to requests for production and interrogatories,
9 reviewing thousands of Plaintiffs’ documents for responsiveness and privilege, reviewing
10 defendants’ voluminous document productions, preparing for and taking over 20 depositions,
11 defending five additional depositions, obtaining relevant employment data and working with
12 Plaintiffs’ expert to evaluate that data and calculate damages on a class-wide basis.¹

13 The parties also had several discovery disputes during this litigation. Plaintiffs filed a
14 motion to compel Pixar and Lucasfilm to produce unredacted copies of expert and class
15 certification materials from *High-Tech*. ECF No. 171.² Plaintiffs filed an additional motion to
16 compel documents that Pixar and Lucasfilm were withholding on the basis of attorney-client
17 privilege. ECF No. 213.

18 In addition, Plaintiffs are involved in a dispute with The Croner Company, which
19 administered the industry-wide salary studies. These studies are part of Plaintiffs’ claims that
20 defendants conspired to keep compensation relatively uniform across companies, in part by sharing
21 compensation information. Croner filed an opposed motion seeking reimbursement of attorneys’
22 fees. ECF No. 285. Finally, on August 29, 2016, the parties filed a joint letter brief regarding
23 defendants’ request to obtain discovery from 500 absent class members. ECF No. 321. Both of
24 these matters are currently pending before Magistrate Judge Howard R. Lloyd.

25
26
27 ¹ See Declaration of Jeff D. Friedman in Support of Plaintiffs’ Motion for Attorneys’ Fees,
Expenses, and Service Awards (“Friedman Decl.”), ¶ 3.

28 ² This dispute was resolved by the parties without Court intervention. See ECF No. 180.

1 **C. Class Certification**

2 On February 1, 2016, Plaintiffs filed their motion for class certification (ECF No. 203), and
3 about ten weeks later filed their reply brief in support of their motion (ECF No. 262). On May 6,
4 2016, the Court held a hearing on Plaintiffs' class certification motion. ECF No. 276. On May 25,
5 2016, the Court granted in part and denied in part the motion. *See Nitsch v. DreamWorks*
6 *Animation SKG Inc.*, 315 F.R.D. 270 (N.D. Cal. 2016). The Court certified the following class (*id.*
7 at 317):

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

19 The Court denied the motion without prejudice as to class members who worked at Pixar
20 and Lucasfilm from 2001-2003, and who worked at DreamWorks in 2003. *See id.* The Court ruled
21 that the SAC did not sufficiently allege acts of fraudulent concealment during those years. *See id.*

22 The filings in support of – and in opposition to – Plaintiffs' motion for class certification
23 have been extensive and voluminous. Plaintiffs' motion for class certification was supported by
24 139 exhibits and a 70-page expert report from Dr. Ashenfelter. ECF No. 205-210. Defendants'
25 opposition included 67 exhibits and a 161-page expert report from Dr. Keeley. ECF Nos. 240-241.
26 Plaintiffs responded with a 93-page reply report from Dr. Ashenfelter. ECF No. 265.

27 This Court, in granting in part and denying in part Plaintiffs' class certification motion,
28 issued an 80-page opinion, in which it noted the “extensive documentary evidence, economic theory,
data, and expert statistical modeling” that Plaintiffs had assembled. *Nitsch*, 315 F.R.D. at 292.

1 **D. Defendants Petitioned the Ninth Circuit for Interlocutory Appeal**

2 On June 8, 2016, defendants filed a Rule 23(f) petition with the Ninth Circuit.³ The Appeal
3 contended that “[t]his closely watched case raises an important question on a recurring issue
4 impacting a wide range of class actions: Under what circumstances is class certification appropriate
5 where, as here, all class members’ claims are time-barred unless they can establish tolling through
6 fraudulent concealment?” *Id.* at 1. The Appeal argued that the Ninth Circuit had not yet addressed the
7 question, and the other circuits had reached “conflicting results.” *Id.* Defendants also claimed that
8 individualized issues could not be managed at a class trial, citing in support *Comcast Corp. v.*
9 *Behrend*, 133 S. Ct. 1426 (2013). *See* Appeal at 2;18.

10 After Plaintiffs filed their opposition,⁴ defendants filed a reply.⁵ Plaintiffs filed a response
11 in opposition to defendants’ motion for leave to file reply on the ground that defendants’ proposed
12 reply improperly raised two new arguments. ECF No. 6 at 1. On August 29, 2016, the Ninth Circuit
13 granted defendants’ motion for leave to file a reply, but denied their Rule 23(f) Petition in a
14 summary order. ECF No. 7 at 1.

15 **II. FEE PETITION**

16 **A. Plaintiffs Have Requested a Reasonable Amount of Attorneys’ Fees and Expenses**

17 Rule 23(h) of the Federal Rules of Civil Procedure provides that “[i]n a certified class
18 action, the court may award reasonable attorney’s fees and nontaxable costs that are authorized by
19 law or by the parties’ agreement.” “[A]wards of attorneys’ fees serve the dual purpose of
20 encouraging persons to seek redress for damages caused to an entire class of persons and
21 discouraging future misconduct.” *In re Apollo Group Inc. Secs. Litig.*, No. CV 04-2147, 2012 U.S.
22 Dist. LEXIS 55622, at *19 (D. Ariz. Apr. 20, 2012). In “common fund” cases, such as this one, the

23 ³ *See* Petition for Permission to Appeal from the United States District Court for the Northern
24 District of California, *Nitsch v. DreamWorks Animation SKG, Inc.*, No. 16-80077 (9th Cir. June 8,
2016) (“*Nitsch I*” or “Appeal”).

25 ⁴ *See* Answering Brief in Opposition to Petition for Permission to Appeal Pursuant to Rule
26 23(f), *Nitsch I*, June 20, 2016, ECF No.3.

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

1 Court has the discretion to award attorneys' fees as either a percentage of the common fund, or by
2 using the lodestar method.⁶

3 In the Ninth Circuit, the "benchmark" award in common fund cases is 25 percent of the
4 recovery obtained. See *High Tech Fees Order*, 2015 WL 5158730, at *6 (citing cases). The court
5 may also apply the lodestar method to determine a reasonable attorney's fee by multiplying the
6 number of hours reasonably expended by a reasonable hourly rate. See *In re Bluetooth*, 654 F.3d at
7 944. The lodestar figure is "presumptively reasonable," although "the court may adjust it upward
8 or downward by an appropriate positive or negative multiplier reflecting a host of reasonableness
9 factors." *High-Tech Fees Order*, 2015 WL 5158730, at *9 (quoting *In re Bluetooth*, 654 F.3d at
10 941). In common fund cases, the lodestar method may also be used as a cross-check of the
11 percentage-of-fund method. See *In re Bluetooth*, 654 F.3d at 944; see also *Vizcaino v. Microsoft*
12 *Corp.*, 290 F.3d 1043, 1050-51 (9th Cir. 2002) (applying a lodestar cross-check to ensure the
13 percentage-of-recovery method yielded a reasonable result).

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

20 **1. Plaintiffs' Fee Request Is Reasonable under the "Common Fund" Percentage**
21 **of Recovery Analysis.**

22 Plaintiffs seek an award of 25 percent of the settlement fund, squarely in line with the Ninth
23 Circuit's benchmark. A 25 percent fee award is "presumptively reasonable," although this depends
24 in part on the size of the fund itself. See *High-Tech Fees Order*, 2015 WL 5158730, at *6, *11.

25
26 ⁶ See *In re High-Tech Emp. Litig.*, Case No. 11-cv-02509 LKH, 2015 WL 5158730, at *6 (N.D.
27 Cal. Sept. 2, 2015) ("*High-Tech Fees Order*") (citing *In re Bluetooth Headset Prods. Liab. Litig.*,
28 654 F.3d 935, 942 (9th Cir. 2011)); see also *In re Wachovia Corp. "Pick-A-Payment" Mortg.*
Mktg. & Sales Practices Litig. ("*Wachovia*"), No. 5:09-md-02105, 2011 U.S. Dist. LEXIS 55351,
at *23-*24 (N.D. Cal. May 17, 2011).

1 Plaintiffs' fee request is fully supported by the particular circumstances of this case. In *In re*
2 *Online DVD-Rental Antitrust Litig.*, 779 F.3d 934 (9th Cir. 2015), the Ninth Circuit outlined a
3 number of factors that courts may consider in setting an appropriate fee, including:

4 [1] The extent to which class counsel "achieved exceptional results for the
5 class," [2] whether the case was risky for class counsel, [3] whether
6 counsel's performance "generated benefits beyond the cash settlement
7 fund," [4] the market rate for the particular field of law (in some
8 circumstances), [5] the burdens class counsel experienced while litigating
9 the case (e.g., cost, duration, foregoing other work), and [6] whether the
10 case was handled on a contingency basis.

11 *Id.* at 954-55 (citing *Vizcaino*, 290 F.3d at 1048-50. Taking all the relevant circumstances into
12 account, Plaintiffs' requested fees in the amount of 25 percent of the \$18.95 million common fund
13 is reasonable here.

14 *First*, class counsel achieved an excellent result on behalf of the Plaintiffs and the class.
15 The settlement negotiated by class counsel provides valuable financial relief to the thousands of
16 workers who allegedly had their wages suppressed as a result of the defendants' conspiracy.
17 Pursuant to the settlement, Blue Sky, the smallest defendant in this case, and the first defendant to
18 settle, agreed to a \$5.95 million payment. Blue Sky's payment is approximately 25 percent of
19 Plaintiffs' expert's calculation of the damages attributable to Blue Sky employees in the class (as
20 calculated based on Dr. Ashenfelter's original expert report in support of class certification). The
21 Sony Agreement provides for a thirteen million dollar payment to the settlement fund, which
22 represents approximately 16.7 percent of the damages attributable to Sony Pictures employees
23 during the relevant time period.

24 These figures compare favorably with the percentages approved by this Court in the *High-*
25 *Tech* case. Initially, the Court rejected a \$324.5 million settlement with Adobe, Apple, Google, and
26 Intel.⁷ The Court noted that the total proposed settlement of \$344.5 million was 11.29 percent of

27 ⁷ See *In re High-Tech Emp. Litig.*, No.11-cv-02509, 2014 WL 3917126, at *5 (N.D. Cal. Aug.
28 8, 2014) ("*High-Tech II*").

1 the expert’s calculation,⁸ but the “procedural posture of the case swung dramatically in plaintiffs’
2 favor after the initial settlements were reached,” and the parties were a month from trial.⁹ The
3 Court ultimately approved a settlement representing 14.26 percent of the total single damages
4 calculated by Plaintiffs’ expert. Here, the proposed settlements were reached before summary
5 judgment, and well before trial – but nevertheless exceed in percentage terms the results obtained
6 in *High-Tech*.

7 *Second*, class counsel assumed a high degree of risk in bringing and pursuing this action to
8 a successful conclusion. As recounted above, initially the Court granted defendants’ motion to
9 dismiss based on the statute of limitations issue. Plaintiffs filed an amended complaint, which
10 included further allegations of fraudulent concealment by the defendants. Defendants opposed this
11 as well, and claimed that the fraudulent concealment allegations were insufficient. Although the
12 Court ultimately denied the second motion to dismiss, this outcome was far from certain as the
13 Plaintiffs drafted the SAC and the opposition to the motion to dismiss. In addition, class counsel
14 faced an additional risk not present in *High-Tech*. The *High-Tech* plaintiffs sued all the targets –
15 but *only* the targets – of the DOJ investigation.¹⁰ Here, in contrast, Plaintiffs brought suit against
16 additional defendants (Sony Pictures, DreamWorks Animation, Blue Sky Studios, IMD, and The
17 Walt Disney Company), which required Plaintiffs to collect additional evidence, rebut additional
18 legal arguments, and confront additional defenses not present in the *High-Tech* case.

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

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26 ⁸ *See id.* The total settlement figure included the previously approved \$20 million settlement
with Intuit, Lucasfilm, and Pixar.

27 ⁹ *Id.*

28 ¹⁰ *See Nitsch*, 315 F.R.D. at 275-76.

1 *Third*, class counsel undertook a notable burden in pursuing this case. As noted above,
2 class counsel's lodestar through the end of July 2016 stands at \$7,942,034.50, and they have
3 incurred \$1,561,700.47 in unreimbursed expenses. They have incurred this expense without any
4 guarantee of being compensated for these expenses. In that light, the Court finds that the burden
5 assumed by class counsel was significant, and weighs in favor of approving their award.

6 *Fourth*, and relatedly, class counsel took on this matter on a purely contingent basis, with
7 no prospects of being able to recover funds absent a settlement or judgment from this Court. This,
8 too, cuts in favor of approval.

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

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

12 Under the lodestar method, courts first look at the number of hours spent by counsel on the
13 case. Here, in support of the lodestar determination, Plaintiffs submit the declarations of class
14 counsel attesting to their total hours, hourly rates, experience, and efforts to prosecute this action.¹¹

15 As set forth in the supporting declarations, Plaintiffs' counsel have collectively spent more
16 than 16,445.30 hours of attorney and litigation support time on this action. *See* Friedman Decl., ¶
17 12 (4,107.1 hours); Small Decl., ¶ 10 (6,911 hours); Seltzer Decl., ¶ 11 (5,427.3 hours). The
18 number of hours that Plaintiffs' counsel has devoted to pursuing this litigation is appropriate and
19 reasonable, given: (1) the extensive pre-complaint investigation; (2) the large number of documents
20 produced by the defendants, and the review of documents from Plaintiffs' files in response to
21 defendants' discovery requests; (3) the extensive factual and legal research and analysis involved
22 in filing an amended complaint, an opposition to a motion to dismiss, a second amended complaint,
23 and a second opposition to a motion to dismiss, as well as an opposition to a motion to compel
24 arbitration; (4) substantial briefing at the class certification stage; (5) the number and breadth of
25 expert reports; (6) the depositions of over twenty witnesses, and defending an additional five

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27 ¹¹ *See* Friedman Decl., ¶¶ 5-15; Declaration of Daniel A. Small in Support of Plaintiffs' Motion
28 for Attorneys' Fees, Expenses, and Service Awards ("Small Decl."), ¶¶ 2-13; Declaration of Marc
M. Seltzer in Support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards
("Seltzer Decl."), ¶¶ 3-15.

1 depositions; and (7) opposing defendants' Rule 23(f) petition. In addition, class counsel have spent
2 numerous hours working with the notice and claims administrator to answer the questions of class
3 members, launch the settlement website, address issues regarding notice and identify class
4 members. Furthermore, class counsel will continue to assist class members with inquiries and
5 continue to work with the notice and claims administrator and defendants on any issues that may
6 arise with respect to the settlement administration. Class counsel may also expend further time and
7 effort to resolve any objections that are lodged, and litigate any appeals that result therefrom.

8 **b. Plaintiffs' Counsel's Hourly Rates Are Reasonable.**

9 The hourly rates of class counsel and other Plaintiffs' counsel, as detailed in their
10 declarations, are also fair and reasonable. Under the lodestar method, counsels' reasonable hourly
11 rates are determined by the "prevailing market rates in the relevant community," which are the
12 rates a lawyer of comparable skill, experience and reputation could command in the relevant
13 community.¹² An attorney's actual billing rate is presumptively appropriate to use as the lodestar
14 market rate. *See People Who Care v. Rockford Bd. of Educ.*, 90 F.3d 1307, 1310 (7th Cir. 1996).
15 "Affidavits of the plaintiffs' attorney and other attorneys regarding prevailing fees in the
16 community, and rate determinations in other cases, particularly those setting a rate for the
17 plaintiffs' attorney, are satisfactory evidence of the prevailing market rate." *United Steelworkers of*
18 *Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990).

19 Declarations from class counsel establish that the hourly rates are fair, reasonable, and
20 market-based, particularly for the "relevant community" in which counsel work. *See Friedman*
21 *Decl.*, ¶ 11; *Small Decl.*, ¶ 9; *Seltzer Decl.*, ¶ 10. Class counsel are highly-respected members of
22 the bar with extensive experience in prosecuting high-stakes complex litigation, including
23 consumer class actions. *See Friedman Decl.*, ¶¶ 5-10; *Small Decl.*, ¶¶ 2-8; *Seltzer Decl.*, ¶¶ 3-9.
24 With three exceptions, counsel's hourly rates in this action range from \$275 to \$735, with rates
25

26 ¹² *See Sw. Ctr. for Biological Diversity v. Bartel*, No. 98-CV-2234, 2007 U.S. Dist. LEXIS
27 64232, at *14 (S.D. Cal. Aug. 30, 2007); *Bellows v. NCO Fin. Sys., Inc.*, No. 07-CV-1413, 2009
28 U.S. Dist. LEXIS 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).

1 varying based on experience. *See* Friedman Decl., ¶ 12; Small Decl., ¶ 10; Seltzer Decl., ¶ 11. The
 2 three most senior attorneys on the case, who serve as the lead attorney for each respective law firm,
 3 charge between \$845 and \$1,200 per hour. *See* Friedman Decl., ¶ 12; Small Decl., ¶ 10; Seltzer
 4 Decl., ¶ 11. Mr. Seltzer’s \$1,200 hourly rate is the same rate that he charges clients, including
 5 corporations that are billed hourly, which provides a market-based cross-check. *See* Seltzer Decl., ¶
 6 10. Hourly rates for paralegals are \$290 or lower. *See* Friedman Decl., ¶ 12; Small Decl., ¶ 10;
 7 Seltzer Decl., ¶ 11. Overall, the rates charged by counsel here are comparable to the fees approved
 8 by the Court, over a year ago, in the *High-Tech* case.¹³

9 **c. Plaintiffs’ Requested Fee Is Reasonable Considering the Time and**
 10 **Labor Required, Novelty and Complexity of the Litigation, Counsel’s**
 11 **Skill and Experience and the Results Obtained.**

12 Multiplying the hours spent by Plaintiffs’ counsel on the litigation by their respective
 13 hourly rates yields a lodestar calculation of \$7,942,034.50. The requested \$4,737,500 is
 14 substantially below the loadstar, and results in a negative multiplier of .60. This is markedly lower
 15 than the range of multipliers accepted by the Ninth Circuit and district courts throughout the
 16 country.¹⁴

17
 18 ¹³ In *High-Tech*, this Court found class counsel’s rates “reasonable in light of prevailing market
 19 rates in this district,” including partner rates that ranged from \$490 to \$975 per hour; non-partner
 20 rates that ranged from \$310 to \$800 per hour; and paralegals, law clerks, and support staff rates
 21 that ranged from \$190 to \$430, “with most in the \$300 range.” *High-Tech Fees Order*, 2015 WL
 22 5158730, at *9.

23 ¹⁴ *See id.*, at *10-*11; *see also Vizcaino*, 290 F.3d at 1051 n.6 (surveying class actions
 24 settlements nationwide, and noting 54 percent of lodestar multipliers fell within the 1.5 to 3.0
 25 range, and that 83 percent of multipliers fell within the 1.0 to 4.0 range); *Maley v. Del Global*
 26 *Techns. Corp.*, 186 F. Supp. 2d 358, 369 (S.D.N.Y. 2002) (4.65 multiplier); *In re NASDAQ Market-*
 27 *Makers Antitrust Litig.*, 187 F.R.D. 465, 489 (S.D.N.Y. 1998) (3.97 multiplier: “In recent years
 28 multipliers of between 3 and 4.5 have become common.”); *In re RJR Nabisco Sec. Litig.*, MDL No.
 818, 1992 U.S. Dist. LEXIS 12702, at *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 *2, (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 multipliers in large and complicated
 class actions runs from a low of 2.26 to a high of 4.5.”); *In re Cenco, Inc. Sec. 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).

1 In deciding an appropriate fee under the lodestar method, district courts may consider a
2 number of factors, including the time and labor required, novelty and complexity of the litigation,
3 skill and experience of counsel, contingent nature of the case, and the results obtained. *Blum v.*
4 *Stenson*, 465 U.S. 886, 898-900 (1984); *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir.
5 1975). All of these factors weigh heavily in favor of granting the requested \$4,737,500 in fees here.

6 **(1) Plaintiffs' Counsel Invested a Significant Amount of Time and**
7 **Resources into This Case.**

8 To date, Plaintiffs' counsel have expended more than 16,445.30 hours, totaling more than
9 \$7,942,034.50 million in lodestar, and have incurred more than \$1,561,700.47 in out-of-pocket
10 expenses in prosecuting this action for the benefit of the class. Friedman Decl., ¶ 14 (\$473,182.85
11 in expenses); Small Decl., ¶ 12 (\$575,743.16 in expenses); Seltzer Decl., ¶ 14 (\$602,373.15 in
12 expenses); *Id.* (less \$89,598.69 in unspent funds). Class counsel vigorously litigated this action
13 and were challenged by aggressive, skilled and well-funded defense counsel every step of the way.

14 To effectively prosecute this large and complex class action, class counsel had to commit a
15 significant amount of time, personnel and expenses to this litigation purely on a contingency basis
16 with no guarantee of being compensated in the end. Such efforts included, but were not limited to:
17 (1) investigating the factual and legal claims and filing this action; (2) amending the complaint, and
18 successfully defeating a second motion to dismiss; (3) filing a factually robust motion for class
19 certification and reply in support of the same; (4) actively engaging in discovery, including the
20 taking and defending of depositions, written discovery, reviewing documents from both the
21 defendants and third parties; (5) retaining and working with an expert economist to develop a
22 damages model and explain the impact of defendants' conspiracy to suppress wages on class
23 members; (6) disseminating notice after class certification to over 10,000 class members;
24 (7) answering inquiries from class members regarding the litigation, settlement, claim forms and
25 other matters concerning their claims; and (8) assisting the claims administrator with the settlement
26 website, electronic claim form and notice issues. Despite the significant risks and uncertainty, class
27 counsel obtained an excellent result on behalf of class members.
28

1 lodestar. This includes all pre- and post-approval work such as overseeing claims administration,
2 communications with class members, disputes over claims, appeals, and any other issues that may
3 arise under the settlements. This future work is substantial and could last for many months. This
4 additional future work underscores the reasonable and fair nature of Plaintiffs' fees request.

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

6 In addition to the \$4,737,500 sought by Plaintiffs to be awarded to class counsel, Plaintiffs
7 seek an award of \$1,561,700.47 in expenses necessarily incurred in connection with the
8 prosecution of this action. The Ninth Circuit allows recovery of pre-settlement litigation costs in
9 the context of class action settlements. *See Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003).
10 All expenses that are typically billed by attorneys to paying clients in the marketplace are
11 compensable. *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994). With their motion, plaintiffs
12 provide an accounting of the expenses incurred by Plaintiffs' counsel. *See* Friedman Decl., ¶¶ 14-
13 15; Small Decl. ¶¶ 12-13; Seltzer Decl. ¶¶ 13; 15. Several categories account for the bulk of these
14 expenses: fees paid to experts, filing fees, travel expenses, costs of court and deposition transcripts,
15 and computer research expenses. All of these costs were necessarily and reasonably incurred to
16 bring this case to a successful conclusion, and they reflect market rates for the various categories of
17 expenses incurred. Further, Plaintiffs' counsel advanced these necessary expenses without
18 assurance that they would even be recouped. Plaintiffs' request for fees is reasonable.

19 In addition, the Court finds as reasonable the costs for notice and claims administration,
20 which currently total \$36,062.92. *See* Declaration of Kenneth Jue Regarding Administration Costs,
21 ¶ 2.

22 **C. Plaintiffs' Request for Service Awards**

23 Plaintiffs also request that the Court approve the service awards in the amount of \$10,000
24 for the three named plaintiffs, to be deducted from the settlement fund. Service awards for class
25 representatives are routinely provided to encourage individuals to undertake the responsibilities
26 and risks of representing the class and recognize the time and effort spent in the case. In the Ninth
27 Circuit, service awards "compensate class representatives for work done on behalf of the class, to
28 make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to

1 recognize their willingness to act as a private attorney general.” *Rodriguez v. West Publ’g Corp.*,
 2 563 F.3d 948, 958-59 (9th Cir. 2009). Courts have discretion to approve service awards based on,
 3 *inter alia*, the amount of time and effort spent, the duration of the litigation, and the personal
 4 benefit (or lack thereof) as a result of the litigation. *See High Tech Fees Order*, 2015 WL
 5 5158730, at *16.

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

11 The service awards of \$10,000 are consistent with service awards in other cases,¹⁶ and half
 12 of the service awards initially ordered in *High-Tech*.¹⁷ Based on the foregoing, the Court
 13 accordingly concludes that the request for a \$10,000 service award for each named plaintiff is
 14 reasonable.

15 III. CONCLUSION

16 For the foregoing reasons, the Court hereby GRANTS Plaintiffs’ Motion for Attorneys’
 17 Fees, Expenses, and Service Awards. The Court awards as follows:

- 18 • \$4,737,5000 in attorneys’ fees to class counsel;
- 19 • \$1,561,700.47 in unreimbursed expenses to class counsel;
- 20 • \$36,062.92 in expenses to KCC, the Claims Administrator; and

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 22
 23 ¹⁵ See Declaration of Robert Nitsch in Support of Plaintiffs’ Motion for Attorneys’ Fees,
 24 Expenses, and Service Awards, ¶¶ 8-12; Declaration of David Wentworth in Support of Plaintiffs’
 25 Motion for Attorneys’ Fees, Expenses, and Service Awards, ¶¶ 8-12; Declaration of Georgia Cano
 26 in Support of Plaintiffs’ Motion for Attorneys’ Fees, Expenses, and Service Awards, ¶¶ 8-12.

25 ¹⁶ See, e.g., *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 253 (3d Cir. 2009) (approving
 26 service award of \$10,000).

26 ¹⁷ See *High Tech Fees Order*, 2015 WL 5158730, at *17. This Court, in recognition of the
 27 settlement of a “megafund” case, ultimately awarded four of the five named plaintiffs a total of
 28 \$100,000 in service awards, and awarded the fifth plaintiff – who successfully objected to the final
 settlement – a total of \$140,000. *See id.*

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.

/s/ Jeff D. Friedman
JEFF D. FRIEDMAN

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