

1 Daniel A. Small (*pro hac vice*)
COHEN MILSTEIN SELLERS & TOLL PLLC
2 1100 New York Ave. NW, Suite 500
Washington, DC 20005
3 Telephone: (202) 408-4600
Facsimile: (202) 408-4699
4 dsmall@cohenmilstein.com

5 Steve W. Berman (*pro hac vice*)
HAGENS BERMAN SOBOL SHAPIRO LLP
6 1918 Eighth Avenue, Suite 3300
Seattle, WA 98101
7 Telephone: (206) 623-7292
Facsimile: (206) 623-0594
8 steve@hbsslaw.com

9 Marc M. Seltzer (54534)
SUSMAN GODFREY LLP
10 1901 Avenue of the Stars, Suite 950
Los Angeles, CA 90067-6029
11 Telephone: (310) 789-3100
Facsimile: (310) 789-3150
12 mseltzer@susmangodfrey.com

13 [Additional Counsel on Sig. Page]

14 *Class Counsel*

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

18 IN RE ANIMATION WORKERS ANTITRUST
19 LITIGATION

Master Docket No. 14-CV-4062-LHK

20 NOTICE OF MOTION AND MOTION
FOR FINAL APPROVAL OF
21 SETTLEMENT WITH SONY
PICTURES IMAGEWORKS INC.,
22 SONY PICTURES ANIMATION INC.,
AND BLUE SKY STUDIOS, INC.

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

26 THIS DOCUMENT RELATES TO:
27 ALL ACTIONS
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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on November 10, 2016 at 1:30 pm or as soon thereafter as the matter may be heard by the Honorable Lucy H. Koh of the United States District Court of the Northern District of California, San Jose Division, located at 280 South 1st Street, San Jose, CA 95113, plaintiffs will and hereby do move the Court pursuant to Federal Rules of Civil Procedure 23 for an order entering Final Judgment and granting final approval of proposed class action settlements with Sony Pictures Imageworks Inc., Sony Pictures Animation Inc., and Blue Sky Studios, Inc.

This motion is based on this notice of motion and motion, the following memorandum of points and authorities, the Settlement Agreements, the pleadings and the papers on file in this action, and such other matters as the Court may consider.

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- I. INTRODUCTION1
- II. PROCEDURAL HISTORY1
- III. SUMMARY OF SETTLEMENT TERMS5
 - A. The Proposed Settlement Class5
 - B. The Settlement Consideration5
 - 1. Monetary Settlement Fund5
 - 2. Additional Consideration.....6
 - C. Plan of Distribution6
- IV. ARGUMENT6
 - A. The Settlement Agreement Satisfies Rule 23(e)6
 - 1. Although Plaintiffs Believe They Have a Strong Case, When Considering the Inherent Risk, These Settlements Are Fair for Class Members7
 - 2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation Supports Compensation for the Class at This Stage.....9
 - 3. The Risk of Maintaining Class Action Status Throughout Trial Further Supports the Proposed Settlements9
 - 4. Both Monetary Compensation for Class Members and Cooperation from These Defendants Support Final Approval of the Settlements9
 - 5. Plaintiffs Settled with These Defendants Only After Sufficient Discovery to Understand the Strengths and Weaknesses of Their Case10
 - 6. Class Counsels’ Support for the Settlements Weighs in Favor of Final Approval11
 - 7. The Reaction of Class Members Supports Final Approval11
 - B. The Proposed Settlement Class Satisfies Rule 2312
 - C. The Proposed Notice and Plan of Dissemination Meets the Strictures of Rule 23 ...14
 - D. The Plan of Allocation Is Fair and Reasonable16
 - E. Plaintiffs Request Distribution of Fees to KCC16
- V. CONCLUSION16

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

Boyd v. Bechtel Corp.,
485 F. Supp. 610 (N.D. Cal. 1979)..... 11

Ellis v. Naval Air Rework Facility,
87 F.R.D. 15 (N.D. Cal. 1980) 7, 11

In re Domestic Air Transp. Antitrust Litig.,
141 F.R.D. 534 (N.D. Ga. 1992) 5

In re High-Tech Emp. Antitrust Litig.,
985 F. Supp. 2d 1167 (N.D. Cal. 2013)..... 13, 14

In re High-Tech Emp. Antitrust Litig.,
2014 WL 3917126 (N.D. Cal. Aug. 8, 2014) *passim*

In re High-Tech Employee Antitrust Litig.,
2015 WL 5159441 (N.D. Cal. Sept. 2, 2015)..... 16

In re Initial Public Offering Secs. Litig.,
226 F.R.D. 186 (S.D.N.Y. 2005)..... 5

In re Mid-Atl. Toyota Antitrust Litig.,
564 F. Supp. 1379 (D. Md. 1983)..... 10

In re Online DVD-Rental Antitrust Litig.,
779 F.3d 934 (9th Cir. 2015) 15

In re TFT-LCD (Flat Panel) Antitrust Litig.,
267 F.R.D. 291 (N.D. Cal. 2010) 14

In re Yahoo Mail Litig.,
308 F.R.D. 577 (N.D. Cal. 2015) 12

In re Zynga Inc. Secs. Litig.,
2015 WL 6471171 (N.D. Cal. Oct. 27, 2015) 5

Larsen v. Trader Joe’s Co.,
WL 3404531 (N.D. Cal. July 11, 2014) 12

Monterrubio v. Best Buy Stores, L.P.,
291 F.R.D. 443 (E.D. Cal. 2013)..... 15

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2
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4
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Nitsch v. Dreamworks Animation SKG Inc.,
315 F.R.D. 270 (N.D. Cal. 2016) 3, 12, 13, 14

Nitsch v. Dreamworks Animation SKG Inc.,
2016 WL 4424965 (N.D. Cal. July 6, 2016) 4

Officers for Justice v. Civil Serv. Comm’n of the City and Cty. of San Francisco,
688 F.2d 615 (9th Cir. 1982) 6, 7

Rodriguez v. W. Pub. Corp.,
563 F.3d 948 (9th Cir. 2009) 14

Torrisi v. Tucson Elec. Power Co.,
8 F.3d 1370 (9th Cir. 1993) 7

Util. Reform Project v. Bonneville Power Admin.,
869 F.2d 437 (9th Cir. 1989) 6

Van Bronkhorst v. Safeco Corp.,
529 F.2d 943 (9th Cir. 1976) 6

Wal-Mart Stores, Inc. v. Dukes,
131 S. Ct. 2541 (2011) 12

FEDERAL RULES

Federal Rule of Civil Procedure 23 *passim*

I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 23, plaintiffs Robert Nitsch, David Wentworth, and Georgia Cano respectfully seek final approval of two Settlement Agreements (collectively, “Agreements”) – one with defendants Sony Pictures Imageworks Inc. and Sony Pictures Animation Inc. (collectively, “Sony Pictures”), and the other with Blue Sky Studios, Inc. (“Blue Sky”).¹ The Court should issue an order granting final approval of the Agreements because they are fair, reasonable and adequate. The Sony Pictures Agreement provides a cash payment of \$13,000,000 to the Class, which represents 16.7 percent of total damages attributable to Sony Pictures employees during the relevant time period. The Blue Sky Agreement provides a cash payment of \$5,950,000 to the Class, which represents 25 percent of attributable damages to Blue Sky employees. These percentages are higher than the percentage of single damages approved in the *High-Tech* litigation. The Agreements also obligate Sony Pictures and Blue Sky to cooperate with plaintiffs in this litigation.

The Agreements here were reached after arm’s length negotiations, drawing on the expertise of informed, experienced counsel who have been deeply involved in this litigation since its inception, and it reflects the risks associated with both parties continuing to litigate this case. In particular, counsel have been informed and guided by the rulings and settlement valuations deemed fair and reasonable in the *High-Tech* litigation.

The Claims Administrator has provided direct notice to approximately 10,828 class members. The deadline for objections and opt-outs has passed; no class members have objected, and only four have opted out of the settlements. A final fairness hearing is set for November 10, 2016.

Plaintiffs respectfully request an order granting final approval of the Agreements.

II. PROCEDURAL HISTORY

Named plaintiffs are former animation and visual effects employees of defendants. Each named plaintiff worked for at least one of the defendants during the period when defendants were engaged in an illegal agreement to suppress compensation paid to class members.

¹ The Agreements are referred to individually as the “Sony Pictures Agreement” and the “Blue Sky Agreement.”

1 Defendants' agreement worked to restrain competition in several respects. Defendants
2 entered into a "gentlemen's agreement" not to actively solicit each other's employees.² Among the
3 manner and means of the alleged anti-solicitation conspiracy were: (a) defendants would not "cold-
4 call" each other's employees; (b) they would notify the other company when making an offer to an
5 employee of the other company, if that employee had applied for a job; and (c) the company making
6 such an offer would not increase the compensation offered to the prospective employee in its offer if
7 the company currently employing the employee made a counteroffer.³ In addition, defendants'
8 employees who were responsible for monitoring and enforcing the recruiting restraints engaged in
9 direct collusive discussions to coordinate compensation across defendant firms.⁴

10 On December 2, 2014, plaintiffs filed their Consolidated Amended Class Action Complaint
11 (CAC) against DreamWorks Animation, ImageMovers Digital, Lucasfilm, Pixar, Sony Pictures
12 Animation, Sony Pictures Imageworks, The Walt Disney Company, and Blue Sky.⁵ On January 9,
13 2015, defendants filed a motion to dismiss.⁶ On April 17, 2015, this Court granted defendants'
14 motion without prejudice.⁷ The Court held that plaintiffs had not sufficiently alleged acts of
15 fraudulent concealment by defendants such that the four-year statute of limitations should be tolled.
16 On May 15, 2015, plaintiffs filed the SAC, alleging additional and more detailed acts of fraudulent
17 concealment by defendants.⁸ The Court denied defendants' second motion to dismiss on August 20,
18 2015.⁹

19 Plaintiffs have engaged in extensive discovery during this litigation: drafting and responding
20 to requests for production and 30(b)(6) notices, reviewing thousands of plaintiffs' documents for
21 responsiveness and privilege, reviewing defendants' voluminous document productions, preparing

22 ² See Second Consolidated Amended Class Action Complaint (SAC), ¶ 43, ECF No. 121.

23 ³ See *id.*, ¶ 2.

24 ⁴ See *id.*, ¶¶ 13-15.

25 ⁵ ECF No. 63.

26 ⁶ Motion to Dismiss the Consolidated Amended Complaint, ECF No. 75.

27 ⁷ Order Granting Defendants' Joint Motion to Dismiss, ECF No. 105.

28 ⁸ SAC, ¶¶ 133-182 .

⁹ Order Denying Defendants' Joint Motion to Dismiss, ECF No. 147.

1 for and taking depositions, obtaining relevant employment data, and working with plaintiffs' expert
2 to evaluate that data and calculate damages on a class-wide basis.

3 On February 1, 2016 plaintiffs filed their motion for class certification.¹⁰ On May 6, 2016, the
4 Court held a hearing on plaintiffs' class certification motion. On May 25, 2016, the Court granted in
5 part and denied in part the motion.¹¹ The Court certified the following class:

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

13 The Court denied the motion without prejudice as to class members who worked at Pixar and
14 Lucasfilm from 2001-2003, and who worked at Dreamworks in 2003.¹³ The Court ruled that the
15 SAC did not sufficiently allege acts of fraudulent concealment during those years.¹⁴

16 On March 31, 2016, plaintiffs filed a motion for preliminary approval of settlement with Blue
17 Sky Studios, Inc.¹⁵ On May 3, 2016, plaintiffs filed a motion for preliminary approval of settlement
18 with Sony Pictures.¹⁶ On May 11, 2016, plaintiffs filed an amended motion for preliminary approval
19

20 _____
21 ¹⁰ Plaintiffs' Notice of Motion and Motion for Class Certification and Memorandum of Law in
Support ("Class Cert. Motion"), ECF No. 203 (filed under seal).

22 ¹¹ *See Nitsch v. Dreamworks Animation SKG Inc.*, 315 F.R.D. 270 (N.D. Cal. 2016).

23 ¹² *Id.* at 317.

24 ¹³ *See id.*

25 ¹⁴ *See id.*

26 ¹⁵ Notice of Motion and Motion for Preliminary Approval of Settlement with Blue Sky Studios,
27 Inc., ECF No. 249.

28 ¹⁶ Notice of Motion and Motion for Preliminary Approval of Settlement with Sony Pictures
Imageworks Inc. and Sony Pictures Animation Inc. ("Sony Settlement Motion"), ECF No. 273.
Plaintiffs had proposed to file one joint motion for both settlements. As a result, the Court ordered
plaintiffs to file an amended motion for the Blue Sky settlement to reflect this proposal. Case
Management Order, ECF No. 277.

1 of settlement with Blue Sky Studios, Inc.¹⁷ Following a preliminary approval hearing,¹⁸ on July 6,
2 2016 the Court granted both motions for preliminary approval of the respective Agreements.¹⁹

3 Pursuant to the Court's order, defendants sent Kurtzman Carson Consultants ("KCC"), the
4 Court-appointed Claims Administrator, "contact information, Social Security Numbers, the last
5 location (by state) where the employee worked for the defendant for state tax reporting purposes, and
6 compensation information for Class Members, identified by job titles[.]"²⁰ On August 16, 2016,
7 KCC emailed notice to 2,665 class members, and mailed notice to an additional 8,396 class members
8 when KCC was unable to obtain or verify email addresses.²¹ In total, after accounting for
9 undeliverable emails and mailed notices, KCC estimates that 10,828 class members received direct
10 notice, which is about 98% percent of the class.²²

11 Consistent with Ninth Circuit authority, on September 15, 2016, plaintiffs filed a motion for
12 attorneys' fees, expenses, and service awards, and posted the motion to the public website
13 (www.animationlawsuit.com) for review by class members.²³ In this motion, class counsel sought 25
14 percent of the settlement funds in attorneys' fees, or \$4,737,500 (which was below their lodestar of
15 \$7,942,034.50), an additional \$1,561,700.47 in expenses, and a \$10,000 service award for each
16 plaintiff.²⁴

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20 ¹⁷ Notice of Motion and Amended Motion for Preliminary Approval of Settlement with Blue Sky
21 Studios, Inc. ("Amended Blue Sky Settlement Motion"), ECF No. 282.

22 ¹⁸ See Civil Minute Entry, ECF No. 298.

23 ¹⁹ See *Nitsch v. Dreamworks Animation SKG Inc.*, No. 14-cv-04062, 2016 WL 4424965 (N.D.
24 Cal. July 6, 2016).

25 ²⁰ *Id.*, at *5.

26 ²¹ See Declaration of Kenneth Jue on Behalf of Notice Administrator in Support of Final
27 Approval and Compliance with Notice ("Jue Decl."), ¶ 3, concurrently filed herewith.

28 ²² See *id.* ¶ 4.

²³ Plaintiffs' Notice of Motion and Motion for Attorneys' Fees, Expenses and Service Awards
("Fee Petition"), ECF No. 331.

²⁴ See *id.* at 22. Plaintiffs also sought \$36,062.92 in expenses to be paid to the Claims
Administrator. See *id.*

1 **III. SUMMARY OF SETTLEMENT TERMS**

2 **A. The Proposed Settlement Class**

3 The proposed Settlement Class for both the Sony Pictures Agreement and the Blue Sky
4 Agreement is as follows:

5 All animation and visual effects employees employed by defendants in
6 the United States who held any of the jobs listed in Ashenfelter Reply
7 Report Appendix C during the following time periods: Pixar (2001-
8 2010), Lucasfilm Ltd., LLC (2001-2010), DreamWorks Animation
9 SKG, Inc. (2003-2010), The Walt Disney Company (2004-2010), Sony
10 Pictures Animation, Inc. and Sony Pictures Imageworks, Inc. (2004-
11 2010), Blue Sky Studios, Inc. (2005-2010) and Two Pic MC LLC f/k/a
12 ImageMovers Digital LLC (2007-2010). Excluded from the Class are
13 senior executives, members of the board of directors, and persons
14 employed to perform office operation or administrative tasks.²⁵

15 The proposed settlement class is the same as the class proposed by plaintiffs in their motion for class
16 certification (as amended by the reply brief). The class certified by this Court in the class
17 certification order is somewhat smaller, although this difference does not preclude certification of the
18 settlement class.²⁶

19 **B. The Settlement Consideration**

20 **1. Monetary Settlement Fund**

21 Sony Pictures has agreed to a lump-sum payment of \$13,000,000. This payment is the full
22 amount owed under the Sony Pictures Agreement, and is inclusive of any attorneys' fees, expenses,
23 and service awards that might be ordered by this Court.²⁷

24 Blue Sky has agreed to a lump-sum payment of \$5,950,000. This payment is also the full
25 amount owed under the Blue Sky Agreement, and is inclusive of any attorneys' fees, expenses, and
26 service awards that might be ordered by this Court.²⁸

27 ²⁵ See Sony Settlement Motion at 4; Amended Blue Sky Settlement Motion at 4.

28 ²⁶ See *In re Zynga Inc. Secs. Litig.*, No. 12-cv-04007, 2015 WL 6471171 (N.D. Cal. Oct. 27, 2015); *In re Initial Public Offering Secs. Litig.*, 226 F.R.D. 186, 194-96 (S.D.N.Y. 2005); *In re Domestic Air Transp. Antitrust Litig.*, 141 F.R.D. 534, 537 n.1 (N.D. Ga. 1992).

29 ²⁷ See Declaration of Jeff D. Friedman in Support of Motion for Preliminary Approval of Settlement with Sony Pictures Imageworks Inc. and Sony Pictures Animation Inc. ("Friedman II"), Ex. A, ECF No. 273-2.

30 ²⁸ See Declaration of Jeff D. Friedman in Support of Amended Motion for Preliminary Approval of Settlement with Blue Sky Studios, Inc. ("Friedman III"), Ex. A, ECF No. 282-1.

1 considered in evaluating the fairness of a class action settlement:

2 The district court’s ultimate determination will necessarily involve a
3 balancing of several factors which may include, among others, some or
4 all of the following: the strength of plaintiffs’ case; the risk, expense,
5 complexity, and likely duration of further litigation; the risk of
6 maintaining class action status throughout the trial; the amount offered
in settlement; the extent of discovery completed, and the stage of the
proceedings; the experience and views of counsel; the presence of a
governmental participant; and the reaction of the class members to the
proposed settlement.³³

7 The importance of any one of these factors “will depend upon and be dictated by the nature of the
8 claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances presented by
9 each individual case.”³⁴

10 The district court exercises its “sound discretion” in approving a settlement.³⁵ In so doing, the
11 court’s examination “must be limited to the extent necessary to reach a reasoned judgment that the
12 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
13 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”³⁶
14 The inquiry is not to be “turned into a trial or rehearsal for trial on the merits.”³⁷ And the Court is not
15 to reach any final decision on the merits, because “it is the very uncertainty of outcome in litigation
16 and avoidance of wasteful and expensive litigation that induce consensual settlements.”³⁸ As outlined
17 below, each of the Ninth Circuit’s factors supports final approval of these settlements.

18 **1. Although Plaintiffs Believe They Have a Strong Case, When Considering the
19 Inherent Risk, These Settlements Are Fair for Class Members**

20 The Agreements necessarily reflect the risks plaintiffs must consider in reaching a successful
21 outcome for class members through dispositive motions, trial, and appeal. For example, on June 8,
22

23 ³³ *Officers for Justice*, 688 F.2d at 625. The presence of a governmental participant is not
24 relevant to the analysis, and plaintiffs do not address it further.

25 ³⁴ *Id.*

26 ³⁵ *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff’d*, 661 F.2d 939 (9th
27 Cir. 1981); *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993).

28 ³⁶ *Officers for Justice*, 688 F.2d at 625.

³⁷ *Id.*

³⁸ *Id.*

1 2016, defendants filed a Rule 23(f) petition with the Ninth Circuit.³⁹ The Appeal contended that
2 “[t]his closely watched case raises an important question on a recurring issue impacting a wide range
3 of class actions: Under what circumstances is class certification appropriate where, as here, all class
4 members’ claims are time-barred unless they can establish tolling through fraudulent
5 concealment?”⁴⁰ The Appeal argued that the Ninth Circuit had not yet addressed the question, and
6 the other circuits had reached “conflicting results.”⁴¹ Although the Ninth Circuit Court of Appeals
7 denied defendants’ Rule 23(f) Petition,⁴² fraudulent concealment and the tolling of the statute of
8 limitations has been a hotly contested issue in this case generally. The Court initially dismissed
9 plaintiffs’ first amended complaint based on insufficient allegations of fraudulent concealment.
10 Although the Court ruled that plaintiffs have now sufficiently pled fraudulent concealment, and
11 plaintiffs continue to obtain evidence to support their fraudulent concealment allegations, that issue
12 undoubtedly injects uncertainty into the ultimate outcome in this case.

13 Plaintiffs also face defendants’ claim that their conduct should not be treated as a *per se*
14 antitrust violation, but instead should be judged under the rule of reason framework – an issue
15 plaintiffs faced in *High-Tech*. This issue also raises uncertainty for plaintiffs in obtaining a favorable
16 verdict in this case.

17 Another risk that plaintiffs face is that both defendants deny their involvement in the
18 conspiracy. Plaintiffs considered the contested record as to both of them and weighed that risk. For
19 example, for Sony Pictures, some evidence shows there were concerns among other co-conspirators
20 that Sony Pictures was “cheating” and at times not fully abiding by the terms of the no-poach
21 agreement.⁴³ Although plaintiffs believe the evidence would show both defendants’ continual
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23 ³⁹ 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”), ECF No. 1.

25 ⁴⁰ *Id.* at 1.

26 ⁴¹ *Id.*

27 ⁴² Order at 1, *Nitsch I*, Aug. 29, 2016, ECF No. 7.

28 ⁴³ See Defendants’ Notice of Motion and Motion to Dismiss the Second Consolidated Amended
Class Action Complaint; Memorandum of Points and Authorities in Support Thereof at 27-29, ECF
No. 126.

1 involvement with the conspiracy (including their collusive coordination with other defendants on
2 compensation),⁴⁴ plaintiffs cannot (and should not) ignore their defenses in reaching a fair and
3 appropriate settlement.

4 **2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation**
5 **Supports Compensation for the Class at This Stage**

6 Unlike in *High-Tech*, here the parties have not yet filed for summary judgment, nor have they
7 submitted their expert reports on the merits. The class also had not yet been certified when these
8 settlements were negotiated and signed. The trial is set for June 12, 2017 – more than a year after
9 these settlements were signed and about seven months away. In light of the continuing uncertainty of
10 further litigation, and delayed benefit to the Class, the complexity and duration of further litigation
11 support final approval here.

12 **3. The Risk of Maintaining Class Action Status Throughout Trial Further Supports**
13 **the Proposed Settlements**

14 Consideration of the risk of maintaining class action status through trial also weighs in favor
15 of final approval. Although the defense strategy has not been shared with plaintiffs' counsel,
16 defendants may seek to decertify the class at some point, either during the summary judgment phase
17 or at trial.

18 **4. Both Monetary Compensation for Class Members and Cooperation from These**
19 **Defendants Support Final Approval of the Settlements**

20 The Agreements provide meaningful and certain monetary recovery. The Blue Sky
21 Agreement provides for a \$5,950,000 payment. Blue Sky, the smallest defendant in this case, was the
22 first defendant to settle. Blue Sky's payment is approximately 25 percent of plaintiffs' expert's
23 calculation of the damages attributable to Blue Sky employees in the class (as calculated based on
24 Dr. Ashenfelter's original expert report in support of class certification). The Sony Pictures
25 Agreement provides for a \$13,000,000 payment to the settlement fund, which represents
26 approximately 16.7 percent of the damages attributable to Sony Pictures employees during the

27 ⁴⁴ See Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendants' Motion to
28 Dismiss the Second Consolidated Amended Class Action Complaint at 28-30, ECF No. 132.

1 relevant time period. For both Agreements, class members are paid directly, without the need to
2 submit a claim.

3 These settlements compare favorably to the settlements that were considered by this Court in
4 *High-Tech*. Initially the Court rejected a \$324.5 million settlement with Adobe, Apple, Google, and
5 Intel.⁴⁵ The Court noted that the total proposed settlement of \$344.5 million was 11.29 percent of the
6 expert's calculation,⁴⁶ but the "procedural posture of the case swung dramatically in Plaintiffs' favor
7 after the initial settlements were reached," and the parties were a month from trial.⁴⁷ The Court
8 ultimately approved a settlement at that late posture in the case representing 14.26 percent of the
9 total single damages calculated by plaintiffs' expert. The recovery of damages here is higher on a
10 percentage basis.

11 In addition, cooperation with plaintiffs is "an appropriate factor for a court to consider in
12 approving settlement."⁴⁸ The Agreements provide the additional consideration that Sony Pictures and
13 Blue Sky will cooperate with plaintiffs to prepare a declaration for all documents produced by the
14 settling defendants in this case that appear on plaintiffs' trial exhibit list and provide no voluntary
15 cooperation to the other defendants. This cooperation was useful in preparing plaintiffs' class
16 certification reply papers, and will be useful in preparing for trial.

17 **5. Plaintiffs Settled with These Defendants Only After Sufficient Discovery to**
18 **Understand the Strengths and Weaknesses of Their Case**

19 The Agreements were the product of a thorough assessment of the strengths and weaknesses
20 of plaintiffs' case. It reflects about a year and half of discovery, uncovering the intricacies of a multi-
21 faceted conspiracy. The Sony Pictures Agreement was reached before the class certification hearing,
22 which allowed them to settle and avoid preparing for the hearing. The Blue Sky agreement was
23 reached before opposition to class certification was due, thereby allowing them to settle without
24 intensive work in preparing the opposition.

25 ⁴⁵ See *In re High-Tech Emp. Antitrust Litig.*, No. 11-cv-02509, 2014 WL 3917126, at *5 (N.D.
Cal. Aug. 8, 2014) ("*High-Tech P*").

26 ⁴⁶ See *id.* The total settlement figure included the previously approved \$20 million settlement
with Intuit, Lucasfilm, and Pixar.

27 ⁴⁷ *Id.*

28 ⁴⁸ *In re Mid-Atl. Toyota Antitrust Litig.*, 564 F. Supp. 1379, 1386 (D. Md. 1983).

1 The parties reached these Agreements after plaintiffs engaged in extensive discovery:
 2 drafting and responding to requests for production and interrogatories, reviewing thousands of
 3 plaintiffs' documents for responsiveness and privilege, reviewing defendants' voluminous document
 4 productions (almost 300,000 documents), preparing for and taking at least 12 depositions,⁴⁹ and
 5 defending five additional depositions.⁵⁰ Plaintiffs also presented a damages model, which helped
 6 inform both parties of the potential damages at stake for the settling parties. Plaintiffs' counsel
 7 worked closely with the economists who created the damages model. The settlement was only
 8 reached after weeks of negotiations between the parties.⁵¹

9 **6. Class Counsels' Support for the Settlements Weighs in Favor of Final Approval**

10 "The recommendations of plaintiffs' counsel should be given a presumption of
 11 reasonableness."⁵² Here, it is the considered judgment of experienced counsel after extensive
 12 discovery and settlement negotiations that the Settlement Agreements are in the best interests of the
 13 Class and should be approved.⁵³

14 **7. The Reaction of Class Members Supports Final Approval**

15 The Class appears to strongly support the settlement. The Claims Administrator, KCC, sent
 16 direct notice to 10,828 class members. According to KCC and the court docket, no class member has
 17 objected, and only four class members have asked to be excluded from the class.⁵⁴ The absence of
 18
 19

20 ⁴⁹ These depositions at the time of the Settlements included the President of DreamWorks, the
 21 Senior Vice President of Production and Talent for Disney, the former "compensation manager" for
 22 Pixar, the former Director of Compensation at Sony Pictures, the former Director of Compensation at
 23 DreamWorks, and two Senior Recruiters who worked for the defendants. *See* Declaration of Jeff D.
 Friedman in Support of Plaintiffs' Motion for Final Approval of Settlement With Sony Pictures
 Imageworks Inc., Sony Pictures Animation Inc., and Blue Sky Studios, Inc. ("Friedman I"), ¶ 2 n.1,
 concurrently filed herewith.

24 ⁵⁰ *Id.*, ¶ 4.

25 ⁵¹ *Id.*

26 ⁵² *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979); *Ellis*, 87 F.R.D. at 18 ("the fact
 27 that experienced counsel involved in the case approved the settlement after hard-fought negotiations
 is entitled to considerable weight").

28 ⁵³ *See* Friedman I, ¶ 3.

⁵⁴ *See* Jue Decl., ¶¶ 4; 7-9.

1 objections from class members “raises a strong presumption that the terms of a proposed class
2 settlement action are favorable to the class members.”⁵⁵ This factor supports final approval here.

3 **B. The Proposed Settlement Class Satisfies Rule 23**

4 Rule 23(a) provides four requirements to certify a class: “(1) the class is so numerous that
5 joinder of all members is impracticable; (2) there are questions of law or fact common to the class;
6 (3) the claims or defenses of the representative parties are typical of the claims or defenses of the
7 class; and (4) the representative parties will fairly and adequately protect the interests of the class.”
8 Fed. R. Civ. P. 23(a). Each of these requirements is addressed below.

9 The class is comprised of several thousand animation and visual effects employees who
10 worked for the defendants during the defined class periods. This number of class members easily
11 satisfies the numerosity requirement.⁵⁶

12 The class is also ascertainable. As this Court recognized, “a class is ascertainable if the class
13 is defined with ‘objective criteria’ and if it is ‘administratively feasible to determine whether a
14 particular individual is a member of the class.’”⁵⁷ In this case, class members are defined by specific
15 job titles, from defendants’ own employment databases, which also identify each individual class
16 member corresponding to those job titles. Class members are easily identified here.⁵⁸

17 The proposed class also satisfies Rule 23(a)(2)’s commonality requirement. Indeed,
18 defendants do not contest commonality.⁵⁹ To satisfy the commonality requirement, “[e]ven a single
19 [common] question will do,”⁶⁰ and “[a]ntitrust liability alone constitutes a common question that
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22 ⁵⁵ See *Larsen v. Trader Joe’s Co.*, No. 11-cv-05188, 2014 WL 3404531, at *5 (N.D. Cal. July 11,
23 2014) (quoting in part *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D.
Cal. 2004)).

24 ⁵⁶ See *Nitsch*, 315 F.R.D. at 283.

25 ⁵⁷ *In re Yahoo Mail Litig.*, 308 F.R.D. 577, 596 (N.D. Cal. 2015) (Koh, J.).

26 ⁵⁸ See *Nitsch*, 315 F.R.D. at 287.

27 ⁵⁹ See *id.* at 283 (“Here, Plaintiffs bring claims for antitrust liability, and Defendants do not
28 contest that the allegations of antitrust conspiracy present common legal and factual issues.”).

⁶⁰ *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2556 (2011) (alteration in original; quotation
marks omitted).

1 ‘will resolve an issue that is central to the validity’ of each class member’s claim ‘in one stroke.’”⁶¹
 2 Here, each class member alleges the same injury – suppressed compensation – from the same alleged
 3 unlawful conduct: defendants’ conspiracy to restrain competitive labor market forces to suppress
 4 compensation through non-solicitation agreements and collusive coordination on compensation.

5 Plaintiffs meet the typicality requirement as well. As this Court has recognized, “[i]n antitrust
 6 cases, typicality usually will be established by plaintiffs and all class members alleging the same
 7 antitrust violations by defendants.”⁶² In this case, plaintiffs have alleged the same antitrust violation
 8 as to every class member, making their claims typical of the class as a whole.⁶³

9 Finally, plaintiffs – and their counsel – will fairly and adequately represent the interests of the
 10 class. The test for adequacy turns on: “(1) whether named plaintiffs and their counsel have ‘any
 11 conflicts of interest with other class members,’ and (2) whether named [p]laintiffs and their counsel
 12 will ‘prosecute the action vigorously on behalf of the class.’”⁶⁴ This Court already held that the
 13 named plaintiffs do not have conflicts of interest with other class members.⁶⁵ The Court also found
 14 that class counsel will fairly and adequately represent the class, and counsel will continue to do so
 15 for the duration of this litigation.⁶⁶

16 In addition, this Court has already found that the settlement class satisfies Rule 23(b)(3)’s
 17 predominance requirement with respect to each of the three elements of an antitrust claim: (a) an
 18 antitrust violation;⁶⁷ (b) antitrust impact;⁶⁸ and (c) damages.⁶⁹ Plaintiffs allege that defendants’ illegal
 19 conspiracy had a single purpose: to avoid “mess[ing] up the pay structure,” and keep defendants out
 20

21 ⁶¹ *In re High-Tech Emp. Antitrust Litig.*, 985 F. Supp. 2d 1167, 1180 (N.D. Cal. 2013) (“*High-Tech IP*”) (quoting *Dukes*, 131 S. Ct. at 2551).

22 ⁶² *Id.* at 1181 (quotation marks omitted).

23 ⁶³ *See Nitsch*, 315 F.R.D. at 284 (finding typicality when “all class members were injured by the same alleged antitrust conspiracy and incurred the same alleged injury”).

24 ⁶⁴ *Id.* at 285 (quoting *Hanon v. Dataproducts Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)).

25 ⁶⁵ *See id.*

26 ⁶⁶ *See id.*

27 ⁶⁷ *See id.* at 289.

27 ⁶⁸ *See id.* at 293.

28 ⁶⁹ *See id.* at 307-08.

1 of “a normal industrial competitive situation.”⁷⁰ Plaintiffs will rely on the expert reports of Dr. Orley
 2 Ashenfelter to establish that the conspiracy had a common impact across the Class, and to determine
 3 damages from the conspiracy to the class members. Although attacked by defendants in their
 4 opposition to plaintiffs’ motion for certification, the Court previously rejected the criticisms of Dr.
 5 Michael Keeley, defendant’s expert, regarding Dr. Ashenfelter’s model and methodology.⁷¹

6 Given the common proof of conspiracy, antitrust injury, and damages described herein,
 7 continuing this case as a class action is superior to other procedural methods.⁷² In light of the
 8 abundance of common proof at issue, requiring class members to proceed individually “would
 9 merely multiply the number of trials with the same issues and evidence.”⁷³ This Court has already
 10 found that plaintiffs met the superiority requirement.⁷⁴

11 **C. The Proposed Notice and Plan of Dissemination Meets the Strictures of Rule 23**

12 Rule 23(c)(2)(B) provides that class members must receive the “best notice that
 13 is practicable under the circumstances, including individual notice to all members who can be
 14 identified through reasonable efforts.” Moreover, Rule 23(e)(1) requires a court to “direct notice in a
 15 reasonable manner to all class members who would be bound by the propos[ed] [settlement].”

16 The notice to the settlement class satisfied Rule 23’s requirements. A class action settlement
 17 notice “is satisfactory if it ‘generally describes the terms of the settlement in sufficient detail to alert
 18 those with adverse viewpoints to investigate and to come forward and be heard.’”⁷⁵ Rule 23(c)(2)(B)
 19 contains specific requirements for the notice, namely, that the notice state in clear, concise, plain, and
 20 easily understood language:

21
 22 ⁷⁰ See Class Cert. Motion at 6, and evidence cited therein.

23 ⁷¹ See *Nitsch*, 315 F.R.D. at 304 (“As with antitrust impact . . . the Court finds that Dr.
 Ashenfelter has persuasively responded to each of Dr. Keeley’s criticisms.”).

24 ⁷² See *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 267 F.R.D. 291, 314 (N.D. Cal. 2010) (“[I]f
 25 common questions are found to predominate in an antitrust action, . . . courts generally have ruled
 that the superiority prerequisite of Rule 23(b)(3) is satisfied.” (Ellipsis in original)).

26 ⁷³ *High-Tech II*, 985 F. Supp. 2d at 1228.

27 ⁷⁴ *Nitsch*, 315 F.R.D. at 316.

28 ⁷⁵ *Rodriguez v. W. Pub. Corp.*, 563 F.3d 948, 962 (9th Cir. 2009) (quoting *Churchill Vill., LLC v.*
Gen. Elec., 361 F.3d 566, 575 (9th Cir. 2004)).

1 (i) the nature of the action; (ii) the definition of the class certified;
 2 (iii) the class claims, issues, or defenses; (iv) that a class member may
 3 enter an appearance through an attorney if the member so desires; (v)
 4 that the court will exclude from the class any member who requests
 exclusion; (vi) the time and manner for requesting exclusion; [and]
 (vii) the binding effect of a class judgment on members under Rule
 23(c)(3).

5 “Notice by mail is sufficient to provide due process to known affected parties, so long as the notice is
 6 ‘reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them
 7 an opportunity to present their objections.’”⁷⁶ Notice by email is routinely accepted as well.⁷⁷

8 In preliminarily approving both settlements in this case, the Court ordered the defendants to
 9 produce contact information, social security numbers, and other information in order to effectuate
 10 direct notice, to the extent practicable. All defendants produced this data by July 27, 2016. On
 11 August 16, 2016, KCC emailed the long-form notice to 2,665 class members, and mailed the notice
 12 to an additional 8,396 class members.⁷⁸ On that same day, the website dedicated to the case –
 13 www.animationlawsuit.com – came online. This website provides a summary of the case and the
 14 settlements, important case documents, responses to “frequently asked questions” (FAQs), a list of
 15 job titles, and the ability to log into the website to update a class member’s contact information. To
 16 date, this website has received 6,503 hits.⁷⁹

17 After notice was sent, KCC established a toll-free telephone number that class members
 18 could use to receive additional information and to speak to a live operator during business hours.
 19 The toll-free line to date has received 261 calls.⁸⁰ Class members also contacted class counsel with
 20 questions and requests, and class counsel responded to these inquiries as well.⁸¹

21
 22
 23 ⁷⁶ *Monterrubio v. Best Buy Stores, L.P.*, 291 F.R.D. 443, 452 (E.D. Cal. 2013) (quoting *Mullane*
v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950) (ellipsis in original).

24 ⁷⁷ *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 946 (9th Cir. 2015) (“The notice
 25 provided in this settlement, in both mail and email form, was sufficient under the Constitution and
 Rule 23(e)”).

26 ⁷⁸ *See* Jue Decl., ¶ 3.

27 ⁷⁹ *See id.*, ¶ 5.

28 ⁸⁰ *See id.*, ¶ 6.

⁸¹ *See* Friedman I, ¶ 4.

1 In addition, Blue Sky and Sony Pictures provided notice by mail to state agencies and the
2 U.S. Attorney General pursuant to the Class Action Fairness Act on April 11, 2016 and May 13,
3 2016, respectively.

4 **D. The Plan of Allocation Is Fair and Reasonable**

5 The Plan of Allocation provides each class member with a fractional share based upon each
6 class members' total compensation received during the conspiracy period. It is a straightforward and
7 fair method (used in the *High-Tech* case) to compensate class members based on an objective
8 measurement of their injuries.⁸² In addition, there will be no reversion of funds back to Sony Pictures
9 or Blue Sky.

10 **E. Plaintiffs Request Distribution of Fees to KCC**

11 Plaintiffs previously requested a distribution of \$36,062.92 to reimburse KCC for its costs in
12 administering the settlement fund.⁸³ KCC estimates it will incur an additional \$59,432.17 in expenses
13 to disperse the funds.⁸⁴ To avoid multiple filings, plaintiffs now respectfully request the Court
14 approve a *total* distribution of \$95,495.09 to KCC.⁸⁵ This amount represents KCC's additional costs
15 to date and estimated costs to pay out all class members. The Proposed Order and Final Judgment
16 accordingly approves this distribution to KCC.

17 **V. CONCLUSION**

18 The proposed settlements represent a fair and reasonable resolution of class members' claims,
19 and are supported by the named plaintiffs and experienced class counsel. Plaintiffs respectfully
20 request that this Court approve both settlements, and enter Final Judgment.

21 DATED: October 13, 2016

HAGENS BERMAN SOBOL SHAPIRO LLP

23 By s/ Jeff D. Friedman
JEFF D. FRIEDMAN

25 ⁸² See *In re High-Tech Employee Antitrust Litig.*, No. 11-cv-02509, 2015 WL 5159441, at *8
26 (N.D. Cal. Sept. 2, 2015).

⁸³ See Fee Petition at 22.

27 ⁸⁴ Jue Decl., ¶ 10.

28 ⁸⁵ *Id.*

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Shana E. Scarlett (217895)
715 Hearst Avenue, Suite 202
Berkeley, CA 94710
Telephone: (510) 725-3000
Facsimile: (510) 725-3001
jefff@hbsslaw.com
shanas@hbsslaw.com

Steve W. Berman (*Pro Hac Vice*)
Jerrod C. Patterson (*Pro Hac Vice*)
HAGENS BERMAN SOBOL SHAPIRO LLP
1918 Eighth Avenue, Suite 3300
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594
steve@hbsslaw.com
jerrodp@hbsslaw.com

DATED: October 13, 2016

SUSMAN GODFREY LLP

By s/ Steven G. Sklaver
STEVEN G. SKLAVER

Marc M. Seltzer (54534)
1901 Avenue of the Stars, Suite 950
Los Angeles, CA 90067-6029
Telephone: (310) 789-3100
Facsimile: (310) 789-3150
mseltzer@susmangodfrey.com
ssklaver@susmangodfrey.com

Matthew R. Berry (*pro hac vice*)
John E. Schiltz (*pro hac vice*)
SUSMAN GODFREY LLP
1201 Third Avenue, Suite 3800
Seattle, WA, 98101-3000
Telephone: (206) 516-3880
Facsimile: (206) 516-3883
mberry@susmangodfrey.com
jschiltz@susmangodfrey.com

Elisha Barron (*pro hac vice*)
SUSMAN GODFREY LLP
1301 Avenue of the Americas
Telephone: (212) 336-8330
Facsimile: (212) 336-8340
ebarron@susmangodfrey.com

DATED: October 13, 2016

COHEN MILSTEIN SELLERS & TOLL PLLC

By s/ Daniel A. Small
DANIEL A. SMALL

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Brent W. Johnson
Jeffrey B. Dubner
1100 New York Ave. NW, Suite 500
Washington, DC 20005
Telephone: (202) 408-4600
Facsimile: (202) 408-4699
dsmall@cohenmilstein.com
bjohnson@cohenmilstein.com
jdubner@cohenmilstein.com

Daniel H. Silverman
COHEN MILSTEIN SELLERS & TOLL PLLC
190 S. LaSalle St., Suite 1705
Chicago, IL 60603
Tel: (312) 357-0370
dsilverman@cohenmilstein.com

Class Counsel

E-FILING ATTESTATION

I, Jeff D. Friedman, am the ECF User whose ID and password are being used to file this document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that each of the signatories identified above has concurred in this filing.

s/ Jeff D. Friedman
JEFF D. FRIEDMAN