UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

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| IN RE ANIMATION WORKERS ANTITRUST LITIGATION | Master Docket No. 14-CV-4062-LHK |
| THIS DOCUMENT RELATES TO:<br><br>ALL ACTIONS | [PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, EXPENSES AND SERVICE AWARDS |

Before the Court is Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards arising out of a settlement between individual and representative plaintiffs Robert Nitsch, David Wentworth, and Georgia Cano, and the Class they represent (collectively, "Plaintiffs"), and DreamWorks Animation SKG, Inc. ("DreamWorks"), and The Walt Disney Company, Pixar, Lucasfilm, Ltd., LLC, and Two Pic MC LLC (collectively, "Disney").

Having considered the submissions of the parties, the arguments made at the May 18, 2017 final approval hearing, the relevant law, and the record in this case, the Court hereby GRANTS Plaintiffs' motion.

## I. BACKGROUND

### A. Initial Motions 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. ECF No. 63. On January 9, 2015, defendants filed a motion to dismiss. ECF No. 75. 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. *Id.* Also on January 9, 2015, defendants filed a motion to compel arbitration and stay proceedings as to plaintiff Nitsch. ECF No. 71. 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. *Id.* On April 24, 2015, this 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. ECF No. 116.

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

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

**B. The Discovery Process**

Plaintiffs have engaged in extensive discovery in this case: drafting and responding to requests for production and interrogatories, reviewing thousands of Plaintiffs' documents for responsiveness and privilege, reviewing defendants' voluminous document productions, preparing for and taking over 25 depositions, defending five additional depositions, obtaining relevant employment data and working with Plaintiffs' expert to evaluate that data and calculate damages on a class-wide basis, and serving two merits expert reports.[1]

The parties also had several discovery disputes during this litigation. Plaintiffs filed a motion to compel Pixar and Lucasfilm to produce unredacted copies of expert and class certification materials from *High-Tech*. ECF No. 171.[2] Plaintiffs filed an additional motion to compel documents that Pixar and Lucasfilm were withholding on the basis of attorney-client privilege. ECF No. 213.

Finally, on August 29, 2016, the parties filed a joint letter brief regarding defendants' request to obtain discovery from 500 absent class members. ECF No. 321. Plaintiffs prevailed on that discovery dispute.

**C. Class Certification**

On February 1, 2016, Plaintiffs filed their motion for class certification (ECF No. 203), and about ten weeks later filed their reply brief in support of their motion (ECF No. 262). On May 6, 2016, the Court held a hearing on Plaintiffs' class certification motion. ECF No. 276. On May 25, 2016, the Court granted in part and denied in part the motion. *See Nitsch v. DreamWorks*

[1] *See* Declaration of Jeff D. Friedman in Support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards ("Friedman Decl."), ¶ 3.

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

*Animation SKG Inc.*, 315 F.R.D. 270 (N.D. Cal. 2016). The Court certified the following class (*id.* at 317):

> All animation and visual effects employees employed by defendants in the United States who held any of the jobs listed in Ashenfelter Reply Report Amended Appendix C during the following time periods: Pixar (2004-2010), Lucasfilm Ltd., LLC (2004-2010), DreamWorks Animation SKG, Inc. (2004-2010), The Walt Disney Company (2004-2010), Sony Pictures Animation, Inc. and Sony 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.

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

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

This Court, in granting in part and denying in part Plaintiffs' class certification motion, 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.

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

On June 8, 2016, defendants filed a Rule 23(f) petition with the Ninth Circuit.[3] The Appeal contended that "[t]his closely watched case raises an important question on a recurring issue impacting a wide range of class actions: Under what circumstances is class certification appropriate where, as here, all class members' claims are time-barred unless they can establish tolling through fraudulent concealment?" *Id.* at 1.The Appeal argued that the Ninth Circuit had not yet addressed the

[3] *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").

question, and the other circuits had reached "conflicting results." *Id.* Defendants also claimed that individualized issues could not be managed at a class trial, citing in support *Comcast Corp. v. Behrend*, 133 S. Ct. 1426 (2013). *See* Appeal at 2;18.

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

**E. Merits Expert Reports**

On November 11, 2016, Plaintiffs served merits expert reports from their two experts, Drs. Orley Ashenfelter and Barry Gerhart. Both expert reports are extensive: Dr. Ashenfelter's report is 131 pages long, and Dr. Gerhart's expert report is 50 pages long.

**F. DreamWorks and Disney Settlements**

After extensive settlement negotiation among counsel, Plaintiffs and DreamWorks signed a settlement agreement on October 4, 2016 in which DreamWorks agreed, among other things, to pay $50,000,000 to a common fund to resolve the litigation.

After months of negotiations and after a mediation with Judge Layn Phillips, Plaintiffs and Disney signed a settlement agreement on January 30, 2017 in which Disney agreed, among other things, to pay $100,000,000 to a common fund to resolve the litigation.

## II. FEE PETITION

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

Rule 23(h) of the Federal Rules of Civil Procedure provides that "[i]n a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." "[A]wards of attorneys' fees serve the dual purpose of

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

[5] *See* Reply in Support of Petition for Permission to Appeal Pursuant to Rule 23(f), *Nitsch I*, 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.

encouraging persons to seek redress for damages caused to an entire class of persons and discouraging future misconduct." *In re Apollo Group Inc. Secs. Litig.*, No. CV 04-2147, 2012 U.S. Dist. LEXIS 55622, at *19 (D. Ariz. Apr. 20, 2012). When awarding attorneys' fees under Federal Rule of Civil Procedure 23(h), "courts have an independent obligation to ensure that the award, like the settlement itself, is reasonable." *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011).

Under the "common fund" doctrine, "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). "The doctrine rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense. Jurisdiction over the fund involved in the litigation allows a court to prevent this inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefited by the suit." *Id.* (citations omitted).

"The procedures used to determine the amount of reasonable attorneys' fees differ concomitantly in cases involving a common fund from those in which attorneys' fees are sought under a fee-shifting statute." *Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th Cir. 2003). Unlike the calculation of fees under a fee-shifting statute, where "a reasonable fee . . . reflects the amount of attorney time reasonably expended on the litigation," "under the 'common fund doctrine,'" "a reasonable fee is based on a percentage of the fund bestowed on the class." *Blum v. Stenson*, 465 U.S. 886, 900 (1984). "Indeed, every Supreme Court case addressing the computation of a common fund fee award has determined such fees on a percentage of the fund basis." *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 773 (11th Cir. 1991).

"This circuit has established 25% of the common fund as a benchmark award for attorney fees." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998). "That percentage amount can then be adjusted upward or downward depending on the circumstances of the case." *de Mira v. Heartland Employment Serv.*, LLC, No. 12-CV-04092 LHK, 2014 WL 1026282, at *1 (N.D. Cal. Mar. 13, 2014). As this Court and others have recognized, "'in most common fund cases, the award

exceeds the benchmark.'" *Id.* (brackets omitted) (quoting *In re Omnivision Technologies, Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008)).

But the hallmark remains the reasonableness of the fee: "[w]hether the Court awards the benchmark amount or some other rate, the award must be supported by findings that take into account all of the circumstances of the case," *id.*—which may include "[c]alculation of the lodestar, which measures the lawyer's investment of time in the litigation." *Vizcaino*, 290 F.3d at 1050. "[W]hile the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective on the reasonableness of a given percentage award." *Id.*

Class counsel here seek an award of $31,500,000 for attorneys' fees. Plaintiffs' fee request represents 21 percent of the $150,000,000 settlement fund and is well within the range approved by the Ninth Circuit. Further, the reasonableness of Plaintiffs' fee request is confirmed when cross-checked against their lodestar, which through the end of February is $9,269,779.25, resulting in a multiplier of 3.40 (and an overall multiplier of 3.91). Accordingly, Plaintiffs' requested fee award is reasonable.

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

Notably, class counsel are asking for fees well under the 25 percent benchmark. And "[w]hile the benchmark is not per se valid," the Ninth Circuit has recognized that requesting "the 25% benchmark award only" demonstrates the reasonableness of a fee request. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 955 (9th Cir. 2015). This Court has held similarly. *See Buccellato v. AT & T Operations, Inc.*, No. C10-00463-LHK, 2011 WL 3348055, at *1 (N.D. Cal. June 30, 2011) (holding that fee request was "reasonable under the percentage of the common fund method, as it is equal to this Circuit's benchmark of 25 percent.").

Class counsel's fee request is supported by an updated attorneys' fees study relied upon by this Court in *High-Tech*, conducted by three law professors, analyzing awards in 458 class actions during 2009-2013.[6] The study looked at fee award percentages and found that they decreased as

[6] See Theodore Eisenberg, Geoffrey P. Miller & Roy Germano, *Attorneys' Fees in Class Actions: 2009-2013*, NYU Law and Economics Research Paper no. 17-02; Cornell Legal Studies Research paper No. 17-05 at 8 (December 1, 2016) ("EMG Study"). This as-yet unpublished

the recovery increased. *See* EMG Study at 1. For the highest decile of recoveries in the study, above $67.5 million, the average percentage awarded was 22.3%. *See id.* at 9-10. The largest recoveries in the study, above $100 million, had mean and median fee percentages that ranged from 16.6% to 25.5%, depending on the year. *See id.* at 8. The midpoint of the study period for recoveries exceeding $100 million is 21%, which is class counsel's request here.

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

A lodestar cross-check confirms the reasonableness of class counsel's request: "[i]f the multiplier is within an acceptable range, this adds further support to the conclusion that the fees sought are reasonable." *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *4 (N.D. Cal. Feb. 6, 2013). Multiplying class counsel's reasonable hours by their prevailing market rates yields a lodestar of $9.27 million. The resulting multiplier of 3.40 (3.91 including the prior fee award), is in line with multipliers that this Court and others have deemed "reasonable":

> The resulting multiplier of 4.3 is reasonable in light of the time and labor required, the difficulty of the issues involved, the requisite legal skill and experience necessary, the excellent and quick results obtained for the Class, the contingent nature of the fee and risk of no payment, and the range of fees that are customary. *Vizcaino*, 290 F.3d at 1052–54; *Steiner v. Am. Broad. Co.*, 248 Fed. Appx. 780, 783 (9th Cir. 2007) (affirming award with multiplier of 6.85); *see also* Newberg, *Attorney Fee Awards*, § 14.03 at 14–5 (1987) ("multiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied."); *Rabin v. Concord Assets Group, Inc.*, No. No. 89 Civ. 6130(LBS), 1991 WL 275757 (S.D.N.Y. 1991) (4.4 multiplier) ("In recent years multipliers of between 3 and 4.5 have become common.") (internal quotations and citations omitted); *In re Xcel Energy, Inc., Securities, Derivative & " 'ERISA" Litig.*, 364 F.Supp.2d 980, 998–99 (D. Minn. 2005) (approving 25% fee, resulting in 4.7 multiplier); *In re Aremissoft Corp. Sec. Litig.*, 210 F.R.D. 109, 134–35 (D.N.J. 2002) (approving 28% fee, resulting in 4.3 multiplier); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 371 (S.D.N.Y. 2002) (approving 33.3% fee, resulting in "modest multiplier of 4.65"); *Di Giacomo v. Plains All Am. Pipeline*, Nos. 99–4137 & 99–4212, 2001 WL 34633373, at *10–11 (S.D. Fla. Dec. 19, 2001) (approving 30% fee, resulting in 5.3 multiplier); *Roberts v. Texaco, Inc.*, 979 F. Supp. 185, 198 (S.D.N.Y. 1997) (5.5 multiplier); *Roberts v.*

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working paper is available at https://ssrn.com/abstract=2904194. In *High Tech*, the Court relied on an earlier study by Eisenberg and Miller covering 68 class action settlements during 1993-2008. Slip op. at 24-25.

> *Texaco*, 979 F.Supp. 185 (S.D.N.Y. 1997) (approving multiplier of 5.5); *Weiss v. Mercedez–Benz*, 899 F.Supp. 1297 (D.N.J. 1995) (approving multiplier of 9.3); *Weiss v. Mercedes–Benz of N. Am., Inc.*, 899 F. Supp. 1297, 1304 (D.N.J. 1995) (9.3 multiplier), *aff'd*, 66 F.3d 314 (3d Cir. 1995).

*Buccellato*, 2011 WL 3348055 at *2. Indeed, "Courts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers." *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481 (S.D.N.Y. 2013) (collecting cases); *accord, e.g.*, *In re Aremissoft Corp. Sec. Litig.*, 210 F.R.D. 109, 134–35 (D.N.J. 2002) (awarding 28% of a $194 million settlement, resulting in a lodestar multiplier of 4.3). The Ninth Circuit, for example, has explicitly affirmed a multiplier of 6.85, holding that it "falls well within the range of multipliers that courts have allowed." *Steiner v. Am. Broad. Co.*, 248 F. App'x 780, 783 (9th Cir. 2007).

An overall multiplier of 3.91 is within the range of multipliers surveyed by the Ninth Circuit in *Vizcaino*. See 9/2/15 Order in *High Tech*. (relying on *Vizcano* survey). *Vizcano* found that in 20 of the 24 cases it surveyed, the multiplier was between 1.0 and 4.0. *See* 290 F.3d at 1051 n.6. Significantly, the cases *Vizcano* surveyed involved common funds of $50-200 million. *Id.* at 1052-54. The settlements in this case total in the high end of this range. Given that the EMG Study shows that multipliers increase as the size of the recovery increases (*see* EMG Study at 1), a multiplier in this case at the high end of the *Vizcano* range is appropriate, even putting aside the excellent results achieved and significant risks borne by class counsel.

Having been shown to be presumptively reasonable under a percentage-of-the-fund calculation, a lodestar cross-check, and a large study of class action fee awards, the question becomes whether there are "any 'special circumstances' justifying a departure," *In re Bluetooth*, 654 F.3d at 942, from the requested 21 percent. Though no exhaustive list of relevant factors exists, the Ninth Circuit has endorsed a number of factors which may be relevant to determining the reasonableness of a fee, including the results achieved, the risks faced, the non-monetary benefits conferred, the contingent nature of the representation, the market rates for similar cases, and the risk of any windfall profits. *See, e.g.*, *In re Online DVD-Rental*, 779 F.3d at 954 (listing factors).

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

In support of the lodestar cross-check determination, Plaintiffs submit the declarations of class counsel attesting to their total hours, hourly rates, experience, and efforts to prosecute this action.[7]

As set forth in the supporting declarations, Plaintiffs' counsel have collectively spent more than 18,448 hours of attorney and litigation support time on this action. *See* Friedman Decl. ¶ 13 (4,704.30 hours); Small Decl. ¶ 30 (7,446.75 hours); Sklaver Decl., ¶ 12 (6,297.90 hours). The number of hours that Plaintiffs' counsel has devoted to pursuing this litigation is appropriate and reasonable, given: (1) the extensive pre-complaint investigation; (2) the large number of documents produced by the defendants, and the review of documents from Plaintiffs' files in response to defendants' discovery requests; (3) the extensive factual and legal research and analysis involved in filing an amended complaint, an opposition to a motion to dismiss, a second amended complaint, and a second opposition to a motion to dismiss, as well as an opposition to a motion to compel arbitration; (4) substantial briefing at the class certification stage; (5) the number and breadth of expert reports; (6) the depositions of twenty-five witnesses, and defending an additional five depositions; and (7) opposing defendants' Rule 23(f) petition. In addition, class counsel have spent numerous hours working with the notice and claims administrator to answer the questions of class members, launch the settlement website, address issues regarding notice and identify class members. Furthermore, class counsel will continue to assist class members with inquiries and continue to work with the notice and claims administrator and defendants on any issues that may arise with respect to the settlement administration. Class counsel may also expend further time and effort to resolve any objections that are lodged, and litigate any appeals that result therefrom.

[7] *See* Friedman Decl., Declaration of Daniel A. Small in Support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards ("Small Decl."); Declaration of Steven G. Sklaver in Support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards ("Sklaver Decl.").

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

The hourly rates of class counsel and other Plaintiffs' counsel, as detailed in their declarations, are also fair and reasonable. Under the lodestar method, counsels' reasonable hourly rates are determined by the "prevailing market rates in the relevant community," which are the rates a lawyer of comparable skill, experience and reputation could command in the relevant community.[8] An attorney's actual billing rate is presumptively appropriate to use as the lodestar market rate. See People Who Care v. Rockford Bd. of Educ., 90 F.3d 1307, 1310 (7th Cir. 1996). "Affidavits of the plaintiffs' attorney and other attorneys regarding prevailing fees in the community, and rate determinations in other cases, particularly those setting a rate for the plaintiffs' attorney, are satisfactory evidence of the prevailing market rate." United Steelworkers of Am. v. Phelps Dodge Corp., 896 F.2d 403, 407 (9th Cir. 1990).

Declarations from class counsel establish that the hourly rates are fair, reasonable, and market-based, particularly for the "relevant community" in which counsel work. *See* Friedman Decl. ¶ 12; Small Decl., ¶ 29; Sklaver Decl., ¶ 11. Class counsel are highly-respected members of the bar with extensive experience in prosecuting high-stakes complex litigation, including consumer class actions. *See* Friedman Decl., ¶¶ 6-11; Small Decl., ¶¶ 2-13; Sklaver Decl., ¶¶ 3-10. With three exceptions, counsel's hourly rates in this action range from $275 to $750, with rates varying based on experience. *See* Friedman Decl., ¶ 13; Small Decl., ¶ 30; Sklaver Decl., ¶ 12. The three most senior attorneys on the case, who serve as the lead attorney for each respective law firm, charge between $870 and $1,200 per hour. *See* Friedman Decl., ¶ 13; Small Decl., ¶ 30; Sklaver Decl., ¶ 12. Mr. Seltzer's $1,200 hourly rate is the same rate that he charges clients, including corporations that are billed hourly, which provides a market-based cross-check. *See* Sklaver Decl., ¶ 11. Hourly rates for paralegals are $290 or lower. *See* Friedman Decl., ¶ 13; Small Decl., ¶ 30; Sklaver Decl., ¶ 12. Overall, the rates charged by counsel here are comparable to the fees approved

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

by the Court, over a year ago, in the *High-Tech* case and more recently in conjunction with the Sony and Blue Sky settlements.[9]

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

In deciding an appropriate fee under the lodestar method, district courts may consider a number of factors, including the time and labor required, novelty and complexity of the litigation, skill and experience of counsel, contingent nature of the case, and the results obtained. *Blum v. Stenson*, 465 U.S. 886, 898-900 (1984); *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975). All of these factors weigh heavily in favor of granting the requested $31,500,000 in fees here.

**(1) Class Counsel Achieved Exceptional Results.**

"The most important factor is the results achieved for the class." *In re: Cathode Ray Tube (CRT) Antitrust Litig.*, No. 1917, 2016 WL 4126533, at *4 (N.D. Cal. Aug. 3, 2016). Here, those results are exceptional. Taking all approved and preliminarily-approved settlements into account, counsel's efforts created a $168.95-million-dollar fund for the class. Notably, the class will recover 30.5 percent of an antitrust injury estimated to be $553 million before trebling. Lesser results have justified *upward departures* from the 25% benchmark. *See, e.g., id.* at *4-5 (holding that 20 percent antitrust recovery in a megafund case warranted "a modest increase over the Ninth Circuit benchmark."); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008) (holding that "a total award of approximately 9% of the possible damages" "weighs in favor of granting the requested 28% fee.").[10]

[9] In *High-Tech*, this Court found class counsel's rates "reasonable in light of prevailing market rates in this district," including partner rates that ranged from $490 to $975 per hour; non-partner rates that ranged from $310 to $800 per hour; and paralegals, law clerks, and support staff rates that ranged from $190 to $430, "with most in the $300 range." *High-Tech Fees Order*, 2015 WL 5158730, at *9; *In re Animators*, Order Granting Request for Attorney's Fees, Dkt. # 347.

[10] *See also In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at *19 (C.D. Cal. June 10, 2005) ("When the requested fee and expense award is deducted, the net amount of the settlement represented approximately 23% of the class' claimed loss. As Lead Counsel maintains, such a recovery percentage is considerable, and is greater than those obtained in cases where class counsel was awarded one-third of a common fund. *See Med. X–Ray* 1998 WL 661515, at *7–*8 (increasing 25% benchmark to 33.3% where counsel recovered 17% of damages); *Crazy Eddie*,

The results achieved are even more substantial when considered as a function of the average cash recovery to each class member, which is $16,823 before accounting for fees and expenses. *Cf. In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2013 WL 1365900, at *7 (N.D. Cal. Apr. 3, 2013) (awarding 28.5% fee because "the amount that individual claimants will receive is excellent" and "in the range of $64 per monitor or laptop, or $128 per TV."). Importantly, class counsel also negotiated an allocation and payment method whereby, at the time of disbursement, each non-opt out class member will receive his or her substantial cash payment directly in the mail, without needing to make any showing, or do anything further.

The exceptional results are also demonstrated by comparing them to the *High-Tech* recovery per class member. Whereas the settlements in *High-Tech* totaled 14% of the proposed single damages estimate, the settlements here totaled 30.5%. Importantly, whereas the settlements in *High-Tech* amounted to approximately $6,753 per class member, the settlements here amounted to approximately $16,823. In fact, even after awarding all fees, expenses, and service awards, the average class member recovery after accounting for all fees and expenses will still be $ 13,637.36 —which is 2.4 times more than the equivalent *High-Tech* recovery of approximately $5,770 per person.

Moreover, these exceptional results were achieved "despite the absence of supporting precedents," *Vizcaino II*, 290 F.3d at 1048—"and against [defendants'] vigorous opposition throughout the litigation." *Id.* At the first hearing in this matter, DreamWorks' told this Court that plaintiffs had asserted "slim to not existent" allegations against defendants "that, frankly, they do not appear to have any basis to have filed lawsuits against." DreamWorks ended up settling for $50,000,000 and cooperation. And the Disney defendants agreed to pay $100,000,000 even though "the House of Mouse is infamous for almost never settling lawsuits." Dominic Patten, *It's Over!*

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824 F. Supp. at 326 (increasing 25% benchmark to 33.8% where counsel recovered 10% of damages); *In re Gen. Instruments Sec. Litig.*, 209 F. Supp. 2d 423, 431, 434 (E.D. Pa. 2001) (awarding one-third fee from $48 million settlement fund that was approximately 11% of the plaintiffs' estimated damages); *Corel*, 293 F. Supp. 2d at 489–90, 498 (permitting one-third fee award from $48 million settlement fund which represented approximately 15% of class' total net damages); *Cullen*, 197 F.R.D. at 148 (awarding one-third in fees from settlement of class consisting of defrauded vocational students that was 17% of the tuition that class members paid))"

*Disney Ends Animation Anti-Poaching Suit with $100M Deal*, Deadline Hollywood, Feb. 1, 2017, http://deadline. com/2017/02/disney-pixar-dreamworks-animation-settlement-lawsuit-class-action-dreamworks-1201899625. Finally, class counsel achieved these exceptional raw-dollar, percentage, and per capita results while litigating against well-respected and well-resourced, defense lawyers, from Covington & Burling; Gibson, Dunn & Crutcher; Jones Day; Keker & Van Nest; Orrick Herrington & Sutcliffe; and Williams & Connolly. *See de Mira*, 2014 WL 1026282 at *2 (justifying 28% fee award in part because "Defendant was represented by an experienced and well-resourced defense firm. Had Class Counsel failed to vigorously prosecute this case, it is unlikely that this settlement could have been achieved").

**(2) Class Counsel Faced Significant Risk.**

"The risk that further litigation might result in Plaintiffs not recovering at all, particularly a case involving complicated legal issues, is a significant factor in the award of fees." *In re Omnivision*, 559 F. Supp. 2d at 1046-47; *accord In re Pac. Enter. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (holding fees justified "because of the complexity of the issues and the risks").

Here, class counsel faced real risks in pursuing this case, not the least of which was being initially dismissed on the pleadings as a matter of law. *See Vizcaino II*, 290 F.3d at 1048 (finding case "extremely risky" where "[t]wice plaintiffs lost in the district court"). Indeed, defendants' statute of limitations defense remained an issue in this case at each stage. Although class counsel survived a second motion to dismiss, two related cases did not and ended in no recovery. *See Garrison v. Oracle Corp.*, 159 F. Supp. 3d 1044 (N.D. Cal. 2016) (distinguishing this case, and granting motion to dismiss plaintiffs' time-barred claims with prejudice); *Ryan v. Microsoft Corp.*, 147 F. Supp. 3d 868 (N.D. Cal. 2015) (same).

Stating a timely claim was only the first step on the road to recovery, as failing to obtain class certification would have all but eliminated the chances of any recovery, much less the meaningful recovery obtained here. While class counsel was able to obtain class certification, it did so without the support of "any case in which the Ninth Circuit ha[d] considered . . . whether certification is permissible when the plaintiff class must prove fraudulent concealment to overcome the statute of limitations," and notwithstanding a Fourth Circuit decision reversing a $390 million

class-action judgment on the theory that tolling analyses implicated individual questions. *See* ECF No. 289 at 64-65.

Surviving a motion to dismiss and certifying the class by no means eliminated the risks posed by defendants' statute of limitations defense. Because fraudulent concealment presents jury questions, there remained a chance of the class not recovering at trial, if counsel failed to convince the jury that defendants had fraudulently concealed their conduct, or if defendants were able to convince the jury that some or all of the class members had actual or constructive knowledge of their claims. And even if plaintiffs' prevailed at trial, defendants would have undoubtedly appealed any jury verdict to the Ninth Circuit, and possibly even the Supreme Court. And here again, because the statute of limitations question was one of law, a Ninth Circuit reversal as to the pleadings or class certification could have resulted in zero recovery.

The significant risks borne by counsel extended beyond the statute of limitations issue too. As other courts have recognized, "[a]n antitrust class action is arguably the most complex action to prosecute. The legal and factual issues involved are always numerous and uncertain in outcome." *In re Optical Disk Drive Prod. Antitrust Litig.*, No. 3:10-MD-2143 RS, 2016 WL 7364803, at *4 (N.D. Cal. Dec. 19, 2016) (quotation and ellipses omitted).

In addition, class counsel faced an additional risk not present in *High-Tech*. The *High-Tech* plaintiffs sued all the targets – but only the targets – of the DOJ investigation.[11] Here, in contrast, Plaintiffs brought suit against additional defendants (Sony Pictures, DreamWorks Animation, Blue Sky Studios, IMD, and The Walt Disney Company), which required Plaintiffs to collect additional evidence, rebut additional legal arguments, and confront additional defenses not present in the *High-Tech* case. Indeed, the very fact that the DOJ investigated but did not file a complaint against many of the defendants in this litigation demonstrates the significant risk that Class Counsel faced.

Finally, it is also worth noting that the EMG Study looked at average fee awards based on risk, according to the type of litigation. The average fee award for low-medium risk antitrust cases

[11] *See Nitsch*, 315 F.R.D. at 275-76.

between 2009-2013 was 24.91%. This data looking at the risk in antitrust cases reinforces the reasonableness of counsel's 21% fee request.

**(3) Plaintiffs' Counsel Are Highly Skilled and Experienced.**

The Court may also consider the experience, skill and reputation of plaintiffs' counsel. *See Kerr*, 526 F.2d at 70; *In re Heritage Bond Litig. v. U.S. Trust Co. of Tex., N.A.*, No. 02-ML-1475, 2005 U.S. Dist. LEXIS 13627, at *38 (C.D. Cal. June 10, 2005); *Crommie v. Pub. Utils. Comm'n*, 840 F. Supp. 719, 725 (N.D. Cal. 1994). Here, class counsel are well-respected leaders in the fields of consumer, antitrust and class action litigation, as detailed in the submitted declarations. *See* Friedman Decl., ¶¶ 6-11; Small Decl., ¶¶ 2-13; Sklaver Decl., ¶¶ 3-10. The Court finds that the reputation, experience, and skill of class counsel substantially contributed to the success of this litigation.

The quality of opposing counsel should also be considered. *See, e.g., In re Equity Funding Corp. of Am. Secs. Litig.*, 438 F. Supp. 1303, 1337 (C.D. Cal. 1977). Here, as noted above, counsel for defendants are all nationally recognized firms in the defense of antitrust class actions. Class counsel vigorously litigated, and defense counsel vigorously defended against, the class wide claims asserted by Plaintiffs throughout this proceeding.

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

Class counsel's 21 percent fee request is also reasonable in light of the contingent nature of class counsel's representation—that is, that they would only get paid if the class recovered, and only out of the class's recovery at that. "Courts have long recognized that the public interest is served by rewarding attorneys who assume representation on a contingent basis with an enhanced fee to compensate them for the risk that they might be paid nothing at all for their work." *Ching v. Siemens Indus., Inc.*, No. 11-CV-04838-MEJ, 2014 WL 2926210, at *8 (N.D. Cal. June 27, 2014). "This mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." *Vizcaino II*, 290 F.3d at 1051. "Contingent fees that may far exceed the market value of the services if rendered on a non-contingent basis are accepted in the legal profession as a

legitimate way of assuring competent representation for plaintiffs who could not afford to pay on an hourly basis regardless whether they win or lose." *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994) (emphasis added).

Here, class counsel have spent nearly three years and more than 18,000 hours investigating and litigating this case, while foregoing other paid work, without receiving any compensation to do so. Such burdens are significant, even for successful and established law firms. For instance, the fact that no money was coming in did not relieve class counsel from having to pay the salaries of the associates and staff working on this case, or from having to cover non-reimbursable overhead expenses like rent. Class counsel not only floated these financial burdens, but they did so while assuming the class's risk that there might never be *any* repayment. *See Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376–77 (9th Cir. 1993) ("Class counsel, however, have the case on a contingency. Moreover, it is a double contingency; first, they must prevail on the class claims, and then they must find some way to collect what they win."). They also advanced over $2 million in expenses, interest-free, prosecuting this action, including all expert fees and expenses, which are a substantial but necessary burden in any antitrust action. "This substantial outlay, when there is a risk that none of it will be recovered, further supports the award of the requested fees." *In re Omnivision*, 559 F. Supp. 2d at 1047.

A 21 percent benchmark award reasonably compensates class counsel for carrying the financial burdens of this risky case. *See Torrisi*, 8 F.3d at 1377 ("The 25% contingent fee rewarded class counsel not only for the hours they had in the case to the date of the settlement, but for carrying the financial burden of the case, effectively prosecuting it and, by reason of their expert handling of the case, achieving a just settlement for the class."); *accord, e.g.*, *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *3 (N.D. Cal. Feb. 6, 2013) (awarding 30 percent fee in part because "case was conducted on an entirely contingent fee basis against a well-represented Defendant."). The 21 percent rate is actually below the standard market contingency rate of 33 percent,[12] which further demonstrates the reasonableness of class counsel's

[12] *See, e.g.*, Lester Brickman, ABA Regulation of Contingency Fees: Money Talks, Ethics Walks, 65 Fordham L. Rev. 247, 248 (1996) (noting that "standard contingency fees" are "usually

request. *See In re Online DVD*, 779 F.3d at 955 (reasonableness factors include "the market rate for the particular field of law (in some circumstances)"); *Vizcaino II*, 290 F.3d at 1049-50 (evidence of market rate may be probative of the fee award's reasonableness).

**e. No Windfall Profits to Counsel.**

In reiterating in *In re Bluetooth Headset Product Liability Litigation* that any fee award must be reasonable, the Ninth Circuit remarked, "for example, where awarding 25% of a 'megafund' would yield windfall profits for class counsel in light of the hours spent on the case, courts should adjust the benchmark percentage or employ the lodestar method instead." 654 F.3d at 942; *but see, e.g.*, *Linerboard*, 2004 WL 1221350 at *17 ("the sliding scale approach is economically unsound."). As an initial matter, counsel are not seeking the benchmark 25% fee here, notwithstanding the representative cases and studies cited above might support such a request.

As the successive, increasing settlements obtained in this action underscore, the size of the common fund is directly related to the efforts of counsel. After class counsel defeated defendants' motion to dismiss and filed a motion for class certification, Blue Sky settled for $5.95 million; after class counsel replied to defendants' opposition to class certification, Sony settled for $13 million; after the Court certified the class and class counsel defeated defendants' Rule 23(f) petition, DreamWorks settled for $50 million; after class counsel staved off absent class member discovery, served their merits expert reports, and presented their case to an impartial mediator, the Disney defendants settled for $100 million. *Accord, e.g.*, *Linerboard*, 2004 WL 1221350 at *17 (rejecting application of the increase-decrease principle "because the highly favorable settlement was attributable to the petitioners' skill and it is inappropriate to penalize them for their success.");

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thirty-three percent to forty percent of gross recoveries" (emphasis omitted)); F. Patrick Hubbard, Substantive Due Process Limits on Punitive Damages Awards: "Morals Without Technique"?, 60 Fla. L. Rev. 349, 383 (2008) (mentioning "the usual 33-40 percent contingent fee" (quoting *Mathias v. Accor Econ. Lodging, Inc.*, 347 F.3d 672, 677 (7th Cir. 2003))); Herbert M. Kritzer, The Wages of Risk: The Returns of Contingency Fee Legal Practice, 47 DePaul L. Rev. 267, 286 (1998) (reporting the results of a survey of Wisconsin lawyers, which found that "[o]f the cases with a [fee calculated as a] fixed percentage [of the recovery], a contingency fee of 33% was by far the most common, accounting for 92% of those cases").

*Vitamins*, 2001 WL 34312839 at *12 ("This Court agrees that it is not fair to penalize counsel for obtaining fine results for their clients.").

Relatedly, the size of the common fund obtained in this case is not "merely a factor of the size of the class." *Bluetooth*, 654 F.3d at 943. The number of class members sharing in the megafund in this case (approximately 10,043 class members) is significantly smaller than the number of class members sharing in most megafund cases; in fact, above-benchmark fees are often awarded where megafunds must be shared by hundreds of thousands, if not millions, of class members.[13]

Class counsel's 21 percent fee request is below the market contingency rate, below the Ninth Circuit benchmark rate, below the rates awarded in other megafund cases, and results in a lodestar cross-check multiplier within the range of multipliers that both this Court and the Ninth Circuit have previously deemed "reasonable." Class counsel's fee request, in short, is eminently reasonable, fair, and justified based on all the circumstances of this case.

**f. Class Counsel Litigated Efficiently**

Although class counsel's fee request is reasonable, and checks out as so under a lodestar cross-check, the efficiency with which class counsel achieved such exceptional results is laudable because it benefits the class. Had class counsel's lodestar been significantly higher, a stronger case would exist for a benchmark award of 25 percent (or more). Thus, class counsel's efficiency should be considered favorably in evaluating the reasonableness of their fee request. *See Vizcaino II*, 290 F.3d at 1043 & n. 5 ("The lodestar method is merely a cross-check on the reasonableness of

[13] *See, e.g.*, *Optical Disk Drive*, 2016 WL 7364803 at *6 ($124.5 million settlement fund for "millions of class members"); *CRT*, 2016 WL 4126533 at *1 ($576.75 million settlement fund for "millions" of class members, *Polyurethane Foam*, 2015 WL 1639269 at *7 ($147.8 million settlement fund for more than "48,000" class members); *Neurontin*, 58 F. Supp. 3d at 170 ($325 million settlement fund for "more than 40,000 class members"); *TFT-LCD*, 2013 WL 1365900 at *3 ($571 million settlement fund for more than "235,808" class members); *In re Checking*, 830 F. Supp. 2d 1330 at 1366 ($510 million settlement fund for "approximately 13 million" class members); *Comverse Tech*, 2010 WL 2653354 at *6 ($225 million settlement fund for "more than 204,000 potential class members"); *Linerboard*, 2004 WL 1221350 at *1 ($202.5 million settlement fund for "approximately 80,000 companies"); *Ikon*, 194 F.R.D. at 170 ($111 million settlement fund for more than 200,000 class members); *Brand Name Prescription Drugs*, 2000 WL 204112 at *2 ($696 million settlement fund for "approximately 40,000 retail pharmacies"); *but see Vitamins*, 2001 WL 34312839 at *9 ($365 million settlement fund for 4,000 class members).

a percentage figure, and it is widely recognized that the lodestar method creates incentives for counsel to expend more hours than may be necessary on litigating a case so as to recover a reasonable fee").

Class counsel adopted procedures to help ensure efficiency in this case, including the following:

- Class counsel divided categories of tasks (e.g., briefing, expert work) among the three firms, eliminating overlap and catch-up work as much as possible;
- Class counsel also worked to divide discovery tasks among the firms by defendant;
- Associate-level attorneys were often the sole or primary representatives at hearings in this case;
- While courts often place a two-attorney limit on depositions, class counsel (with one exception), sent only one attorney to each deposition they took in this case;
- Class counsel only took 25 depositions, which they explained is the result of strategically focusing solely on depositions that were necessary with which to go to trial. By way of comparison, *High-Tech* counsel took 94 depositions. This saved the class significant expenses, in addition to fees; and
- Class counsel kept contemporaneous time records, prepared monthly billings records, and exchanged those records with one of the other co-lead firms, allowing the three firms to cross-check each other's time records and write off duplicative or inefficient time.

Again, each one of these actions likely reduced class counsel's lodestar, resulting in a higher multiplier when cross-checking counsel's percentage-of-the-fund award. But efficiency is a good thing. *See In re Xcel Energy, Inc., Sec., Derivative & "ERISA" Litig.*, 364 F. Supp. 2d 980, 996 (D. Minn. 2005) ("But for the cooperation and efficiency of counsel, the lodestar of plaintiffs' counsel would have been substantially more and would have required this court to devote significant judicial resources to its management of the case. Instead, counsel moved the case along expeditiously, and the court determines that the time and labor spent to be reasonable and fully supportive of the 25% attorney fee.").

Thus, as a matter of policy, the law should reward results achieved through efficiency and incentivize similar future litigation conduct:

> There are strong policy reasons behind the judicial and legislative preference for the percentage of recovery method of determining attorney fees in these cases. Under the percentage method, the more the attorney succeeds in recovering money for the client, and the fewer legal hours expended to reach that result, the higher dollar

> amount of fees the lawyer earns. Thus, one of the primary advantages of the percentage of recovery method is that it is thought to equate the interests of class counsel with those of the class members and encourage class counsel to prosecute the case in an efficient manner.

*In re Xcel Energy*, 364 F. Supp. 2d at 991 (brackets, quotations, and citations omitted).

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

Plaintiffs seek a total award of $490,040.13 in expenses necessarily incurred in connection with the prosecution of this action. The Ninth Circuit allows recovery of pre-settlement litigation costs in the context of class action settlements. *See Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003). All expenses that are typically billed by attorneys to paying clients in the marketplace are compensable. *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994). With their motion, plaintiffs provide an accounting of the expenses incurred by Plaintiffs' counsel. *See* Friedman Decl. ¶15; Small Decl. ¶ 33; Sklaver Decl. ¶ 14. Several categories account for the bulk of these expenses: fees paid to experts, filing fees, travel expenses, costs of court and deposition transcripts, and computer research expenses. All of these costs were necessarily and reasonably incurred to bring this case to a successful conclusion, and they reflect market rates for the various categories of expenses incurred. Further, Plaintiffs' counsel advanced these necessary expenses without assurance that they would even be recouped. Plaintiffs' request for fees is reasonable.

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

"Service awards for class representatives are routinely provided to encourage individuals to undertake the responsibilities and risks of representing the class and recognize the time and effort spent in the case." ECF No. 347 at 14. In the Ninth Circuit, service awards "compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009). "Courts have discretion to approve service awards based on, *inter alia*, the amount of time and effort spent, the duration of the litigation, and the personal benefit (or lack thereof) as a result of the litigation." ECF No. 347 at 14.

Here, the three named plaintiffs, Robert Nitsch, David Wentworth, and Georgia Cano have spent a significant amount of time assisting the litigation of this case. Each plaintiff responded to written discovery and produced documents relating to their claims; they were each deposed by defense counsel for a full day regarding their claims; they reviewed the SAC and other substantive pleadings; and they reviewed and approved the settlements.[14] Maybe most importantly, despite the tight-knit and fluid nature of the animation and visual effects industry, each of the named plaintiffs was willing to put his or her name on this employment lawsuit for the benefit of all absent class members despite a very real fear of workplace retaliation, *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998), or being viewed as "troublemakers" within the industry, *In re High-Tech Emp. Antitrust Litig.*, No. 11-CV-02509-LHK, 2015 WL 5158730, at *17 (N.D. Cal. Sept. 2, 2015).[15] In fact, defendants subpoenaed their employment records from current and former employers. Finally, the service awards of $90,000 ($100,000 total for the litigation) are in line with awards in other megafund cases, and the ratio between the services awards and the average class member recovery is not unreasonable. *See id.* The service awards of $90,000 are consistent with service awards ordered in *High-Tech*.[16] Based on the foregoing, the Court accordingly concludes that the request for a $90,000 service award for each named plaintiff is reasonable.

## III. CONCLUSION

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

- $31,500,000 in attorneys' fees to class counsel;
- $490,040.13 in unreimbursed expenses to class counsel;

[14] *See* Declaration of Robert Nitsch in Support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards ("Nitsch Decl."), ¶¶ 6-11; Declaration of David Wentworth in Support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards ("Wentworth Decl."), ¶¶ 6-9; Declaration of Georgia Cano in Support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards ("Cano Decl."), ¶¶ 6-11.

[15] *See* Nitsch Decl. ¶ 12; Wentworth Decl. ¶ 10; Cano Decl. ¶ 12.

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

- $90,000 service awards each to named plaintiffs Robert Nitsch, David Wentworth, and Georgia Cano.

IT IS SO ORDERED.

DATED: _____

HONORABLE LUCY H. KOH
UNITED STATES DISTRICT COURT JUDGE

*Submitted by*:

Dated: April 7, 2017

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