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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
21 FOR PRELIMINARY APPROVAL OF
SETTLEMENT WITH DREAMWORKS
ANIMATION SKG, INC.

22 Date: January 19, 2017
23 Time: 1:30 p.m.
Courtroom: 8, 4th Floor
24 Judge: The Honorable Lucy H. Koh

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

PLEASE TAKE NOTICE that on January 19, 2017 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:

- 1) Preliminarily approving a proposed class action settlement with DreamWorks Animation SKG, Inc.;
- 2) Approving the manner and form of Notice and proposed Plan of Allocation to class members.

This motion is based on this Notice of Motion and Motion for Preliminary Approval of Settlement with DreamWorks Animation SKG, Inc., the following memorandum of points and authorities, the Settlement Agreement filed herewith, the pleadings and papers on file in this action, and such other matters as the Court may consider.

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I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 23, plaintiffs Robert Nitsch, David Wentworth, and Georgia Cano respectfully seek preliminary approval of a Settlement Agreement with defendant DreamWorks Animation SKG, Inc. (“DreamWorks”). The Court should preliminarily approve the proposed settlement as fair, reasonable, and adequate because it provides for the class a cash payment of \$50,000,000 and cooperation from DreamWorks. That amount is approximately 39.3 percent of plaintiffs’ expert’s calculation of the damages attributable to DreamWorks employees in the certified class based on plaintiffs’ February 1, 2016 expert report.

The settlement here was 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 both this action and the *High-Tech* litigation.

At this stage in the litigation, plaintiffs are quite familiar with the strengths of this case, as well as the challenges plaintiffs face as this case proceeds to trial. Counsel for plaintiffs have analyzed and catalogued approximately 350,000 documents produced from defendants’ custodians, deposed nearly thirty witnesses, including two third-party witnesses and defendants’ expert, defended the deposition of each of the named plaintiffs, defended two depositions of plaintiffs’ expert Dr. Orley Ashenfelter, and have filed a successful class certification motion and reply supported by Dr. Ashenfelter’s expert reports, one of the world’s leading labor economists.¹ The settlement reached with DreamWorks is fair and appropriate based on the risks and rewards of litigating this case.

Further, plaintiffs propose a comprehensive notice program designed to effectively provide direct and actual notice of the settlement to all class members. The manner and form of notice is modeled after the manner and form of notice this Court preliminarily approved with respect to the Blue Sky and Sony Pictures settlements.

¹ See Declaration of John E. Schiltz in Support of Motion for Preliminary Approval of Settlement with DreamWorks (“Schiltz Decl.”), ¶ 3, filed concurrently herewith.

1 Plaintiffs respectfully request an order providing: (1) preliminary approval of the proposed
2 Settlement Agreement with DreamWorks; and (2) approval of the manner and form of notice and
3 proposed Plan of Allocation² to class members.

4 II. PROCEDURAL HISTORY

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

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

18 On December 2, 2014, plaintiffs filed their Consolidated Amended Class Action Complaint
19 (CAC) against DreamWorks Animation, ImageMovers Digital, Lucasfilm, Pixar, Sony Pictures
20 Animation, Sony Pictures Imageworks, The Walt Disney Company, and Blue Sky.⁶ On January 9,
21 2015, defendants filed a motion to dismiss.⁷ This Court granted defendants' motion without
22 prejudice on April 17, 2015.⁸ The Court held that plaintiffs had not sufficiently alleged acts of

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² See Schiltz Decl., Ex. A, Attachment 2.

24 ³ See Second Consolidated Amended Class Action Complaint (SAC) ¶ 43, ECF No. 117.

25 ⁴ See *Id.*, ¶ 2.

26 ⁵ See *id.*, ¶¶ 13-15.

27 ⁶ ECF No. 63.

28 ⁷ Motion to Dismiss the CAC, ECF No. 75.

⁸ Order Granting Motion to Dismiss, ECF No. 105.

1 fraudulent concealment by defendants such that the four-year statute of limitations should be tolled.
2 On May 15, 2015, plaintiffs filed the SAC, alleging additional and more detailed acts of fraudulent
3 concealment by defendants.⁹ The Court denied defendants' second motion to dismiss on August 20,
4 2015.¹⁰

5 Following the denial of defendants' second motion to dismiss, plaintiffs engaged in extensive
6 discovery: drafting and responding to requests for production and 30(b)(6) notices, reviewing
7 thousands of plaintiffs' documents for responsiveness and privilege, reviewing defendants'
8 voluminous document productions, responding to defendants' written discovery, engaging in
9 discovery motion practice, preparing for and taking depositions, obtaining relevant employment data
10 and working with plaintiffs' expert to evaluate that data and calculate damages on a class-wide basis
11 – all in anticipation of their motion for class certification and trial.

12 Plaintiffs filed their motion for class certification on February 1, 2016. Plaintiffs' motion was
13 supported by 139 exhibits and a 70-page expert report from Dr. Ashenfelter. Defendants' opposition
14 included 67 exhibits and a 161-page expert report from Dr. Michael C. Keeley. Plaintiffs responded
15 with a 93-page reply report from Dr. Ashenfelter. The Court granted in part and denied in part
16 plaintiffs' motion for class certification and certified the class on May 25, 2016. As relevant here, the
17 Court denied the motion without prejudice as to class members who worked at DreamWorks in 2003,
18 holding that the SAC did not sufficiently allege acts of fraudulent concealment during that year.
19 Defendants petitioned for interlocutory appeal of that order under Federal Rule of Civil Procedure
20 23(f), plaintiffs responded, and on August 29, 2016, the Court of Appeals for the Ninth Circuit
21 denied defendants' Rule 23(f) petition.

22 Plaintiffs filed Motions for Preliminary Approval of Settlements with Blue Sky Studios on
23 March 31, 2016, and with Sony Pictures Imageworks Inc. and Sony Pictures Animation Inc.
24 (collectively, "Sony Pictures") on May 3, 2011.¹¹ Following instructions from the Court, on May 11,
25 2011 plaintiffs filed an amended motion with respect to the Blue Sky settlement to reflect the fact

26 ⁹ ECF No. 121.

27 ¹⁰ Order Denying Motion to Dismiss, ECF No. 147.

28 ¹¹ ECF Nos. 249, 273.

1 that plaintiffs had proposed sending one notice for both settlements.¹² The Settlement Agreement
2 with Blue Sky provides for a \$5.95 million settlement fund, which was over 25 percent of plaintiffs’
3 expert’s calculation of the damages attributable to Blue Sky employees. The Settlement Agreement
4 with Sony Pictures provides for a \$13 million settlement fund, which was approximately 16.7
5 percent of plaintiffs’ expert’s calculations of the damages attributable to Sony Pictures employees.
6 The Court preliminarily approved the Settlements with Blue Sky Studios and Sony Pictures on July
7 6, 2016.¹³

8 **III. SUMMARY OF SETTLEMENT TERMS**

9 **A. The Settlement Consideration**

10 **1. Monetary Settlement Fund**

11 DreamWorks has agreed to a lump-sum payment of \$50,000,000 to the Settlement Fund. This
12 payment is the full amount owed under the Settlement Agreement, and is inclusive of any attorneys’
13 fees, expenses, and service awards that might be ordered by this Court.¹⁴

14 **2. Additional Consideration**

15 As additional consideration, DreamWorks has agreed to (a) timely prepare a declaration on
16 issues regarding authentication for documents produced by DreamWorks in the litigation that appear
17 on plaintiffs’ trial exhibit list; (b) use best efforts to answer all reasonable questions posed by
18 plaintiffs’ counsel concerning the content or circumstances of the documents produced by
19 DreamWorks in this litigation; and (c) will not voluntarily produce any employee to testify at trial for
20 any non-settling defendant.¹⁵

21 **B. Release of Claims**

22 Once the Settlement Agreement is final and effective, the named plaintiffs and the class shall
23 release, as to DreamWorks and any of its related entities as defined by the Settlement Agreement,
24 any and all state and federal claims, either known or unknown, arising from or relating to the factual
25

26 ¹² ECF No. 282.

27 ¹³ See ECF No. 305.

28 ¹⁴ See Schiltz Decl., Ex. A § III(A), ¶ 1.

¹⁵ *Id.*, § III(B), ¶ 1.

1 allegations in plaintiffs' SAC, or any purported restriction on competition for employment or
 2 compensation of named plaintiffs or Class Members, up to the date of the Settlement. The Settlement
 3 Agreement does not release any other claims not covered by the Settlement Agreement.

4 DreamWorks has agreed not to solicit or encourage any plaintiffs to exclude themselves from the
 5 Settlement Agreement.¹⁶

6 **C. Notice and Implementation of the Settlement**

7 The Settlement Agreement provides for actual notice to the Settlement Class members, as
 8 described below. In connection with the Sony Pictures and Blue Sky settlements, defendants have
 9 already provided to the notice administrator contact information in defendants' human resources and
 10 payroll databases for all potential Class Members. DreamWorks has again agreed as part of the
 11 Settlement Agreement to provide such contact information as it has available in its human resources
 12 and payroll databases for all potential Class Members. Plaintiffs have submitted with this Motion a
 13 notice of settlement with DreamWorks that will be sent within 21 days of preliminary approval of the
 14 Settlement Agreement.¹⁷

15 **D. Plan of Distribution**

16 Within ten days of final approval of the Settlement Agreement, DreamWorks will wire (or
 17 cause to be wired) \$49,900,000 to an account established by an escrow agent.¹⁸ The funds will be
 18 held in an interest-bearing account that will be construed to be a "Qualified Settlement Fund"
 19 pursuant to applicable IRS regulations.¹⁹ The Claims Administrator will be responsible for
 20 determining the monetary award that shall be awarded to plaintiffs from the Settlement Fund based
 21 on their pro-rata share, which is calculated based on their total compensation compared to the total
 22 compensation of all class members throughout the class period, as described in the Plan of
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24 _____
 25 ¹⁶ *Id.*, § V(A), ¶ 3.

26 ¹⁷ *Id.*, § II(B), ¶¶ 4, 5.

27 ¹⁸ *Id.*, § III(A), ¶1(a). If the Court preliminarily approves the Settlement Agreement,
 DreamWorks will already have provided \$100,000 to the settlement fund within 10 days of the
 Court's order.

28 ¹⁹ *Id.*, § III(A), ¶ 3.

1 Allocation. The Claims Administrator’s decision shall be final and unreviewable.²⁰ Class Counsels’
 2 attorneys’ fees and cost payments and all Named Plaintiff service awards are subject to court
 3 approval.²¹

4 IV. ARGUMENT

5 A. The Settlement Agreement Satisfies Rule 23(e)

6 Federal Rule of Civil Procedure 23(e) provides that a proposed settlement in a class action
 7 case must be approved by the Court. The Court is to determine whether the proposed settlement is
 8 “fair, reasonable, and adequate.”²² As a first step, plaintiffs must seek preliminary approval of the
 9 proposed settlement, which is an “initial evaluation” of the fairness of a proposed settlement.²³ In
 10 determining whether the proposed settlement is “fundamentally fair, adequate, and reasonable” the
 11 court makes a preliminary determination of whether to give notice of the proposed settlement to the
 12 class members and an opportunity to voice approval or disapproval of the settlement.²⁴ Preliminary
 13 approval is not a dispositive assessment of the fairness of the proposed settlement, but rather
 14 determines whether it falls within the “range of reasonableness.”²⁵ Preliminary approval establishes
 15 an “initial presumption” of fairness,²⁶ such that notice may be given to the class and the class may
 16 have a “full and fair opportunity to consider the proposed [settlement] and develop a response.”²⁷

17 Preliminary approval of a settlement and notice to the proposed class is appropriate: “[i]f
 18 [1] the proposed settlements appears to be the product of serious, informed, non-collusive
 19 negotiations, [2] has no obvious deficiencies, [3] does not improperly grant preferential treatment to
 20

21 ²⁰ *Id.*, § IV(B), ¶¶ 3, 4.

22 ²¹ *See id.*, § VI(A), ¶ 1.

23 ²² Fed. R. Civ. P. 23(e)(2).

24 ²³ Manual for Complex Litigation (Fourth) § 21.632 (2015).

25 ²⁴ *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003) (quoting *Hanlon v. Chrysler Corp.*, 150
 F.3d 1011, 1026 (9th Cir. 1998)); *see* Manual for Complex Litigation (Fourth) § 21.631 (2015).

26 ²⁵ *In re High-Tech Emp. Litig.*, No. 11-cv-2509, 2013 WL 6328811, at *1 (N.D. Cal. Oct. 30,
 2013) (“*High-Tech P*”) (citation omitted); *see also Collins v. Cargill Meat Solutions Corp.*, 274
 F.R.D. 294, 301-302 (E.D. Cal. 2011).

27 ²⁶ *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007).

28 ²⁷ *Williams v. Vukovich*, 720 F.2d 909, 921 (6th Cir. 1983).

1 class representatives or segments of the class, and [4] falls with the range of possible approval.”²⁸ It
 2 is within the “sound discretion of the trial judge” to approve or reject the settlement.²⁹ In instances
 3 where a settlement results from arm’s length negotiations with involvement of experienced counsel
 4 and relevant discovery has been provided, there is a “presumption that the agreement is fair.”³⁰

5 **1. The Settlement Is the Product of Informed, Arm’s Length Negotiations**

6 The settlement was reached after informed, arm’s length negotiations between the parties.³¹
 7 The parties reached this settlement after the Court certified the class, and after the Ninth Circuit
 8 denied defendants’ Rule 23(f) motion. In the months leading up to the class certification decision,
 9 plaintiffs served and reviewed detailed written discovery, reviewed hundreds of thousands of
 10 documents, took and defended more than twenty fact and expert depositions, and briefed and argued
 11 their motion for class certification. Plaintiffs also presented a damages model, which helped inform
 12 both parties of the potential damages at stake for DreamWorks. Plaintiffs then conducted additional,
 13 informative discovery after the Court certified the class, including by deposing key current and
 14 former DreamWorks employees, including the current and former heads of Human Resources as well
 15 as the Chief Executive Officer of DreamWorks.³² The settlement was only reached after months of
 16 negotiations between the parties.³³

17 The settlement also reflects non-collusive negotiations. Courts weigh three factors when
 18 considering collusion: (1) a disproportionate distribution of the settlement fund to counsel; (2) a
 19 negotiation of a “clear sailing provision,” which allows for the payment of attorneys’ fees
 20 independent of payments to the class; and (3) an arrangement for funds not awarded to revert to
 21 defendants rather than to be added to the settlement fund.³⁴ None of those factors is present here.

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 23 ²⁸ *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007).

24 ²⁹ *Zepeda v. Paypal, Inc.*, No. C 10-2500, 2015 WL 6746913, at *4 (N.D. Cal. Nov. 5, 2015).

25 ³⁰ *Linney v. Cellular Alaska P’ship*, No. C-96-3008, 1997 WL 450064, at *5 (N.D. Cal. July 18, 1997).

26 ³¹ *See* Schiltz Decl., Ex. A, § III(B), ¶ 2.

27 ³² *See id.* ¶ 3

28 ³³ *See id.* ¶ 4.

³⁴ *Id.*

1 *First*, the settlement requires payment of attorneys’ fees solely out of the Settlement Fund.
 2 Payment to the named plaintiffs and class members is distributed based on the distribution plan
 3 specified in the Settlement Agreement, and class counsels’ fees and payments to Named Plaintiffs
 4 must be approved by this Court.³⁵ *Second*, there is no clear sailing provision. To the contrary, the
 5 settlement stipulates that the parties have no agreement on any applications for Attorney’s Fees and
 6 Expenses by Class Counsel.³⁶ *Third*, the settlement allows a pro rata reduction of the Settlement
 7 Fund if three percent or more of Class Members opt out, but other than that provision, it does not
 8 allow any reversion of settlement funds to the defendants.³⁷ This provision is common, was included
 9 in the preliminarily-approved settlements with Blue Sky and Sony Pictures, and is no way reflective
 10 of any collusion; its threshold is unlikely to be met. After the distribution, to the extent that any
 11 monies remain in the settlement fund, plaintiffs will move the Court to order distribution of such
 12 funds either for additional distribution to eligible claimants or to escheat to the federal government.³⁸

13 **2. The Proposed Settlement Has No Obvious Deficiencies**

14 The Proposed Settlement Agreement was the product of a thorough assessment of the
 15 strengths and weaknesses of plaintiffs’ case. It reflects nearly two years of discovery, uncovering the
 16 intricacies of a multi-faceted conspiracy. This settlement follows the Court’s certification of the class
 17 and the Ninth Circuit’s denial of defendants’ Rule 23(f) petition, and allows DreamWorks to settle
 18 and obtain a release of all claims against it before DreamWorks would be required to engage in
 19 expert discovery and any briefing of dispositive motions.

20 The Settlement also provides meaningful and certain monetary recovery. In making this
 21 assessment, plaintiffs are guided by this Court’s decisions in *High-Tech* and in preliminarily
 22 approving the Blue Sky and Sony Pictures settlements.

23 Initially, *High-Tech* plaintiffs sought approval of a \$20 million settlement with Intuit,
 24 Lucasfilm, and Pixar. The Court approved this amount, based on (1) an “initial presumption of

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 26 ³⁵ See Schiltz Decl., Ex. A, § VI(A).

27 ³⁶ See *id.*, § III(B), ¶ 2.

28 ³⁷ See *id.*, § VII(R).

³⁸ See *id.*, § IV(B), ¶ 6.

1 fairness” that adheres to arm’s length negotiations involving experienced counsel; (2) the amount of
2 consideration – \$20 million – was “substantial,” based on the number of injured plaintiffs and total
3 compensation paid by defendants; (3) the non-settling defendants remained jointly and severally
4 liable for all damages caused by the conspiracy, including the damage caused by the defendants who
5 settled; and (4) the defendants’ agreement to cooperate with authenticating documents and locating
6 witnesses.³⁹

7 Similarly, in preliminarily approving the \$18.95 million combined settlements with
8 defendants Blue Sky and Sony Pictures, the Court held that the following factors weighed in favor of
9 that preliminary approval: (1) the settlement was the result of “arm’s length negotiations among
10 experienced counsel following extensive discovery on both sides”; (2) the combined consideration of
11 \$18.95 million was “fair and reasonable based on the circumstances, risks involved, and significant
12 recovery from two of the companies whose share of employee-years comprise 20.3% of the class”;
13 (3) the remaining defendants remained jointly and severally liable for all damages caused by the
14 conspiracy; and (4) and the settling defendants had independently agreed to cooperate with plaintiffs
15 in authenticating documents and to not assist the remaining defendants with the litigation.⁴⁰

16 As detailed above, the proposed settlement here was the result of arm’s length negotiations
17 with experienced counsel, following extensive discovery on both sides. By law, the remaining
18 defendants remain jointly and severally liable for all damages caused by the conspiracy, including
19 damages caused by DreamWorks.⁴¹ And DreamWorks has agreed to cooperate with plaintiffs in
20 authenticating documents, and in not voluntarily producing any employee to testify at trial for any
21 non-settling defendant.

22 The remaining issue, then, is the fairness of the consideration paid by DreamWorks at this
23 stage of the litigation. Here again, this Court’s reasoning in rejecting a proposed *High-Tech*

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³⁹ See *High-Tech I*, 2013 WL 6328811, at *1.

27 ⁴⁰ ECF No. 305 at 3-4.

28 ⁴¹ See *Ward v. Apple Inc.*, 791 F.3d 1041, 1048 (9th Cir. 2015) (citations omitted).

1 settlement of \$324.5 million with Adobe, Apple, Google, and Intel,⁴² and in preliminarily approving
2 the \$18.95 million combined Blue Sky and Sony Pictures settlements is instructive.⁴³

3 In *High-Tech*, the Court noted that the total proposed settlement of \$344.5 million was 11.29
4 percent of the expert's calculation,⁴⁴ but the "procedural posture of the case swung dramatically in
5 Plaintiffs' favor after the initial settlements were reached," and the parties were a month from trial.⁴⁵
6 The Court ultimately approved a settlement at that late posture in the case representing 14.26 percent
7 of the total single damages calculated by plaintiffs' expert.

8 Here, the proposed DreamWorks settlement provides for a fifty million dollar payment to the
9 settlement fund, which represents approximately 39.3 percent of the total single damages attributable
10 to DreamWorks employees as calculated by plaintiffs' expert. This compares favorably to the Blue
11 Sky and Sony Pictures settlements, which this Court deemed "fair and reasonable."

12 The Settlement also reflects the risks plaintiffs must consider in reaching a successful
13 outcome for class members through expert discovery, dispositive motions, trial, and appeal. For
14 example, although plaintiffs believe the class members have meritorious claims, juries can be
15 difficult to predict. And defendants would almost certainly appeal any adverse finding from the jury.
16 In particular, as this Court is aware, the statute of limitations has been a hotly-contested issue in this
17 case; the Court initially dismissed plaintiffs' first Complaint based on insufficient allegations of
18 fraudulent concealment. Although the Court ruled that plaintiffs have now sufficiently pled
19 fraudulent concealment, and plaintiffs continue to obtain evidence to support their fraudulent
20 concealment allegations; that issue undoubtedly injects uncertainty into the ultimate outcome in this
21 case. Indeed, defendants have pursued discovery on this issue vigorously with the named Plaintiffs
22 and third parties, including through document requests and deposition testimony, and have now
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25 ⁴² See *In re High-Tech Emp. Litig.*, No.11-cv-02509, 2014 WL 3917126, at *5 (N.D. Cal. Aug. 8, 2014) ("*High-Tech II*").

26 ⁴³ See ECF No. 305.

27 ⁴⁴ See *High-Tech II*, 2014 WL 3917126 at *5. The total settlement figure included the previously
28 approved \$20 million settlement with Intuit, Lucasfilm, and Pixar.

⁴⁵ *Id.*

1 sought leave to serve absent class member discovery to that end on 500 absent class members.
 2 Overall, the risks plaintiffs face here remain significant.

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

7 This settlement, therefore, reflects the careful balance struck between each parties' position at
 8 this stage in the litigation.

9 **3. The Settlement Does Not Improperly Grant Preferential Treatment to Class** 10 **Representatives or Segments of the Class**

11 The third factor the court must consider in granting preliminary approval is whether the
 12 settlement improperly grants preferential treatment to class representatives or segments of the class.⁴⁶
 13 The Proposed Settlement Agreement does not. It provides a reasonable and fair manner to
 14 compensate named plaintiffs and class members based on their salary and injury. The Named
 15 Plaintiffs, each of whom has been deposed and reviewed and produced thousands of pages of
 16 documents, has had their personnel work files produced, and continue to provide valuable assistance
 17 to counsel as they pursue the class's claims, would receive a \$10,000 service award under the
 18 Proposed Settlement Agreement.⁴⁷

19 **4. The Settlement Falls Well Within the Range of Possible Approval**

20 The court must also determine whether a settlement “falls within the range of possible
 21 approval.” To make a determination, the Court must focus on “substantive fairness and adequacy.”⁴⁸

22
 23 ⁴⁶ *Zepeda*, 2015 WL 6746913, at *4.

24 ⁴⁷ Plaintiffs previously sought \$10,000 in service awards for the Named Plaintiffs in plaintiffs'
 25 motion for preliminary approval of the Blue Sky settlement. The additional \$10,000 service award
 26 provided for here would put the Named Plaintiffs on the same footing as the named plaintiffs in
 27 *High-Tech*, who received \$20,000 service awards, which the Court held fair and reasonable under the
 28 *Staton* factors. See *In re High-Tech Emp. Litig.*, Case No. 11-cv-02509 LHK, Order Granting
 Plaintiffs' Motion for Attorney's Fees, Reimbursement of Expenses, and Service Awards (ECF No.
 916), at 3.

⁴⁸ *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1080.

1 This settlement certainly falls within the range of possible approval. As detailed above, the
 2 \$50 million settlement represents about 39.3 percent of the damages that Dr. Ashenfelter estimated
 3 DreamWorks caused its employees in the certified class based on his February 1, 2016 expert report.
 4 This is in excess of both the 25 percent and the 16.7 percent preliminarily-approved by the Court in
 5 the Blue Sky and Sony Pictures settlements, respectively, and in excess of the 14.26 percent
 6 approved by the Court in *High-Tech II*.

7 **B. The Proposed Notice and Plan of Dissemination Meets the Strictures of Rule 23**

8 Rule 23(c)(2)(B) provides that class members must receive the “best notice that
 9 is practicable under the circumstances, including individual notice to all members who can be
 10 identified through reasonable efforts.” Moreover, Rule 23(e)(1) requires a court to “direct notice in a
 11 reasonable manner to all class members who would be bound by the propos[ed] [settlement].”
 12 Plaintiffs propose the same notice here that this Court already approved for the prior settlements.

13 A class action settlement notice “is satisfactory if it ‘generally describes the terms of the
 14 settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come
 15 forward and be heard.’”⁴⁹ Rule 23(c)(2)(B) contains specific requirements for the notice, namely,
 16 that the notice state in clear, concise, plain, and easily understood language:

17 (i) the nature of the action; (ii) the definition of the class certified; (iii)
 18 the class claims, issues, or defenses; (iv) that a class member may enter
 19 an appearance through an attorney if the member so desires; (v) that
 20 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).

21 “Notice by mail is sufficient to provide due process to known affected parties, so long as the notice is
 22 ‘reasonably calculated ... to apprise interested parties of the pendency of the action and afford them
 23 an opportunity to present their objections.’”⁵⁰ Notice by email is routinely accepted as well.⁵¹ As in

24 _____
 25 ⁴⁹ *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)).

26 ⁵⁰ *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)).

27 ⁵¹ *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934 (9th Cir. 2015) (“The notice
 28 provided in this settlement, in both mail and email form, was sufficient under the Constitution and
 Rule 23(e)”).

1 *High-Tech*,⁵² and with the Blue Sky and Sony Pictures settlements, to discourage potentially
2 frivolous objections, an objector must not only sign his or her objection under penalty of perjury, but
3 must also list any other objections by the Objector, or the Objector's attorney, to any class action
4 settlements submitted to any court in the United States in the previous five years.

5 The Proposed Notice⁵³ here meets those requirements, and is modelled on the notices
6 approved by the Court for the Blue Sky and Sony Pictures settlements and in the *High Tech*
7 litigation. The parties' intent is to have the Claims Administrator provide actual notice to each Class
8 Member by email and/or mail to the extent practicable. Pursuant to the agreement between the
9 parties, DreamWorks is obligated to provide plaintiffs with the full name, social security number, all
10 known email addresses, last known physical address, dates and location of employment, and all
11 known compensation information by date, job title, and type of compensation at DreamWorks during
12 the defined class period (to the extent that information exists in DreamWorks' human resources
13 databases). If DreamWorks is unable to determine an employee's job title during the class period, it
14 is obligated to provide in an electronic database format all known dates of employment at
15 DreamWorks and all known associated compensation by date and type of compensation. Defendants,
16 including DreamWorks, have already provided such information to the notice administrator pursuant
17 to the Court's order that they do so in connection with the Blue Sky and Sony Pictures settlements.

18 The Claims Administrator, Kurtzman Carson Consultants ("KCC"),⁵⁴ will be responsible for
19 providing notice to potential class members consistent with Rule 23(c)(2)(B). The Court previously
20 appointed KCC the Notice and Claims Administrator in its order preliminarily approving the Blue
21 Sky and Sony Pictures Settlements.⁵⁵ The Claims Administrator will email notice to settlement class
22 members where possible, and send mailed notice if email notification is not possible. Finally, the
23 detailed notice will be available on the website www.animationlawsuit.com, along with relevant case
24 documents such as the complaint and settlement agreement itself. With this motion, plaintiffs

25 ⁵² See *High-Tech I*, 2013 WL 6328811, at *6.

26 ⁵³ See Schiltz Decl., Ex. A, Attachment 1.

27 ⁵⁴ KCC acquired Gilardi LLC in August 2015. Gilardi previously served as Claims
Administrator in the *High-Tech* litigation.

28 ⁵⁵ See ECF No. 305 at ¶ 19.

1 provide proposed forms for email notice, mailed notice, and a proposed plan of distribution.

2 **C. Proposed Schedule for Final Approval and Dissemination of Notice**

3 Below is a proposed schedule for providing notice, filing objections, and holding a fairness
4 hearing:

Event	Due Date
Notice mailed and posted on internet	21 days from Order preliminarily approving Settlement.
Deadline for motion for attorneys' fees, costs, and service awards	31 days after Notice mailed.
Objections deadline	45 days after Notice mailed.
Exclusions deadline/end of opt-out period	45 days after Notice mailed.
Administrator files Affidavit of Compliance with Court regarding notice requirements	14 days after opt-out deadline.
Motion for final approval deadline	14 days after opt-out deadline.
Final Fairness Hearing	95 days from Motion seeking preliminary approval of Settlement, or at the Court's convenience.

20 **V. CONCLUSION**

21 Based on the foregoing, plaintiffs respectfully request that the Court preliminarily approve
22 the proposed Settlement Agreement, and approve the notice plan.
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E-FILING ATTESTATION

I, John E. Schiltz, 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/ John E. Schiltz
JOHN E. SCHILTZ