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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES, CENTRAL CIVIL WEST**

11 COLIN HIGGINS PRODUCTIONS, LTD.,

12 Plaintiff,

13 vs.

14 UNIVERSAL CITY STUDIOS, LLC, and
15 DOES 1-100,

16 Defendant.

CASE NO. BC499180 (Related to Case Nos.
BC499179, BC499181, BC499182,
BC500040, and BC540146)

CLASS ACTION

**NOTICE OF MOTION AND MOTION
FOR ATTORNEYS' FEES, COSTS AND
INCENTIVE AWARDS; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Assigned to the Honorable Hon. Elihu M.
Berle (Dept. CCW-323)

[Complaint Filed: January 16, 2013]

Date: December 11, 2015
Time: 10:00 a.m.
Dept.: 323

28

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on December 11, 2015 at 10:00 a.m., or as soon thereafter
3 as the matter may be heard by the Honorable Elihu M. Berle in Department 323 of the Los
4 Angeles Superior Court, Central Civil West Courthouse, located at 600 South Commonwealth
5 Avenue, Los Angeles, California 90005, Plaintiffs Colin Higgins Productions, Ltd. ("CHP"),
6 Indigo, Inc. ("Indigo") and Lynn Unger Children's Trust ("LUCT") (collectively, "Plaintiffs") will
7 and hereby do move for the Court for an order approving and awarding attorneys' fees, costs and
8 incentive awards. By way of this motion, Plaintiffs seek:

- 9 1. \$4,333,333.33 in attorneys' fees to Class Counsel (identified below);
10 2. \$19,893.20 in verified litigation costs to Class Counsel; and
11 3. \$10,000 in incentive awards to each of the class representatives, CHP, Indigo and
12 LUCT.

13 This motion is made on the grounds that: (1) Plaintiffs' requested attorneys' fees are fair
14 and reasonable in light of the efforts of Class Counsel in obtaining the settlement herein; (2) the
15 requested attorneys' fees comport with the applicable law; (3) the expenses for which
16 reimbursement is sought were reasonably and necessarily incurred in connection with the
17 prosecution of this action; and (4) a reasonable payment to the class representatives for their
18 efforts on behalf of the Class is warranted and appropriate. This motion is based upon this Notice
19 of Motion, the accompanying Memorandum of Points and Authorities, the accompanying
20 declarations of Class Counsel, the pleadings and records on file herein, and upon such additional
21 evidence or argument as may be accepted by the Court at or prior to the hearing on this motion.

22
23
24 DATED: October 13, 2015

By: 
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Through this motion, Plaintiffs Colin Higgins Productions, Ltd. (“CHP”), Indigo, Inc. (“Indigo”) and Lynn Unger Children’s Trust (“LUCT”) (collectively, “Plaintiffs”) respectfully request attorneys’ fees, costs and incentive awards in connection with their settlement of this class action litigation. Plaintiffs brought the underlying class action alleging that Defendant Universal City Studios, LLC (“Universal”) failed to properly report the amount of Home Video Revenue and Electronic Sell-Through (“EST”) Revenue¹ on Universal motion pictures to Plaintiffs and similarly situated Profit Participants. Upon filing their original complaint in January 2013, Plaintiffs and Class Counsel² faced the daunting task of taking on one of the largest movie studios in the world and challenging an ingrained industry-wide practice of calculating profit participation. Despite the many obstacles they faced, Plaintiffs and Class Counsel persevered and achieved a remarkable class settlement that offers significant monetary relief to the Class. The Settlement provides \$26 million in total compensation to Class Members by creating: (1) a \$13 million Settlement Fund, which will be used to credit the accounts of Recouped Class Members; and (2) a separate \$13 million Accounting Relief Fund, which will be used to credit the accounts of Unrecouped Class Members. All Class Members will automatically receive monetary or accounting relief under the Settlement without having to take any affirmative action, such as pursuing an expensive audit or even filing a claim form. This is an exceptional result for the Class, especially in light of Universal’s numerous defenses in this case.

Plaintiffs request attorneys’ fees in the amount of \$4,333,333.33, litigation costs in the amount of \$19,893.20 and incentive awards in the amount of \$10,000 to each of the class representatives. These requested attorneys’ fees, costs and incentive awards are reasonable and

¹ All capitalized terms herein shall have the definitions given to them in the Amended Stipulation and Agreement of Settlement (“Settlement Agreement”) attached as Exhibit A to the Declaration of Daniel L. Warshaw (“Warshaw Decl.”), unless otherwise stated.

² Class Counsel is composed of the law firms of Johnson & Johnson LLP; Pearson, Simon & Warshaw, LLP; Kiesel Law LLP; and Boucher LLP.

1 justified by the facts of this case and the relevant law. The requested fees represent one-third
2 (33.33%) of the \$13 million Settlement Fund and one-sixth (16.67%) of the total \$26 million
3 settlement amount. The reasonableness of Plaintiffs' fee request is confirmed by a lodestar cross-
4 check, which reflects an appropriate multiplier of 3.39 based on Class Counsel's historical hourly
5 rates. Plaintiffs' requested litigation costs, which were advanced by Class Counsel, were
6 reasonably incurred and necessary to achieve the result in this case. Finally, Plaintiffs' requested
7 incentive awards are reasonable to reward the class representatives for their substantial work and
8 service to the Class. For these reasons, and for the reasons detailed below, Plaintiffs request that
9 the Court approve their requested attorneys' fees, costs and incentive awards.

10 **II. RELEVANT BACKGROUND**

11 Plaintiffs and Class Members in this case are writers, actors, directors, producers and other
12 Profit Participants on motion pictures distributed by Universal. Plaintiff CHP filed the original
13 complaint in this action on January 16, 2013 alleging that Universal violated Class Members'
14 Profit Participation Contracts by accounting to them based on 20% of the gross receipts (i.e.
15 revenues) generated from the distribution of their movies, rather than 100% as required by their
16 contracts. Plaintiff CHP brought a number of state law and common law claims seeking to compel
17 Universal to compensate Class Members for the monetary shortfall resulting from Universal's
18 alleged breach of contract and failure to report Home Video and EST Revenues based on 100% of
19 gross receipts.

20 Universal demurred and moved to strike the complaint, which the Court overruled and
21 denied, respectively, on June 14, 2013. On December 17, 2013, Plaintiffs filed their First
22 Amended Complaint adding Indigo and LUCT as class representatives. Plaintiffs later filed the
23 operative Second Amended Complaint on June 4, 2014, correcting the applicable contracts for
24 Plaintiffs Indigo and LUCT.

25 Prior to engaging in settlement negotiations, the parties conducted substantial discovery
26 relating to Plaintiffs' and Class Members' claims. Warshaw Decl. ¶¶ 9-12. They exchanged
27 written discovery, including multiple sets of Document Requests, Special Interrogatories, Form
28 Interrogatories and Requests for Admissions. *Id.* ¶ 9. Universal produced more than 9,000 pages

1 of documents encompassing all contracts, profit participation statements and correspondence
2 relating to the named Plaintiffs' films and documents relating to a random sample of other films in
3 the Class. *Id.* ¶ 10. The parties extensively negotiated the parameters of Universal's production
4 relating to the random sample of films in the Class, ensuring that the production was fairly
5 representative of all of the films in the Class. *Id.* Plaintiffs also produced relevant documents to
6 Universal, and Universal deposed representatives for each of the named Plaintiffs. *Id.* ¶ 11.

7 On October 20, 2014, the parties first participated in a face-to-face meeting at Pearson,
8 Simon & Warshaw, LLP's office, during which they exchanged information regarding their
9 respective claims and defenses. Warshaw Decl. ¶ 13. That meeting led the parties to retain the
10 Hon. Louis M. Meisinger (Ret.) of ADR Services to serve as a mediator. *Id.* ¶ 14. The parties
11 attended an all-day mediation session with Judge Meisinger on November 21, 2014, and had
12 subsequent smaller sessions, meetings and correspondence both with and without Judge Meisinger
13 in the weeks following. *Id.* After several months of extensive negotiations, the parties entered
14 into a Stipulation and Agreement of Settlement on April 30, 2015. *Id.* ¶ 15.

15 On May 1, 2015, Plaintiffs filed their Motion for Preliminary Approval of the Settlement.
16 At the July 15, 2015 preliminary approval hearing, the Court instructed the parties to make certain
17 changes to the Settlement Agreement and notice documents; set a schedule for implementation of
18 the Settlement; and set a further preliminary approval hearing on August 11, 2015. Warshaw
19 Decl. ¶ 17.³ Plaintiffs submitted a supplemental report to the Court in advance of the August 11,
20 2015 hearing, and the Court granted preliminary approval to the Settlement at the hearing. *Id.* In
21 accordance with the Court's ordered schedule in its Preliminary Approval Order, Plaintiffs now
22 file their motion for attorneys' fees, costs and incentive awards.

23 **III. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE AND JUSTIFIED**
24 **AND SHOULD BE APPROVED BY THE COURT**

25 ³ The Court also requested confirmation that Plaintiffs had consented to any fee splitting
26 agreement among Class Counsel. Pursuant to the Court's request, and in accordance with the
27 Court's Final Approval Checklist, Plaintiffs and Class Counsel provided the Court with this
28 information. *See* Supplemental Declarations of Plaintiffs and Daniel L. Warshaw in support of
Plaintiffs' Motion for Preliminary Approval, filed on July 29, 2015.

1 Under California law, courts have discretion in common fund cases to apply either the
2 percentage-of-the-fund method or the lodestar method in calculating an attorneys' fee award.
3 *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 27 (2000); *In re Consumer Privacy*
4 *Cases*, 175 Cal. App. 4th 545, 557-58 (2009); *Natural Gas Anti-Trust Cases I, II, III & IV*, 2006
5 WL 5377849, at *3 (San Diego Super. Ct. Dec. 11, 2006) ("Both California state and federal
6 courts recognize two methods for evaluating the fairness and reasonableness of attorneys' fees in
7 class action settlements resulting in the creation of a common fund for the distribution to class
8 members: (1) the percentage-of-the-benefit method; or (2) the lodestar method plus multiplier
9 method."). The traditional approach in common fund cases has been to award a percentage of the
10 total fund under the "common fund" doctrine. *See Lealao*, 82 Cal. App. 4th at 27. This doctrine
11 maintains that "when a number of persons are entitled in common to a specific fund, and an action
12 brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of
13 that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund." *Serrano v.*
14 *Priest*, 20 Cal. 3d 25, 34 (1977). Use of the percentage method is appropriate where the efforts of
15 counsel "have resulted in the preservation or recovery of a certain or easily calculable sum of
16 money out of which sum or 'fund' the fees are to be paid." *Id.* at 35.

17 Numerous authorities advocate the use of the percentage method because it promotes
18 important values in the administration of justice. *See* Report of the Federal Courts Study
19 Committee (Judge Joseph F. Weiss, Chair), at 104-05 (1990); Report of the Third Circuit Task
20 Force on Court Awarded Attorney Fees, 108 F.R.D. 237, 255 (1985). The percentage method
21 emphasizes the results achieved rather than the time spent on the case, and "more closely aligns
22 the interests of the counsel and the class, i.e., class counsel directly benefit from increasing the
23 size of the class fund and working in the most efficient manner." *Lopez v. Youngblood*, 2011 WL
24 10483569, at *3 (E.D. Cal. Sept. 2, 2011). It also encourages early settlement of meritorious cases
25 and "ensur[es] that competent counsel continue to be willing to undertake risky, complex, and
26 novel litigation." *Manual for Complex Litigation*, § 14.121 (4th ed. 2004). As a practical matter,
27 the percentage method is easy to administer, conserves judicial resources, rewards counsel for
28 efficiency and provides predictability to counsel and the class before litigation commences, which

1 allows a proper weighing of the risks/reward inherent in a case before filing.⁴

2 Courts that use the percentage-of-the-fund method to calculate a fee award can apply the
3 lodestar method as a “cross-check.” *See Lealao*, 82 Cal. App. 4th at 45-46; *Chavez v. Netflix, Inc.*,
4 162 Cal. App. 4th 43, 65-66 (2008). Though this is not required, courts can in their discretion
5 “cross-check” an award of attorneys’ fees calculated by one method against an award calculated
6 by the other method in order to confirm the award is reasonable. *See Consumer Privacy Cases*,
7 175 Cal. App. 4th at 557. In this case, Plaintiffs request attorneys’ fees that are reasonable under
8 both the percentage method and the lodestar method. Their requested fees of \$4,333,333.33
9 represent one-third (33.33%) of the \$13 million Settlement Fund and one-sixth (16.67%) of the
10 total \$26 million settlement amount. This falls within the range of percentages awarded in similar
11 class action cases and is justified by, *inter alia*, the risks involved in the litigation, Class Counsel’s
12 experience and skill in overcoming those risks, and the tremendous result achieved in the case. A
13 lodestar cross-check confirms the reasonableness of Plaintiffs’ fee request, which represents a
14 multiplier of 3.39 based on Class Counsel’s historical hourly rates, also within the range of
15 multipliers awarded in similar class action cases.

16 A. **The Requested Attorneys’ Fees Are Reasonable, Fair and Appropriate under**
17 **the Percentage-of-the-Fund Approach**

18 Under the percentage method, California courts have recognized that “fee awards in class
19 actions average around one-third of the recovery.” *Chavez*, 162 Cal. App. 4th at 66 n.11; *Natural*
20 *Gas Anti-Trust Cases*, 2006 WL 5377849, at *3. The Ninth Circuit uses a 25% “benchmark” as
21 the “starting point for analysis,” which can be adjusted upward or downward to account for any
22 special circumstances in the case. *Vizcaino v. Microsoft Corp.*, 290 F. 3d 1043, 1047 (9th Cir.

23 ⁴ The Court’s Final Approval Checklist contains an item regarding attorneys’ fees that quotes a
24 sentence from *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1809 (1996), stating: “Later cases
25 cast doubt on the use of the percentage method to determine attorney fees in California class
26 actions.” However, the Court would be mistaken to apply the rationale from *Dunk* to this case
27 because *Dunk* was predicated on the fact that there was no common fund and no easily calculable
28 sum of money. The court’s holding does not support the conclusion that cases that do involve a
common fund or easily calculable sum of money, like the case at hand, have cast doubt on the use
of the percentage method to determine attorneys’ fees.

1 2002); *see also Johansson-Dohrmann v. Cbr Sys., Inc.*, 2013 WL 3864341, at *8 (S.D. Cal. Jul.
2 24, 2013) (“Under the percentage method, California has recognized that most fee awards based
3 on either a lodestar or percentage calculation are 33 percent and has endorsed the federal
4 benchmark of 25 percent.”). With respect to the settlement fund amount, “the total fund could be
5 used to measure whether the portion allocated to the class and to attorney fees is reasonable.”
6 *Consumer Privacy Cases*, 175 Cal. App. 4th at 554.

7 “Whether relying on the percentage or lodestar method for determining a fee award,
8 California courts consider the same basic factors.” *In re California Indirect Purchaser X-Ray*
9 *Film Antitrust Litig.*, 1998 WL 1031494, at *3 (San Francisco Super. Ct. Oct. 22, 1998). As
10 relevant here, those factors include: (1) the result Class Counsel obtained; (2) the novelty and
11 difficulty of the questions involved, and the skill displayed in presenting them; (3) the extent to
12 which the nature of the litigation precluded other employment by Class Counsel; and (4) the
13 contingent nature of the fee award.⁵ *See Serrano*, 20 Cal. 3d at 49; *Dunk*, 48 Cal. App. 4th at 1810
14 n.21. Applying these factors, California courts have often approved attorney fee awards under the
15 percentage method of 33.33% or more. *See, e.g., In re California Indirect-Purchaser Plasticware*
16 *Antitrust Litig.*, Case Nos. 961814, 963201 and 963590 (San Francisco Super. Ct. 1995)
17 (approving 33.33% award); *In re Liquid Carbon Dioxide Cases*, J.C.C.P. 3012 (San Diego Super.
18 Ct. 1996) (approving 33.33% award); *In re Facsimile Paper Antitrust Litig.*, Case Nos. 963598,
19 964899 and 967137 (San Francisco Super. Ct. 1997) (approving 33.33% award); *In re Milk*
20 *Antitrust Litigation*, Case No. BC070061 (L.A. Sup. Ct. 1998) (approving 33.33% award); *Wren v.*
21 *RGIS Inventory Specialists*, 2011 U.S. Dist. Lexis 38667, at *78 (N.D. Cal. Apr. 1, 2011)
22 (approving lodestar-based fee equal to 42% of fund). As shown below, consideration of the above
23 factors in this case supports the reasonableness of Plaintiffs’ requested fee award.

24 **1. Class Counsel Achieved an Extraordinary Result for the Class**

25 The Settlement in this case is truly an outstanding result for the Class. Through their hard

26 _____
27 ⁵ These are the same factors that courts consider when determining whether to adjust the lodestar
28 upward using a “multiplier.” *See Ketchum v. Moses* 24 Cal. 4th 1122, 1132 (2001).

1 work and able negotiation, Class Counsel obtained \$26 million in total compensation for the
2 Class, consisting of two separate funds that provide relief to all Class Members. The first fund,
3 the \$13 million Settlement Fund, will be used to pay Recouped Class Members both for past
4 royalties allegedly owed and for future royalties not yet earned. In this way, Recouped Class
5 Members will not only be paid for past profit participation they never received but will get the
6 benefit of money *now* for future profit participation they haven't yet made. The parties previously
7 estimated for the Court that, based on the number of Recouped Class Members identified by
8 Universal (440), the average payouts to Recouped Class Members will be as follows:

- 9 • The average payout to the top 20 Recouped Class Members will be ~\$174,000.
- 10 • The average payout to the top 100 Recouped Class Members will be ~\$69,000.
- 11 • The average payout to the top 200 Recouped Class Members will be ~\$40,000.
- 12 • The average payout to all Recouped Class Members will be ~\$19,000.

13 *See* Joint Settlement Relief Update and Notice of Errata in regard to Plaintiffs' Motion for
14 Preliminary Approval at 2. If any money is left over after the initial distribution of payments,
15 either a second pro rata distribution will occur (if there are sufficient funds to justify it) or the
16 remaining funds will be donated *cy pres* to the Motion Picture & Television Fund. *See* Settlement
17 Agreement § 4.3. In no event will any money from the \$13 million Settlement Fund revert to
18 Universal. *Id.* § 1.31.

19 The second fund created by the Settlement, the \$13 million Accounting Relief Fund, will
20 be used to credit the accounts of Unrecouped Class Members, whose films have not yet realized
21 enough revenue for them to receive profit participation. The \$13 million in accounting
22 adjustments will bring some Unrecouped Class Members into profits—meaning they will
23 immediately begin receiving profit participation on their previously underwater films—or, at the
24 very least, bring them closer to profits. Thus, as a direct result of the Settlement, Unrecouped
25 Class Members will either begin receiving actual payments or will move closer to receiving such
26 payments, neither of which would have occurred but for the Settlement. Universal will apply the
27 adjustments on each eligible Class Member's account automatically, without requiring the Class
28 Member to do anything to receive this benefit.

1 In fact, both Recouped and Unrecouped Class Members will be able to receive the benefits
2 of the Settlement without having to take any affirmative action. This obviates the need for Class
3 Members to file a claim to participate in the Settlement, as they will simply receive a check (if
4 they are Recouped) or the benefit of an accounting adjustment (if they are Unrecouped). For
5 many Class Members, the relief under the Settlement is particularly valuable because, in the
6 absence of the Settlement, they would have to incur significant out-of-pocket costs to conduct an
7 audit in order to calculate how much money they are potentially owed. Most Class Members do
8 not have the resources to pursue an individual audit or lawsuit, and the Settlement provides them
9 with substantial relief that otherwise would not have been available to them.

10 Because Class Members will receive the full benefits of the Settlement (\$13 million in
11 cash and \$13 million in accounting credits), Plaintiffs submit that the value of the Settlement can
12 be accurately monetized at \$26 million. This is not a case where the relief to the Class depends on
13 the number of claims made or the ultimate value of injunctive relief; rather, Universal's
14 responsibility to the Class is fixed at \$26 million. Thus, while Plaintiffs' requested attorneys' fees
15 represent 33.33% of the \$13 million Settlement Fund—which, as shown herein, on its own is
16 reasonable—they represent only 16.67% of the total \$26 million settlement amount. Plaintiffs
17 believe that \$26 million is the true value of the Settlement, which is an extraordinary result for the
18 Class in light of the challenges and risks Plaintiffs faced in this case (discussed in detail below).

19 **2. The Case Involved Novel and Complex Legal Issues, Requiring**
20 **Tremendous Skill and Superior Work to Overcome**

21 This litigation was significant, first and foremost, because it challenged an ingrained
22 *industry-wide* practice of calculating profit participation based on 20% of gross receipts. As the
23 Court is aware, this case is one of five parallel class actions against the major movie studios, all of
24 which allege a similar theory that Home Video and EST Revenue should be reported based on
25 100% of gross receipts, rather than 20%. Plaintiffs in this case took on one of the major movie
26 studios, Universal, and argued for a sea change in an industry that has been following the same
27 practice for many decades. This was no easy feat, and Universal had numerous defenses to
28 Plaintiffs' claims at every step of the litigation. Universal argued, *inter alia*, that its practice of

1 accounting for Home Video and EST Revenue did not violate Class Members’ Profit Participation
2 Contracts; that its practice did not cause damage to Plaintiffs because it did not deduct certain
3 charges under the 100% gross receipts calculation; and that Plaintiffs would not be able to obtain
4 class certification due to differences in the contracts and experiences of the Class Members.

5 Despite these challenges, Plaintiffs persevered and prevailed at critical points in the
6 litigation. Plaintiffs defeated Universal’s demurrer and motion to strike and were confident that
7 they could defeat Universal’s motion for summary adjudication on their conversion cause of
8 action (withdrawn by Universal). Plaintiffs also believed that they would be able to obtain class
9 certification and prevail at trial. Still, there was no way to guarantee either of these outcomes,
10 especially in this case which involved novel and complex issues without any precedent. The fact
11 that Class Counsel were able to achieve the results they did for the Class despite the risks they
12 faced speaks to the level of skill Class Counsel brought to bear in this case. Negotiating the
13 details of the Settlement was protracted and difficult, requiring many months of negotiations
14 following the parties’ formal mediation. *See* Warshaw Decl. ¶¶ 13-15. Before even beginning
15 settlement negotiations, the parties conducted substantial discovery, including multiple rounds of
16 written discovery; the production and review of thousands of pages of contracts, profit
17 participation statements and correspondence; and the depositions of representatives for each of the
18 named Plaintiffs. *Id.* ¶¶ 9-12. After the parties executed the Settlement Agreement, Class Counsel
19 continued to work diligently on the case, working closely with the Settlement Administrator to
20 oversee the notice process and providing the Court with supplemental information about the
21 Settlement and Notice. In short, “prosecuting this case required a significant commitment of time,
22 resources, and energy from Class Counsel, and the relief achieved simply would not have been
23 possible but for the commitment and skill of Class Counsel.” *Garner v. State Farm Mutual Auto.*
24 *Ins. Co.*, 2010 WL 1687829, at *2 (N.D. Cal. Apr. 22, 2010).

25 **3. Class Counsel Took on a Heavy Contingent Risk, Advanced All**
26 **Litigation Costs and Worked on This Case Without Any Guarantee of**
Success

27 The contingent risk of receiving little or no recovery for significant legal work is another
28 major factor in considering an appropriate award of attorneys’ fees. *See, e.g., Ketchum*, 24 Cal.

1 4th at 1128, 1132 (“A contingent fee contract, since it involves a gamble on the result, may
2 properly provide for a larger compensation than would otherwise be reasonable.”). As the
3 accompanying declarations of Class Counsel attest, Class Counsel have been working diligently
4 on this case for nearly three years on a pure contingency basis with no guarantee of recovery.
5 Class Counsel have collectively spent over 2000 hours working on this case and have advanced all
6 out-of-pocket expenses, including discovery costs and mediation-related costs, with no promise of
7 repayment. *See* Warshaw Decl. ¶ 24; Johnson Decl. ¶ 25; Koncius Decl. ¶ 10; Boucher Decl. ¶¶
8 13-15. Indeed, Class Counsel faced the possibility that they would spend years litigating this
9 complex case and recover nothing. Class Counsel’s high-risk and successful efforts on behalf of
10 the Class further warrant their requested attorneys’ fees.

11 For all the reasons discussed above, particularly the outstanding result obtained by Class
12 Counsel; the issues and challenges Class Counsel faced and overcame; the extensive and high-
13 quality work Class Counsel performed; and the burdens Class Counsel bore in pursuing this
14 litigation on a pure contingency basis, Plaintiffs’ requested fee award is reasonable as a percentage
15 of either the \$13 million Settlement Fund (33.33%) or both the Settlement Fund and the
16 Accounting Relief Fund (16.67%).

17 **B. The Requested Attorneys’ Fees Are Reasonable, Fair and Appropriate under**
18 **the Lodestar Approach**

19 The first step in awarding fees under the lodestar method is to calculate the lodestar
20 amount, which is the number of hours reasonably performed at a reasonable hourly rate. *Serrano*,
21 20 Cal. 3d at 48; *Vo v. Las Virgines Mun. Water Dist.*, 79 Cal. App. 4th 440 (2000). Class
22 counsel’s lodestar serves as the “touchstone” for the fee award. *Vo*, 79 Cal. App. 4th at 445-46.
23 The court may then adjust the lodestar amount based on the factors discussed above, including:
24 “(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them,
25 (3) the extent to which the nature of the litigation precluded other employment by the attorneys,
26 [and] (4) the contingent nature of the fee award.” *Ketchum*, 24 Cal. 4th at 1132. Other relevant
27 factors include “the time limitations imposed by the litigation, the amount at stake, and the result
28 obtained by counsel.” *City of Oakland v. Oakland Raiders*, 203 Cal. App. 3d 78, 83 (1988).

1 Class Counsel’s requested fee represents a multiplier on their lodestar of 3.39 based on
2 their historical hourly rates. Such a multiplier is well within the range of multipliers awarded in
3 similar cases and is well-justified here, given the factors discussed above.

4 **1. Class Counsel’s Lodestar Is Reasonable and Compensable**

5 “Under the lodestar method, a party who qualifies for a fee should recover for all hours
6 reasonably spent unless special circumstances would render the award unjust.” *Vo*, 79 Cal. App.
7 4th at 446; *see also Weeks v. Baker & McKenzie*, 63 Cal. App. 4th 1128, 1175 (1998) (“[A]n
8 attorney who takes on [a complex] case can anticipate receiving full compensation for every hour
9 spent litigating a claim against even the most polemic opponent.”); *Ketchum*, 24 Cal. 4th at 1132.
10 Compensable activities under the lodestar method include both pre-litigation activities (*e.g.*,
11 interviewing the client, investigating the facts, researching the law and preparing the initial
12 pleading) and litigation activities (*e.g.*, conducting discovery, conferring with clients, drafting
13 pleadings, making court appearances, travel time and settlement negotiations). *Webb v. Bd. of*
14 *Edu.*, 471 U.S. 234, 243 (1985); *Stokus v. Marsh*, 217 Cal. App. 3d 647, 655-56 (1990). A review
15 of billing records is not necessary to award attorneys’ fees; the court can accept declarations of
16 counsel setting forth the hours worked and tasks performed. *See In re Sutter Health Uninsured*
17 *Pricing Cases*, 171 Cal. App. 4th 495, 511-12 (2009) (“We see no reason why [the court] could
18 not accept the declarations of counsel attesting to the hours worked, particularly as he was in the
19 best position to verify those claims by reference to the various proceedings in the case.”); *Wershba*
20 *v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254-55 (2001) (“California case law permits fee
21 awards in the absence of detailed time sheets.”).⁶

22 As of October 11, 2015, Class Counsel spent a total of 2002.175 hours working on this
23 case and incurred a combined lodestar of \$1,278,122.03 based on their historical hourly rates. A
24 breakdown of these fees and hours between the law firms is set forth in the below chart:
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27 ⁶ Nevertheless, pursuant to the requirement set forth in the Court’s Final Approval Checklist,
28 Class Counsel are lodging their billing records with the Court for review.

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Class Counsel	Hours	Lodestar
Pearson, Simon & Warshaw, LLP	665.875	\$433,900.53
Johnson & Johnson LLP	623.8	\$409,076.50
Kiesel Law LLP	519.1	\$291,833.30
Boucher LLP (including Khorrami)	193.4	\$108,869.50
Total	2002.175	\$1,278,122.03

The work performed, hours and lodestar for each of the above law firms are detailed in the concurrently filed declarations of Class Counsel. These declarations detail the amount of work that was necessary in order to obtain a successful result on behalf of the Class Members at every stage of the litigation, including: (1) pre-litigation research and investigation; (2) drafting the relevant pleadings and motions, including complaints, oppositions to Universal’s demurrer and motion to strike and motions to approve the Settlement; (3) conducting discovery, including multiple rounds of written discovery, reviewing documents produced by Universal and defending Plaintiffs’ depositions; (4) settlement related activities, including preparing for and attending mediation, drafting mediation briefs and engaging in numerous settlement conferences; and (5) obtaining Court approval of the Settlement Agreement. *See* Warshaw Decl. ¶¶ 6-20; Johnson Decl. ¶¶ 10-19; Koncius Decl. ¶¶ 3-8; Boucher Decl. ¶¶ 4-5. Each hour expended by Class Counsel on this case has ultimately benefitted the Class Members, and Class Counsel’s lodestar amount is reasonable and compensable.

2. Class Counsel’s Hourly Rates Are Reasonable and Have Been Approved by Other Courts

The test for the reasonableness of an attorney’s hourly rate is whether it is “within the range of reasonable rates charged by and judicially awarded to comparable attorneys for comparable work.” *Children’s Hosp. & Med. Ctr. v. Bunt*, 97 Cal.App.4th 740, 783 (2002); *see also PCLM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000) (“The reasonable hourly rate is that prevailing in the community for similar work.”). In performing this analysis, courts look to

1 the experience and reputation of class counsel, the complexity of the issues involved, the
2 geographic market in which the case is litigated, and other factors affecting the litigation. *See*
3 *Oakland Raiders*, 203 Cal. App. 3d at 82 (affirming a trial court’s award based on an hourly rate
4 that falls in line with the rates charged by “top law firms in the Bay Area”).

5 The attorney declarations and supporting exhibits establish the basis and calculation for the
6 hourly rates of the attorneys and paralegals at each firm who worked on this case. Each of the
7 firms composing Class Counsel has experience handling class actions and complex litigation. *See*
8 *Warshaw Decl.* ¶¶ 25-29; *Johnson Decl.* ¶¶ 3-6; *Koncius Decl.* ¶¶ 11-12; *Boucher Decl.* ¶¶ 16-17.
9 Moreover, each of the firms involved in this case has specific experience litigating class actions in
10 the entertainment industry, including the alleged underpayment of royalties to professionals in the
11 film and music industries. This experience was invaluable in adjudicating the issues presented in
12 this case, and supports the reasonableness of Class Counsel’s hourly rates. Class Counsel billed
13 this case at their usual and customary hourly billing rates, which have been approved by other
14 courts presiding over similar complex class action lawsuits, including in California. *See, e.g.*,
15 *Warshaw Decl.* ¶¶ 27-28.

16 **3. A Lodestar Multiplier Is Warranted Based on Class Counsel’s**
17 **Handling of this Case and the Results Obtained**

18 Once calculated, the lodestar can be adjusted upward using a “multiplier” based on several
19 factors, including: the novelty and difficulty of the litigation; class counsel’s skill in handling it;
20 the burdens imposed by taking on the case; the contingent nature of the fee award; and the quality
21 of the results achieved. *See Ketchum*, 24 Cal. 4th at 1132; *Oakland Raiders*, 203 Cal. App. 3d at
22 83. There is no rigid formula and each factor should be considered only where appropriate. *See*
23 *Serrano*, 20 Cal.3d at 49; *The People ex rel. Dep’t. of Transp. v. Yuki*, 31 Cal. App. 4th 1754,
24 1771 (1995). In appropriate cases, “[m]ultipliers can range from 2 to 4 or even higher.” *Wershba*,
25 91 Cal.App.4th at 225; *see also Chavez*, 162 Cal. App. 4th at 66 (affirming use of 2.5 multiplier to
26 award attorneys’ fee of \$2,040,000 in a case where lodestar was \$805,000 based on, *inter alia*, the
27 success achieved and the quality of class counsel’s representation).

28 In this case, consideration of the above factors supports the lodestar multiplier sought by

1 Class Counsel. The requested fee represents a 3.39 multiplier based on Class Counsel’s historical
2 hourly rates. For the reasons discussed above, such a multiplier is warranted in light of the result
3 obtained by Class Counsel; the complex legal and factual issues involved in this litigation; the
4 skill and work performed by Class Counsel in handling those complex issues; and the significant
5 risks, costs and uncertainties borne by Class Counsel in taking on this case. Class Counsel’s
6 requested multiplier falls within the range approved in other complex, class action litigation, and
7 is reasonable given the circumstances of this case. As a result, the lodestar cross-check supports
8 an award of Plaintiffs’ requested attorneys’ fees.

9 **IV. PLAINTIFFS SHOULD BE REIMBURSED THEIR LITIGATION COSTS**

10 In addition to attorneys’ fees incurred, attorneys in a class action may be reimbursed for
11 costs incurred “in the ordinary course of prosecuting [a] case.” *California Indirect Purchaser X-*
12 *Ray Film Antitrust Litig.*, 1998 WL 1031494, at *11; *Natural Gas Anti-Trust Cases*, 2006 WL
13 5377849, at *4. As set forth in the attorney declarations, Class Counsel have incurred \$19,893.20
14 in litigation costs to date during the ordinary course of this litigation. *See* Warshaw Decl. ¶ 24;
15 Johnson Decl. ¶ 25; Koncius Decl. ¶ 10; Boucher Decl. ¶¶ 13-15. These costs include filing fees,
16 computerized legal research, travel expenses, deposition expenses and mediation-related expenses
17 that were incurred in the normal course of business. *See id.* Under the Settlement Agreement,
18 Class Counsel are entitled to apply to the Court for reimbursement of up to \$125,000 in litigation
19 costs and expenses. *See* Settlement Agreement § 19. However, Class Counsel have incurred less
20 than that amount and request reimbursement only for the amount actually incurred. Their costs
21 incurred were reasonable and essential to the successful prosecution of this lawsuit, and should be
22 awarded by the Court.

23 **V. THE COURT SHOULD AWARD INCENTIVE AWARDS TO THE CLASS**
24 **REPRESENTATIVES**

25 Courts typically award incentive awards to the named plaintiffs in a class action for their
26 work performed on behalf of the class. *In re Cellphone Fee Termination Cases*, 186 Cal. App. 4th
27 1380, 1393-94 (2010). “Incentive awards are fairly typical in class action cases . . . and are
28 intended to compensate class representatives for work done on behalf of the class, to make up for

1 financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their
2 willingness to act as a private attorney general.” *Id.* (citing *Rodriguez v. West Publ’g Corp.*, 563
3 F.3d 948, 958-59 (9th Cir. 2009)) (emphasis omitted). Here, Plaintiffs request an incentive award
4 of \$10,000 each for the three class representatives, CHP, Indigo and LUCT. These awards are
5 justified by the time and effort the class representatives dedicated to this case and the reputational
6 risks they faced in associating their names with a well-publicized class action lawsuit against a
7 major movie studio. *See In re Netflix Privacy Litig.*, 2013 WL 1120801, at *11 (N.D. Cal. Mar.
8 18, 2013) (incentive awards recognized that class representatives “assumed the responsibilities and
9 burdens of acting as representatives” and faced “public scrutiny through media coverage of this
10 high profile suit”). More than the typical class representative, Plaintiffs here put their names and
11 livelihoods at risk by pursuing significant litigation against a movie studio with whom they have
12 an ongoing relationship. Moreover, Plaintiffs were actively engaged in the litigation, including by
13 participating in the discovery process, reviewing documents and having their depositions taken.


14 The requested incentive awards for the class representatives comport with previous case
15 law. California state and federal courts have approved incentive awards of \$10,000 or more,
16 particularly in class actions that involved significant risk and substantial efforts expended by the
17 class representatives. *See, e.g., Cellphone Fee Termination Cases*, 186 Cal. App. 4th at 1395
18 (approving \$10,000 incentive awards to each of the four class representatives); *In re Warner*
19 *Music Group Corp. Digital Downloads Litig.*, Case No. 12-cv-00559-RS (N.D. Cal. Jan. 12, 2015)
20 (approving \$10,000 incentive awards to each of the six current and former class representatives in
21 a class action against a major music label alleging the underpayment of royalties) (Order attached
22 as Ex. E to Warshaw Decl.); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 2013 WL 1365900, at
23 *17 (N.D. Cal. Apr. 3, 2013) (approving \$15,000 incentive awards to each of the 40 court-
24 appointed class representatives). The \$10,000 incentive awards sought by Plaintiffs in this case
25 are justified and should be approved.

26 **VI. CONCLUSION**

27 Based on the foregoing, Plaintiffs respectfully request an award of attorneys’ fees, costs
28 and incentive awards in the amounts set forth above.

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