UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IN RE ANIMATION WORKERS ANTITRUST LITIGATION	No. 3:14-CV-4062 LHK
	[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT WITH BLUE SKY STUDIOS
This Document Relates to: ALL ACTIONS	

WHEREAS plaintiffs, on behalf of themselves and of the proposed stipulated settlement class ("Settlement Class"), and Defendant Blue Sky Studios, Inc. ("Blue Sky"), have agreed, subject to Court approval following notice to the Settlement Class and a hearing, to settle the above-captioned matter ("Lawsuit") upon the terms set forth in the Settlement Agreement;

WHEREAS, this Court has reviewed and considered the Settlement Agreement entered into among the parties, together with all exhibits thereto, the record in this case, and the briefs and arguments of counsel;

WHEREAS, Plaintiffs have applied for an order granting preliminary approval of the Settlement Agreement;

WHEREAS, this Court preliminarily finds, for purposes of settlement only, that the action meets all the prerequisites of Rule 23 of the Federal Rules of Civil Procedure;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Unless otherwise defined herein, all terms that are capitalized herein shall have the same meaning ascribed to those terms in the Settlement Agreement.

2. The Court has jurisdiction over this Action (and all actions and proceedings consolidated in the Action), Plaintiffs, Class Members, Blue Sky, the remaining defendants, and any party to any agreement that is part of or related to the Settlement Agreement.

3. Federal Rule of Civil Procedure 23(e) provides that a proposed settlement in a class action case must be initially approved by the Court. The Court is to determine whether the proposed settlement is "fair, reasonable, and adequate." Rule 23(e)(2). As a first step, plaintiffs must seek preliminary approval of the proposed settlement, which is an "initial evaluation" of the fairness of a proposed settlement. Manual for Complex Litigation (Fourth) § 21.632 (2015). In determining whether the proposed settlement is "fundamentally fair, adequate, and reasonable" the Court makes a preliminary determination of whether to give notice of the proposed settlement to the class members and an opportunity to voice approval or disapproval of the settlement. *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). Preliminary approval is not a dispositive assessment of the fairness of the proposed settlement, but rather determines whether it

falls within the "range of reasonableness." *In re High-Tech Employee Litig.*, 2013 U.S. Dist. WL 6328811, at *1 (N.D. Cal. Oct. 30, 2013) ("*High-Tech I*") (citation omitted); *see also Collins v. Cargill Meat Solutions Corp.*, 274 F.R.D. 294, 301-302 (E.D. Cal. 2011). Preliminary approval establishes an "initial presumption" of fairness, such that notice may be given to the class and the class may have a "full and fair opportunity to consider the proposed [settlement] and develop a response." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007); *Williams v. Vukovich*, 720 F.2d 909, 921 (6th Cir. 1983).

4. Preliminary approval of a settlement and notice to the proposed class is appropriate: "[i]f [1] the proposed settlements appears to be the product of serious, informed, non-collusive negotiations, [2] has no obvious deficiencies, [3] does not improperly grant preferential treatment to class representatives or segments of the class, and [4] falls with the range of possible approval." *In re Tableware*, 484 F. Supp. 2d at 1079. It is within the "sound discretion of the trial judge" to approve or reject the settlement. *Zepeda v. Paypal, Inc.*, 2015 U.S. Dist. WL 6746913, at *4 (N.D. Cal. Nov. 5, 2015). In instances where a settlement results from arm's length negotiations with involvement of experienced class action counsel and relevant discovery has been provided, there is a "presumption that the agreement is fair." *Linney v. Cellular Alaska P'ship*, 1997 U.S. Dist. WL 450064, at *5 (N.D. Cal. July 18, 1997).

5. While the Court is not to consider at this stage whether final approval is warranted, all the relevant factors weigh in favor of approving the proposed Settlement Agreement. First, the settlement is the result of arm's length negotiations among experienced counsel, following extensive discovery on both sides. Second, the agreed-upon consideration of $5.95 million is substantial, particularly in light of the fact that it represents approximately 25 percent of plaintiffs' expert's calculation of damages attributable to Settlement Class members who worked at Blue Sky during the relevant time period. This percentage is notably higher than the percentage approved by this Court in *High-Tech*. *See In re High-Tech Litig.*, Case No. 11-cv-02509 LKH, Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, at 4, ECF No. 1054 (total settlement amount of $435 million was 14.26% of $3.05 billion in damages calculated by plaintiffs' expert). Third, as a matter of law, the remaining defendants remain jointly and severally liable for all

damages caused by the conspiracy, including damages caused by Blue Sky. *See Ward v. Apple*, 791 F.3d 1041, 1048 (9th Cir. 2015) (citations omitted). And fourth, Blue Sky has agreed to cooperate with plaintiffs in authenticating documents, and to not assist the remaining defendants with the litigation. *See In re Mid-Atlantic Toyota Antitrust Litig.*, 564 F. Supp. 1379, 1386 (D. Md.1983). As a result, the Court finds notice to the Proposed Class appropriate here.

6. The Court further finds that the proposed Plan of Allocation, which is attached to the Motion, is fair, reasonable, and adequate, and is hereby preliminarily approved, subject to further consideration at the Fairness Hearing.

7. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court preliminarily certifies, for purposes of effectuating this settlement, a Settlement Class as follows:

> All animation and visual effects employees employed by defendants in the United States who held any of the jobs listed in Ashenfelter Report Appendix C during the following time periods: Pixar (2001-2010), Lucasfilm Ltd., LLC (2001-2010), DreamWorks Animation SKG, Inc. (2003-2010), 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 operation or administrative tasks.

The specific job titles from Ashenfelter Report Appendix C [Dkt. No. 210] are provided again in the declaration accompanying plaintiffs' motion for preliminary approval of the Settlement with Blue Sky Studios, Inc. *See* Friedman Decl., Ex. B.

8. Blue Sky takes no position regarding certification of the Proposed Settlement Class.

9. The Court hereby conditionally certifies the Settlement Class, subject to final approval of the Settlement.[1] Rule 23 provides four requirements to certify a class: "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or

[1] The Court is required to conditionally certify a proposed settlement class before it can preliminarily approve the class settlement. *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 619 (1997). The requirements are identical with respect to certification for litigation and for settlement, except that for settlement the Court need not find the class would be manageable under Rule 23(b)(3)(D) because there is no trial.

defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a). Each of these requirements is addressed below.

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

11. The class is also ascertainable. As this Court previously recognized, "a class is ascertainable if the class is defined with objective criteria and if it is administratively feasible to determine whether a particular individual is a member of the class." *In re Yahoo Mail Litig.*, 308 F.R.D. 577, 596 (N.D. Cal. 2015) (Koh, J.) (quotation omitted). In this case, class members are defined by specific job titles, from defendants' own employment databases, which also identify each individual class member corresponding to those job titles. This Court found ascertainability satisfied through the use of similar methodologies in *High-Tech*. *See* 985 F. Supp. 2d 1167, 1182 (N.D. Cal. Oct. 24, 2013).

12. The proposed class also satisfies Rule 23(a)(2)'s commonality requirement. Each class member alleges the same injury – suppressed compensation – from the same unlawful conduct: Defendants' alleged conspiracy to restrain competitive labor market forces to suppress compensation through non-solicitation agreements and collusive coordination on compensation. "Where an antitrust conspiracy has been alleged, courts have consistently held that 'the very nature of a conspiracy antitrust action compels a finding that common questions of law and fact exist.'" *Id.* at 1180 (quoting *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 267 F.R.D. 583, 593 (N.D. Cal. 2010)). To satisfy the commonality requirement, "[e]ven a single [common] question will do," *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2556 (2011) (quotation omitted), and "[a]ntitrust liability alone constitutes a common question that 'will resolve an issue that is central to the validity' of each class member's claim 'in one stroke.'" *High-Tech*, 985 F. Supp. 2d at 1180 (*quoting Dukes*, 131 S. Ct. at 2551). The existence of defendants' compensation-suppression conspiracy is a common question for every class member, thus satisfying the commonality requirement.

13. Plaintiffs also meet the typicality requirement. "In antitrust cases, typicality usually will be established by plaintiffs and all class members alleging the same antitrust violations by

defendants." *High-Tech*, 985 F. Supp. 2d at 1181 (quotation omitted). In this case, plaintiffs have alleged the same antitrust violation as to every class member, making their claims typical of the class as a whole.

14. The Court further finds that Plaintiffs will fairly and adequately represent the interests of the Class. The test for adequacy turns on two questions: "(1) whether named plaintiffs and their counsel have 'any conflicts of interest with other class members,' and (2) whether named plaintiffs and their counsel will 'prosecute the action vigorously on behalf of the class.'" *Id.* at 1181 (*quoting Hanlon*, 150 F.3d at 1020). The named plaintiffs do not have conflicts of interest with other class members. Plaintiffs and their counsel have also demonstrated they will prosecute this action vigorously, and the Court trusts that they will continue to do so.

15. The Court must further find that "questions of law or fact common to class members predominate over any questions affecting individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). To meet the predominance requirement of Rule 23(b)(3), a plaintiff must establish that the "issues in the class action that are subject to generalized proof, and thus applicable to the class as a whole . . . predominate over those issues that are subject only to individualized proof." *In re Visa Check/MasterMoney Antitrust Litig.*, 280 F.3d 124, 136 (2nd Cir. 2001) (citations omitted). There is no requirement that common evidence predominate for each element of the claim. *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 133 S. Ct. 1184, 1194 (2013) ("Rule 23(b)(3), however, does *not* require a plaintiff seeking class certification to prove that each elemen[t] of [her] claim [is] susceptible to classwide proof." (emphasis and brackets in original) (quotation omitted)). In antitrust conspiracy cases, "courts repeatedly have held that the existence of the conspiracy is the predominant issue and warrants certification even where significant individual issues are present." *In re Cathode Ray Tube* ("*CRT*") *Antitrust Litig.*, 308 F.R.D. 606, 620 (N.D. Cal. 2015) (quotation omitted); *see also In re Rubber Chem. Antitrust Litig.*, 232 F.R.D. 346, 352 (N.D. Cal. 2005) ("[T]he Court notes that the 'great weight of authority suggests that the dominant issues in cases like this are whether the charged conspiracy existed and whether price-fixing occurred.'") (citation omitted).

16. The Court finds that there are common questions regarding defendants' alleged conspiracy to suppress compensation. Plaintiffs allege that defendants conspired to suppress compensation by agreeing not to solicit each other's employees, to take special procedures when contacted by each other's employees, and to coordinate compensation policies through direct, collusive communications. In addition, plaintiffs have also presented evidence regarding the class-wide impact of defendants' scheme through the expert report of Princeton economist Dr. Orley Ashenfelter. Dr. Ashenfelter's report, drawing on economic theory, the documentary evidence, and standard statistical modeling and econometric analysis, finds that defendants' compensation was generally suppressed, and that this suppression impacted all or nearly all of the class, not just those who would have been directly recruited.

17. The Court further finds that litigating this matter as a class action is superior to other available methods. *See LCD*, 267 F.R.D. at 314 ("[I]f common questions are found to predominate in an antitrust action, . . . courts generally have ruled that the superiority prerequisite of Rule 23(b)(3) is satisfied." (ellipses in original)). In light of the substantial common proof at issue, requiring class members to proceed individually "would merely multiply the number of trials with the same issues and evidence." *High-Tech*, 985 F. Supp. 2d at 1228.

18. Based on the findings herein, and the documents and pleadings submitted in this case, the Court conditionally certifies the Settlement Class.

19. The Court designates the following as Settlement Class Counsel: Cohen Milstein Sellers & Toll, PLLC; Hagens Berman Sobol Shapiro LLP; and Susman Godfrey L.L.P.

NOTICE TO CLASS MEMBERS

20. The Court appoints the firm of Kurtzman Carson Consultants ("KCC") as Claims Administrator.

21. The Court approves the Proposed Settlement of Class Action ("the Settlement Notices"), and finds that the dissemination plan complies fully with the requirements of Rule 23 and due process of law, and is the best notice practicable under the circumstances. Hence, when notice is completed, it shall constitute due and sufficient notice of the proposed Settlement Agreement and the

Fairness Hearing to all persons affected by and/or entitled to participate in the Settlement Agreement, in full compliance with the applicable requirements of Rule 23 and due process.

22. The Claims Administrator will be responsible for providing notice to potential class members consistent with Rule 23(c)(2)(B). The Claims Administrator will mail and/or email notice to the potential class members, and post notice on the internet, within 21 days of receipt of the contact information for employees and former employees of the defendants who appear to match the class definition. The proposed forms of notice submitted by the parties are approved.

PRODUCTION OF CONTACT AND COMPENSATION INFORMATION FOR CLASS MEMBERS

23. Within twenty (20) days after the date of the Preliminary Approval order, the defendants shall provide to the Claims Administrator in an electronic format for the following time periods:

- Pixar (Jan. 1, 2001 – Dec. 31, 2010)
- Lucasfilm Ltd., LLC (Jan. 1, 2001 – Dec. 31, 2010)
- DreamWorks Animation SKG, Inc. (Jan. 1, 2003 – Dec. 31, 2010)
- The Walt Disney Company (Jan. 1, 2004 – Dec. 31, 2010)
- Sony Pictures Animation, Inc. and Sony Pictures Imageworks, Inc. (Jan. 1, 2004 – Dec. 31, 2010)
- Blue Sky Studios, Inc. (Jan. 1, 2005 – Dec. 31, 2010)
- Two Pic MC LLC f/k/a ImageMovers Digital LLC (Jan. 1, 2007 – Dec. 31, 2010)

contact information, Social Security Numbers, the last location (by state) where the employee worked for the defendant for state tax reporting purposes, and compensation information for Class Members, identified by job titles [*see* Friedman Decl., Ex. B], to the extent such information exists in each defendant's human resources databases. The Claims Administrator shall utilize Class Members' information provided by the defendants solely for purposes of effectuating Notice and administering the Settlement Fund, including withholding taxes, and shall keep the information confidential.

ADMINISTRATION OF THE SETTLEMENT FUND

24. The proposed notices satisfy the requirements of due process and the Federal Rules of Civil Procedure and, accordingly, are approved for dissemination to the Class. By no later than 21 days after receiving from all defendants the information in paragraph 23, the Claims Administrator shall cause the Settlement Notice to be emailed and/or mailed to Class members and potential Class

Members pursuant to procedures described in the Settlement Agreement, and to any potential Class Member who requests one; and, in conjunction with Class Counsel, shall create a case-specific website with case information, court documents relating to the Settlement and the Notice. By no later than 14 days after the opt-out deadline, the Claims Administrator shall file with the Court an Affidavit of Compliance with Notice Requirements.

25. All costs incurred in disseminating Notice and administering the Settlement shall be paid from the Settlement Fund pursuant to the Settlement Agreement.

CLASS MEMBER RESPONSE AND SCHEDULING OF FAIRNESS HEARING

26. Class Members will have until 45 days after the Notice is mailed to opt-out (the "Opt–Out Deadline") of the proposed Settlement.

27. Any Class Member who wishes to be excluded (opt out) from the Settlement Class must send a written request for exclusion to Class Counsel on or before the close of the Opt–Out Deadline. Members of the Settlement Class may not exclude themselves by filing requests for exclusion as a group or class, but must in each instance individually and personally execute a request for exclusion. Class Members who exclude themselves from the Settlement will not be eligible to receive any benefits under the Settlement, will not be bound by any further orders or judgments entered for or against the Settlement Class, and will preserve their ability independently to pursue any claims they may have against Blue Sky.

28. Class Counsel shall file their motion for payment of attorneys' fees, costs, and for Plaintiff Service Awards, no later than 31 days after notice is mailed.

29. All Class Members who did not properly and timely request exclusion from the Settlement Class shall, upon entry of the Final Approval Order and Judgment, be bound by all the terms and provisions of the Settlement Agreement, including the release provisions, whether or not such Class Member objected to the Settlement and whether or not such Class Member received consideration under the Settlement Agreement.

30. A final hearing on the Settlement Agreement ("Fairness Hearing") shall be held before the Court at 1:30 p.m. on [DATE], in Courtroom 8, 4th Floor, of the Northern District of

California, 280 South 1st Street, San Jose, CA 95113. Such hearing shall be at least 90 days from the completion of notice pursuant to the Class Action Fairness Act.

31. At the Fairness Hearing, the Court will consider (a) the fairness, reasonableness, and adequacy of the Settlement Agreement and whether the Settlement Agreement should be granted final approval by the Court; (b) approval of the proposed Plan of Allocation; and (c) entry of a Final Approval Order and Judgment including the Settlement Release. Class Counsel's application for payment of costs, and request for the Court to approve service awards to the named Plaintiffs, shall also be heard at the time of the hearing.

32. The date and time of the Fairness Hearing shall be subject to adjournment by the Court without further notice to the Class Members, other than that which may be posted by the Court. Should the Court adjourn the date for the Fairness Hearing, such adjournment shall not alter the deadlines for mailing of the Notice, nor the deadlines for submissions of settlement objections, claims, requests for exclusion, or notices of intention to appear at the Fairness Hearing unless those dates are explicitly changed by subsequent Order.

33. Any Class Member who did not elect to be excluded from the Class may, but need not, enter an appearance through his or her own attorney. For settlement purposes, Class Counsel will continue to represent Class Members who do not timely object and do not have an attorney enter an appearance on their behalf.

34. Any Class Member who did not elect to be excluded from the Class may, but need not, submit comments or objections to (a) the Settlement Agreement, (b) entry of a Final Approval Order and Judgment approving the Settlement Agreement, (c) Class Counsel’s application for payment of costs and anticipated application for fees, and/or (d) service award requests, by mailing a written comment or objection to the addresses provided by the Claims Administrator in the Notice.

35. Any Class Member making an objection (an “Objector”) must sign the objection personally, under penalty of perjury, even if represented by counsel, and provide the Class Member's name and full residence or business address and a statement that the Class Member was an employee and member of the Settlement Class. An objection must state why the Objector objects to the Settlement Agreement and provide a basis in support, together with any documents such person

wishes to be considered in support of the objection. If an Objector intends to appear at the hearing, personally or through counsel, the Objector must include with the objection a statement of the Objector's intent to appear at the hearing. The Objector must also list any other objections by the Objector, or the Objector's attorney, to any class action settlements submitted to any court in the United States in the previous five years.

36. Objections, along with any statements of intent to appear, must be postmarked no later than 45 days after notice is mailed, and mailed to the addresses provided by the Claims Administrator in the Notice. If counsel is appearing on behalf of more than one Class Member, counsel must identify each such Class Member and each such Class Member must have complied with this Order.

37. Only Class Members who have filed and served valid and timely objections accompanied by notices of intent to appear shall be entitled to be heard at the Fairness Hearing. Any Class Member who does not timely file and serve an objection in writing in accordance with the procedure set forth in the Notice and mandated in this Order shall be deemed to have waived any objection to (a) the Settlement Agreement; (b) entry of a Final Approval Order and Judgment; (c) Class Counsel's application for payment of costs and anticipated request for fees; and (d) service award requests for the named Plaintiffs, whether by appeal, collateral attack, or otherwise.

38. Class Members need not appear at the hearing or take any other action to indicate their approval.

39. Upon entry of the Final Approval Order and Judgment, all Class Members who have not personally and timely requested to be excluded from the Class will be enjoined from proceeding against Blue Sky and all other released parties as defined in the Settlement Agreement, with respect to all of the released claims as defined in the Settlement Agreement.

40. The schedule by which the events referenced above shall occur is as follows [INSERT]:

41. All further proceedings as to Blue Sky are hereby stayed, except for any actions required to effectuate or enforce the Settlement Agreement, or matters related to the Settlement

Fund, including applications for attorneys' fees, payment of costs, and service awards to Class Representatives.

42. In the event the Settlement Agreement is terminated pursuant to the applicable provisions of the Settlement Agreement, the Settlement Agreement and all related proceedings shall, except as expressly provided in the Settlement Agreement, become void and shall have no further force or effect, and Class Plaintiffs shall retain all of their current rights against Blue Sky, and Blue Sky shall retain any and all of its current defenses and arguments thereto so that the Settling Parties may take such litigation steps (including without limitation opposing class certification, serving expert reports, deposing experts, and filing motions) that the Settling Parties otherwise would have been able to take absent the pendency of this Settlement. These Actions shall thereupon revert forthwith to their respective procedural and substantive status prior to March 31, 2016, and shall proceed as if the Settlement Agreement had not been executed.

43. Neither this Order nor the Settlement Agreement, nor any other Settlement-related document nor anything contained or contemplated therein, nor any proceedings undertaken in accordance with the terms set forth in the Settlement Agreement or herein or in any other Settlement-related document, shall constitute, be construed as or be deemed to be evidence of or an admission or concession by Blue Sky as to (a) the validity of any claim that has been or could have been asserted against either or as to any liability by either as to any matter encompassed by the Settlement Agreement or (b) the propriety of certifying any litigation class against Blue Sky.

44. Neither the Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with them, shall be construed as an admission or concession by plaintiffs or defendant, respectively, of the truth or falsity of any of the allegations in the Lawsuit, or of any liability, fault or wrongdoing of any kind.

45. All members of the Proposed Settlement Class are temporarily barred and enjoined from instituting or continuing the prosecution of any action asserting the claims released in the proposed settlement, until the Court enters final judgment with respect to the fairness, reasonableness, and adequacy of the settlement.

IT IS SO ORDERED.

DATED: _____

_____
HONORABLE LUCY H. KOH
UNITED STATES DISTRICT COURT JUDGE

Submitted by:

Dated: March 31, 2016

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