

MAY 16 2016

Sherri R. Carter, Executive Officer/Clerk
By: Stephanie Amador, Deputy
Stephanie Amador

- 1 Paul R. Kiesel, State Bar No. 119854
kiesel@kiesel.law
- 2 Jeffrey A. Koncius, State Bar No. 189803
koncius@kiesel.law
- 3 Mariana Aroditis, State Bar No. 273225
aroditis@kiesel.law
- 4 Melanie Meneses Palmer, State Bar No. 286752
palmer@kiesel.law
- 5 **KIESEL LAW LLP**
8648 Wilshire Boulevard
6 Beverly Hills, California 90211-2910
Tel: 310-854-4444
7 Fax: 310-854-0812

8 *(Additional Attorneys Listed on Signature Page)*
9 *Attorneys for Plaintiffs and the Class*

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

12 **COLIN HIGGINS PRODUCTIONS,**
13 **LTD.,**

14 **Plaintiff,**

15 **v.**

16 **PARAMOUNT PICTURES**
17 **CORPORATION, and DOES 1-100,**

18 **Defendant.**

Case No. **BC499179** (related to BC499180,
BC499181, BC500040, BC499182, and
BC540146)

*Assigned to the Honorable Elihu M. Berle,
Dept. 323*

CLASS ACTION

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
PARAMOUNT PICTURES
CORPORATION CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: June 10, 2016
Time: 10:00 a.m.
Dept.: 323

Action Filed: January 16, 2013
Trial Date: None

KIESEL LAW LLP
Attorneys at Law
Beverly Hills, California

- 24
- 25
- 26
- 27
- 28

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

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on June 10, 2016, at 10:00 a.m. or as soon thereafter as the matter may be heard by the Honorable Elihu M. Berle in Department 323 of the Los Angeles Superior Court, Central Civil West Courthouse, located at 600 South Commonwealth Avenue, Los Angeles, California 90005, Plaintiffs Colin Higgins Productions, Ltd. and Michael Elias will and hereby do apply for an order of preliminary approval of the proposed class settlement between Plaintiffs and Defendant Paramount Pictures Corporation in this action.

This Motion is made pursuant to California Code of Civil Procedure section 382 and California Rule of Court 3.760 *et seq.* This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the declarations and other documents filed in support thereof, the pleadings and papers on file in this action, and such oral and documentary evidence as may be presented at the hearing on this Motion.

DATED: May 16, 2016

KIESEL LAW LLP



Paul R. Kiesel
Jeffrey A. Koncius
Mariana Aroditis
Melanie Meneses Palmer

Attorneys for Plaintiffs and the Class
(Additional Counsel Listed Below)

TABLE OF CONTENTS

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

Page

I. INTRODUCTION..... 1

II. SUMMARY OF THE LITIGATION 2

 A. Summary of the Claims and Defenses 2

 B. Procedural History and Summary of Settlement Negotiations 3

III. SUMMARY OF THE SETTLEMENT..... 4

 A. The Proposed Settlement Class 4

 B. Class Relief Provided by the Settlement 6

 1. Monetary Relief to Recouped Class Members..... 6

 2. Monetary Relief to Unrecouped Class Members 7

 3. Injunctive Relief to All Class Members 7

 4. Fair and Efficient Distribution of Class Relief..... 8

 C. Narrowly Tailored Release..... 8

 D. Requested Attorneys’ Fees and Costs and Enhancement Awards 9

 E. Comprehensive Notice Program 9

IV. LEGAL ANALYSIS 9

 A. The Proposed Settlement Meets the Standards for Preliminary Approval..... 9

 1. The Vigorously Negotiated Settlement Is Subject to a Presumption
 of Fairness 10

 2. The Strength of Plaintiffs’ Case Compared to the Risk, Expense,
 Complexity, and Likely Duration of Further Litigation..... 10

 3. The Risk of Maintaining Class Action Status Through Trial..... 11

 4. The Amount Offered in Settlement 11

 5. The Extent of Discovery Completed..... 12

 6. The Experience and Views of Counsel 12

 B. The Proposed Settlement Class Satisfies the Requirements for Class
 Certification..... 13

 1. The Settlement Class Is Sufficiently Numerous 13

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

2.	The Settlement Class Is Ascertainable	13
3.	Common Questions of Law and Fact Predominate.....	14
4.	Plaintiffs’ Claims Are Typical of the Class	15
5.	Plaintiffs and their Counsel Are Adequate Representatives of the Class	15
6.	A Class Action Is the Superior Method of Adjudicating this Litigation	16
C.	The Proposed Incentive Awards to the Plaintiffs Are Reasonable	17
D.	The Proposed <i>Cy Pres</i> Recipient Is Appropriate	17
E.	The Notice Program Adequately Apprises Class Members of their Rights and Options Under the Settlement	18
1.	The Notice Program Is Comprehensive and Provides Direct Notice to the Class Members	19
2.	The Notice Documents Adequately Apprise Class Members of their Rights and Options	20
3.	Angeion Group Should Be Appointed As Claims Administrator	20
V.	CONCLUSION	21

TABLE OF AUTHORITIES

CASES

1
2
3
4 *7-Eleven Owners for Fair Franchising v. Southland Corp.*
85 Cal. App. 4th 1135 (2000)..... 18
5
6 *Chavez v. Netflix, Inc.*
162 Cal. App. 4th 43 (2008)..... 18
7 *Cho v. Seagate Tech. Holdings, Inc.*
177 Cal. App. 4th 734 (2009)..... 19, 20
8
9 *Clark v. American Residential Serv. LLC*
175 Cal. App. 4th 785 (2009)..... 10
10 *Classen v. Weller*
145 Cal. App. 3d 27 (1983)..... 15
11
12 *Collins v. Rocha*
7 Cal. 3d 232 (1972)..... 13
13 *Dennis v. Kellogg Co.*
697 F.3d 858 (9th Cir. 2012)..... 18
14
15 *Dunk v. Ford Motor Co.*
48 Cal. App. 4th 1794 (1996)..... 9, 10, 14
16 *Estrada v. FedEx Ground Package Sys., Inc.*
154 Cal. App. 4th 1 (2007)..... 13
17
18 *Harper v. 24 Hour Fitness, Inc.*
167 Cal. App. 4th 966 (2008)..... 13, 14
19 *Hicks v. Kaufman & Broad Home Corp.*
89 Cal. App. 4th 908 (2001)..... 15
20
21 *In re Cellphone Fee Termination Cases*
186 Cal. App. 4th 1380 (2010)..... 17, 18
22 *In re Microsoft I-V Cases*
135 Cal. App. 4th 706 (2006)..... 18
23
24 *In re Tobacco II Cases*
46 Cal. 4th 298 (2009)..... 13
25 *Kullar v. Foot Locker Retail, Inc.*
168 Cal. App. 4th 116 (2008)..... 10
26
27 *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*
186 Cal. App. 4th 399 (2010)..... 17
28

1 *Nachshin v. AOL, Inc.*
663 F.3d 1034 (9th Cir. 2011)..... 18

2

3 *Radcliffe v. Experian Info. Solutions Inc.*
715 F.3d 1157 (9th Cir. 2013)..... 17

4 *Reyes v. Board of Supervisors of San Diego Cnty.*
196 Cal. App. 3d 1263 (1987)..... 16

5

6 *Richmond v. Dart Indus.*
29 Cal. 3d 462 (1981)..... 15

7 *Rose v. City of Hayward*
126 Cal. App. 3d 926 (1981)..... 13

8

9 *Sav-on Drug Stores, Inc. v. Superior Court*
34 Cal. 4th 319 (2004)..... 13, 15

10 *Southland Corp. v. Keating*
465 U.S. 1 (1984)..... 16

11

12 *State of California v. Levi Strauss & Co.*
41 Cal. 3d 460 (1986)..... 18

13 *Vasquez v. Superior Court*
4 Cal. 3d 800 (1971)..... 14, 15

14

15 *Wershba v. Apple Computer, Inc.*
91 Cal. App. 4th 224 (2001)..... 15, 19, 20

16

17 **STATUTES**

18 Cal. Civ. Proc. Code § 384..... 18

19

20 **RULES**

21 Cal. R. Ct. 3.766..... 18

22 Cal. R. Ct. 3.766(c) 18, 20

23 Cal. R. Ct. 3.766(d) 20

24 Cal. R. Ct. 3.766(e) 19

25 Cal. R. Ct. 3.769..... 9, 18, 20

26 Cal. R. Ct. 3.769(f)..... 20

27

28

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This class action lawsuit is centered around allegations that Defendant Paramount Pictures Corporation (“Paramount” or “Defendant”) has improperly underreported the amount of Home Video Revenues, Electronic Sell-Through (“EST”) Revenues, and Streaming Revenues¹ on Paramount motion pictures to Plaintiffs² and similarly situated profit participants. Rather than face the uncertainty inherent in litigating this case through class certification and trial, the parties engaged in settlement negotiations and reached the significant class Settlement³ that obtains substantial monetary relief for the Class Members.

The Settlement compensates the Class for a total of \$6.810 million by creating, (1) a \$3.405 million Settlement Fund, which will be used to compensate Recouped⁴ Class Members, plus (2) a \$3.405 million Accounting Relief Fund, which will be used to credit the accounts of Unrecouped Class Members. In addition to such monetary relief, after the Effective Date Paramount will account to each Class Member for Streaming Revenue, and any future methods of streaming now known or hereafter created, on the basis of 100% of such revenue. All Class Members will be able to receive their benefits under the Settlement *without having to take any affirmative action*, such as filing a claim form. The Settlement will compensate Class Members for royalties allegedly owed in the past and for future royalties not yet earned. Participating Class

¹ Home Video Revenue is revenue derived from the sale of physical copies of motion pictures (*e.g.*, Videocassettes, DVDs, Blu-Ray discs). EST Revenue is revenue derived from the sale of permanent digital copies of motion pictures (*e.g.*, through purchases on iTunes or Amazon). Streaming Revenue means revenue derived from digital streaming of motion pictures, including through services commonly known as “video-on-demand” (“VOD”) or “subscription-on-demand” (“SVOD”), where the consumer does not obtain permanent ownership of a copy of the motion picture (*e.g.*, Netflix or Hulu).

² “Plaintiffs” refers to named Plaintiffs Colin Higgins Productions, Ltd. (“CHP”) and Michael Elias (“Elias”) (collectively, “Plaintiffs”).

³ All capitalized terms herein shall have the definitions set forth in the Stipulation and Agreement of Settlement dated May 13, 2016 (“Settlement Agreement”) unless otherwise stated. The Settlement Agreement is attached to the Declaration of Jeffrey A. Koncius submitted in conjunction with this Motion (“Koncius Decl.”) as Ex. “A.”

⁴ As explained more fully *infra*, “Recouped Class Member” refers to a Class Member that has the right to participate in profits on a film under the terms of their contract. An “Unrecouped Class Member” is one that has not reached the threshold which would require such payment.

1 Members will receive benefits without having to initiate expensive audits or individual lawsuits
2 against Paramount. Participating Class Members will further maintain their rights to pursue an
3 audit or lawsuit for all claims unrelated to the allegations alleged in the operative complaint.

4 As shown in this Motion, the Settlement is fair, adequate and reasonable, and more than
5 satisfies all of the criteria for preliminary approval. The Settlement Class meets the requirements
6 for conditional class certification. The notice plan contemplated by the Settlement complies with
7 the applicable law and is the best notice practicable. Further, the Settlement here substantially
8 tracks the settlement terms approved by this Court in *Colin Higgins Productions, Ltd. v. Universal*
9 *City Studios, LLC*, Los Angeles Superior Court Case No. BC499180 (the “*Universal Matter*”), as
10 well as the manner of giving notice. Accordingly, Plaintiffs request that the Court grant
11 preliminary approval of the proposed Settlement, certify the Settlement Class for settlement
12 purposes, direct distribution of the Class Notice in the manner agreed to in the Settlement, and set
13 a schedule for final approval of the Settlement.

14 **II. SUMMARY OF THE LITIGATION**

15 **A. Summary of the Claims and Defenses**

16 Plaintiffs and Class Members in this case are writers, actors, directors, producers and other
17 Profit Participants on motion pictures distributed by Paramount. Plaintiffs allege that the Profit
18 Participation Contracts they entered into require Paramount to account to and credit Class
19 Members for 100% of the gross receipts (i.e. revenues) derived by Paramount or its subsidiaries
20 from the sale of Home Video, EST, and Streaming Revenues. Plaintiffs claim that Paramount
21 violated these Profit Participation Contracts by reporting Home Video, EST, and Streaming
22 Revenues based on 20% of the revenue received by its wholly owned subsidiaries, rather than on
23 100% of these revenues as required by the contracts. Through this class action lawsuit, Plaintiffs
24 sought to compensate Class Members for the monetary shortfall resulting from Paramount’s
25 alleged breach of contract and failure to pay Home Video, EST, and Streaming Revenues based on
26 100% of gross receipts.

27 These core allegations formed the basis for each of Plaintiffs’ claims for: (1) Breach of
28 Contract; (2) Breach of Implied Covenant of Good Faith and Fair Dealing; (3) Money Had and

1 Received; (4) Declaratory Judgment; (5) Open Book Account; (6) Unfair Competition in Violation
2 of California Business Code § 17200 *et seq.*; and (7) Conversion. *See* Second Amended
3 Complaint.

4 Paramount denies Plaintiffs’ allegations and asserts defenses to class certification and the
5 merits. Paramount argues, *inter alia*, that its practice of accounting for Home Video, EST, and
6 Streaming Revenues based on amounts received from its Affiliates or subsidiaries did not violate
7 the Profit Participation Contracts, and Paramount was permitted to account to the Class Members
8 by following Paramount’s and the motion picture industry’s practice of calculating profit
9 participation based on 20% of the Home Video, EST, and Streaming Revenue received for these
10 films. Paramount further argues that payment to Class Members based on 20% of the Home
11 Video, EST, and Streaming Revenues did not damage Plaintiffs because Paramount did not charge
12 them for costs relating to the production, distribution and sale of these media that would be
13 deductible under the 100% gross receipts calculation. Paramount further contends that Class
14 Members’ claims are barred by the applicable statute of limitations or any contractually prescribed
15 temporal incontestability provision contained in the contracts between the parties. Finally,
16 Paramount claims that Plaintiffs could not certify this case as a class action due to the differences
17 in the contracts, rights and damages amongst the Class Members.

18 Plaintiffs carefully considered the strength of their claims and Paramount’s defenses before
19 entering into the Settlement Agreement.

20 **B. Procedural History and Summary of Settlement Negotiations**

21 Plaintiff CHP originally filed this class action lawsuit on January 16, 2013. On June 14,
22 2013, the Court denied Paramount’s demurrer and motion to strike the complaint. On December
23 17, 2013, Plaintiff filed its First Amended Complaint adding Michael Elias as a class
24 representative.

25 Prior to beginning settlement negotiations the parties conducted discovery relating to the
26 claims of Plaintiffs and Class Members in this case. Koncius Decl. ¶¶ 5-6. The parties exchanged
27 written discovery, including multiple sets of Form Interrogatories, Special Interrogatories and
28 Requests for Admissions. *Id.* In response to Plaintiffs’ discovery Paramount produced, and

1 Plaintiffs reviewed, more than 37,730 pages of documents relating to all contracts, profit
2 participation statements, correspondence and other documents related to the named Plaintiffs’
3 films and a random sample of other films in the putative class. *Id.* ¶ 6. Plaintiffs also reviewed
4 discovery and documents relating to the commerce at issue and the size of the Class. *Id.* Plaintiffs
5 also deposed various Paramount employees. *Id.* Paramount also deposed representatives for each
6 of the named Plaintiffs. *Id.*

7 On June 6, 2014, Paramount filed a motion for summary judgment or, in the alternative,
8 summary adjudication. Plaintiffs opposed the motion and the Court entered an order on May 18,
9 2015, denying Paramount’s Motion for Summary Judgment in its entirety and granting
10 Paramount’s Motion for Summary Adjudication as to Plaintiffs’ Seventh Cause of Action for
11 Conversion, only.

12 On November 18, 2015, the parties participated in an all-day mediation with the Hon.
13 Louis M. Meisinger (Ret.) of ADR Services. After a day of extensive negotiations the basic terms
14 of a settlement were reached. Numerous phone conferences and correspondence then occurred and
15 the parties negotiated and agreed to the terms of the Settlement now being presented to the Court.
16 *Id.* ¶ 8.

17 **III. SUMMARY OF THE SETTLEMENT**

18 **A. The Proposed Settlement Class**

19 The Settlement is entered into on behalf of the following Settlement Class:

20 All persons and entities (and their successors-in-interest, assigns,
21 and heirs) that are parties to a “Class Profit Participation Contract”
22 (defined by the Settlement Agreement as a Profit Participation
23 Contract entered into on or before July 5, 1980⁵, or that includes,
24 references, or incorporates “Standard Terms” for the calculation and
25 accounting of Profit Participation dated prior to July 5, 1980).
26 Where a person or entity is a party to one or more Profit
27 Participation Contracts that are not Class Profit Participation
28 Contracts and one or more Profit Participation Contracts that are
Class Profit Participation Contracts, that person or entity is a
member of the Settlement Class only with regard to the Class Profit
Participation Contracts and not a part of the Settlement Class with

27 ⁵ After this date, home video royalties started to be specifically addressed by contract.
28

1 regard to any other Profit Participation Contracts.⁶
2 In other words, the Settlement Class consists of profit participants who entered into contracts that
3 did not contain express provisions regarding the payment of Home Video Revenue, EST Revenue
4 and/or Streaming Revenue. Further, the Class Members’ share of the Settlement is limited to those
5 Profits Participation Contracts that do not have express provisions regarding the payment of Home
6 Video Revenue, EST Revenue and/or Streaming Revenue. Because newer Profit Participation
7 Contracts include express provisions relating to Home Video Revenue, EST Revenue and/or
8 Streaming Revenue, the Settlement applies to older titles and releases. After the Effective Date of
9 the Settlement, Paramount will account to each Class Member for Streaming Revenue, and any
10 future methods of streaming now known or hereafter created, on the basis of 100% of such
11 revenue. *See* Settlement Agreement § 8.

12 The Settlement Class includes both Recouped and Unrecouped Class Members. A
13 Recouped Class Member “means a Class Member who, as of August 31, 2015, is a Profit
14 Participant on one or more motion pictures that have realized sufficient revenue to require
15 payment of Profit Participation to that Class Member under the terms of that person or entity’s
16 Class Profit Participation Contract” (i.e. they were earning profit participations from their Profit
17 Participation Contract). *Id.* §1.22. Conversely, an Unrecouped Class Member means a Class
18 Members who, as of August 31, 2015, is a Profit Participant on one or more motion pictures that
19 have not realized sufficient revenue to require payment of Profit Participation to that Class
20 Member under the terms of that person or entity’s Class Profit Participation Contract (i.e., they
21 were not yet earning profit participations from their Profit Participation Contract). *Id.* §1.36. Since
22 it is possible for a profit participant to be considered both a Recouped Class Member and an
23 Unrecouped Class Member by virtue of being party to one or more Class Participation Contracts
24 that fall into both of these categories, in such a situation, the Class Member would obtain a portion
25 of the Settlement Relief Fund as well as the Accounting Relief Fund.

26 _____
27 ⁶ *See* Settlement Agreement § 2. The Settlement Agreement identifies certain parties to Class Participation
28 Contracts who are excluded from the Settlement Class. *See* Settlement Agreement §§ 3.1-3.4.

1 **B. Class Relief Provided by the Settlement**

2 Similar to the *Universal Matter*, the Settlement here is crafted to provide substantial relief
3 to both Recouped and Unrecouped Class Members and fully resolve the claims at issue in this
4 case. The cash portion of the Settlement creates a Settlement Fund of \$3.405 million which will be
5 used to compensate Recouped Class Members and pay administrative and notice costs, attorneys'
6 fees and costs, and incentive awards to the named Plaintiffs. The Settlement also creates an
7 Accounting Relief Fund of \$3.405 million which will be used to make accounting credits to Home
8 Video, EST and Streaming Revenues on the accounts of Unrecouped Class Members. Thus, the
9 total value of the Settlement Agreement is \$6.810 million.⁷

10 As set forth in detail below, the relief provided to the Class Members is significant and
11 reasonable. Absent this Settlement, Class Members would not get the benefit of any compensation
12 relating to Home Video, EST, or Streaming Revenue without first undertaking a very long and
13 expensive audit process without guarantee that they would be paid anything for such efforts. This
14 Settlement provides for such payment now. In addition, this Settlement provides that Paramount
15 will account to each Class Member for Streaming Revenue, and any future methods of streaming
16 now known or hereafter created, on the basis of 100% of such revenue.

17 **1. Monetary Relief to Recouped Class Members**

18 Recouped Class Members will receive payments from the \$3.405 million Settlement Fund
19 as follows:

20 a. Retrospective Relief: Each Recouped Class Member will receive a pro rata
21 payment from the Retrospective Relief Fund (stipulated to be 70% of the Settlement Fund
22 Payout), calculated as the ratio of the total amount of Profit Participation paid to the Recouped
23 Class Member through August 31, 2015 (numerator) to the total amount of Profit Participation
24 paid to *all* Recouped Class Members through August 31, 2015 (denominator). *See* Settlement
25 Agreement §§ 1.24, 1.25, 4.1.

26 _____
27 ⁷ The number of films and the amount of commerce at issue in this case is less than in the *Universal Matter*
28 which accounts for the difference between the cases in the negotiated settlement sum.

1 b. Prospective Relief: Each Recouped Class Member will also receive a pro rata
2 payment from the Prospective Relief Fund (stipulated to be 30% of the Settlement Fund Payout),
3 calculated as the ratio of the total amount of Profit Participation paid to the Recouped Class
4 Member from January 1, 2011, through August 31, 2015 (numerator) to the total amount of Profit
5 Participation paid to *all* Recouped Class Members during the same period (denominator). *See*
6 Settlement Agreement §§ 1.17, 1.18, 4.2. This ratio represents an estimate negotiated by the
7 parties for future Profit Participation payments owed to the Class Member.

8 Although the exact amount received by each Class Member will depend on the number of
9 Class Members who remain in the Class and revenue from the films at issue, the formula can be
10 readily tested and applied on a pro rata basis for approval purposes. For example, as of this filing
11 there are 86 Recouped Class Members (Koncius Decl. ¶ 12) which results in approximately
12 \$27,715.12 in pro rata retroactive relief ($\$3.405 \text{ million} \times 70\% \div 86 = \$27,715.12$) and
13 approximately \$11,877.91 in pro rata prospective relief ($\$3.405 \text{ million} \times 30\% \div 86 =$
14 $\$11,877.91$).

15 **2. Monetary Relief to Unrecouped Class Members**

16 In addition to the \$3.405 million Settlement Fund used to compensate Recouped Class
17 Members, the Settlement creates a \$3.405 million Accounting Relief Fund to provide credits on
18 the accounts of motion pictures associated with Unrecouped Class Members. *See* Settlement
19 Agreement § 5.1. Such accounts will receive a pro rata share of the Accounting Relief Fund,
20 calculated as the ratio of the total amount of Home Video, EST, and Streaming Revenues derived
21 by Paramount through August 31, 2015, for that motion picture (numerator) to the total amount of
22 such revenue for *all* motion pictures receiving an accounting adjustment (denominator). *See id.* As
23 there are 59 Unrecouped Class Members (Koncius Decl. ¶ 12), their pro rata credit is \$57,711.86
24 ($\$3.405 \text{ million} \div 59 = \$57,711.86$).

25 **3. Injunctive Relief to All Class Members**

26 In addition to monetary relief, the Settlement provides valuable injunctive relief to Class
27 Members going forward. Paramount “agrees that, in the absence of an existing or future agreement
28 that includes express provisions regarding the calculation of Streaming Revenue, Paramount will,

1 beginning after the Effective Date, account to each Class Member for Streaming Revenue, and any
2 future methods of streaming now known or hereafter created, on the basis of 100% of such
3 revenue received after the Effective Date in a manner otherwise consistent with the terms of each
4 Class Profit Participation Contract.” Settlement Agreement § 8.

5 **4. Fair and Efficient Distribution of Class Relief**

6 The Settlement Agreement is designed to ensure that the Class Members receive their
7 injunctive and monetary benefits in the easiest and most efficient way possible, without reversion
8 to Paramount. *See* Settlement Agreement § 1.31. Under the Settlement, Class Members who do
9 not opt out from the Settlement will *automatically* receive monetary or accounting relief without
10 having to take any additional steps, such as filing a claim. *Id.* §§ 4-5. Upon receiving payment of
11 their settlement benefits, Class Members will have 180 days to cash or deposit their settlement
12 checks. *Id.* § 4.3. The Settlement calls for a second pro rata distribution to occur if Class Counsel
13 determines that there are sufficient funds to justify a second distribution in light of the
14 administrative cost and amount of the proposed distribution to the Recouped Class. As in the
15 *Universal* Matter, the Settlement calls for a *cy pres* donation to the Motion Picture & Television
16 Fund in the event that there is a balance in the Accounting Relief Fund. *Id.* This limited *cy pres*
17 distribution is solely intended as a means to prevent any reversion to Paramount under the
18 Settlement Agreement.

19 **C. Narrowly Tailored Release**

20 The Settlement Agreement contains a release that is limited to claims relating to the subject
21 matter of the litigation – namely, Paramount’s practice of accounting for Home Video, EST, and
22 Streaming Revenues on a 20% royalty basis. *See* Settlement Agreement §§ 1.20, 7. The class
23 release does not include a general release or a waiver of California Civil Code section 1542 on
24 behalf of the Class Members. *Id.* Class Members who participate in the Settlement (and who are
25 therefore subject to the release) will still preserve their full rights to challenge any other
26 accounting practice, charge or any other conduct by Paramount in the past or future. *Id.* The scope
27 of the release is justified and supports granting this Motion.

28

1 **D. Requested Attorneys’ Fees and Costs and Enhancement Awards**

2 The Settlement allows Class Counsel to apply to the Court for an award of attorneys’ fees
3 in an amount not to exceed \$1,135,000 and costs in an amount not to exceed \$105,000. Settlement
4 Agreement § 19. These attorneys’ fees and costs will be paid from the Settlement Fund. *Id.* § 1.32.
5 The named Plaintiffs will also be allowed to apply to the Court for an enhancement award of
6 \$10,000 each, designed to compensate them for their time and service to the Class. *Id.* § 23. These
7 fees, costs and incentive awards are reasonable and justified based on the work performed and
8 costs incurred by Class Counsel and the named Plaintiffs in order to obtain a successful result on
9 behalf of the Class Members. Plaintiffs will file a motion for Court approval of their attorneys’
10 fees, costs, and incentive awards to be heard at the same time as the final fairness hearing.

11 **E. Comprehensive Notice Program**

12 As explained further in Section IV.E. below, the Settlement features a comprehensive
13 notice program that utilizes: (1) direct Notice by Mail to individual Class Members; (2)
14 Publication Notice in widely circulated motion picture print and online publications; (3)
15 newsletters from motion picture publications; (4) advertisements in social media platforms such as
16 Facebook, Twitter and LinkedIn; and (5) a press release to all major media outlets. Settlement
17 Agreement § 10 *et seq.* The notice program is comprehensive and ensures that substantially all of
18 the Class Members will receive notice of the Settlement and be able to exercise their rights
19 thereunder. Angeion Group, an experienced third-party claims administrator, will handle all
20 aspects of notice and the claims process.

21 **IV. LEGAL ANALYSIS**

22 **A. The Proposed Settlement Meets the Standards for Preliminary Approval**

23 California Rule of Court 3.769 requires court approval of the settlement of class action
24 lawsuits. To be approved, a class action settlement must be “fair, adequate, and reasonable” and
25 fall within the “range of approval.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801-02
26 (1996). The determination of whether a settlement should be preliminarily approved requires
27 “basic information about the nature and magnitude of the claims in question and the basis for
28 concluding that the consideration being paid for the release of those claims represents a reasonable

1 compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 133 (2008); *Clark v.*
2 *American Residential Serv. LLC*, 175 Cal. App. 4th 785, 790, 802-03 (2009).

3 In evaluating a settlement’s fairness, courts consider factors such as the strength of the
4 plaintiffs’ claims, the risk and expense of further litigation, the risk of maintaining class action
5 status through trial, the amount offered in settlement, the extent of discovery completed, the
6 experience and views of counsel and the presence of a government participant. *Dunk*, 48 Cal. App.
7 4th at 1801. A presumption of fairness exists where, as here, the settlement is reached “through
8 arm’s-length bargaining,” the “investigation and discovery are sufficient” and “counsel is
9 experienced in similar litigation.” *Id.* at 1802.

10 **1. The Vigorously Negotiated Settlement Is Subject to a Presumption of**
11 **Fairness**

12 The Settlement is subject to the presumption of fairness because it is the product of
13 protracted mediation and arm’s length negotiations with the assistance of Judge Meisinger. *See*
14 *Dunk*, 48 Cal. App. 4th at 1802. Plaintiffs and their counsel advocated vigorously on behalf of the
15 Class Members during each phase of these negotiations in order to negotiate a settlement that
16 provides adequate relief and is in the best interest of the Class Members. *See* Koncius Decl. ¶¶ 19-
17 21. The negotiations between the parties resulted in a settlement that is the product of genuine give
18 and take and justified by the facts of this case. *See id.*

19 **2. The Strength of Plaintiffs’ Case Compared to the Risk, Expense,**
20 **Complexity, and Likely Duration of Further Litigation**

21 While Plaintiffs were able to defeat Paramount’s demurrer, motion to strike, and motion
22 for summary judgment, there was no guarantee that Plaintiffs would prevail on the merits of their
23 claims. Indeed, as set forth above, Paramount asserted numerous factual and legal defenses, that
24 these defenses would defeat Plaintiffs’ motion for class certification, defeat Plaintiffs’ claims on
25 the merits, or severely limit Plaintiffs’ damages in this case. Although Plaintiffs were confident
26 that they could certify a class and prevail at trial, there was no way to guarantee either of these
27 outcomes. This is particularly true since this is a novel and difficult class action that involves
28 complex issues without precedent. Even if Plaintiffs had prevailed at trial, Paramount would likely
appeal, leading to further expense, delay, and uncertainty. Thus, the further adjudication of this

1 case carried significant risks to Plaintiffs and Class Members.

2 The Settlement eliminates this possibility that Class Members might not recover anything
3 at all and is highly justified by the risk, expense and uncertainty of further litigation. By obtaining
4 a quality settlement that provides millions of dollars in relief to absent Class Members, the
5 Plaintiffs have secured a guaranteed victory for the Class Members without further delay.

6 **3. The Risk of Maintaining Class Action Status Through Trial**

7 As set out more fully below, Plaintiffs submit that this case can be certified as a class
8 action and maintain class action status through trial. However, Plaintiffs recognize that Paramount
9 intended to zealously oppose class certification. Paramount would have further raised numerous
10 defenses and attempted to defeat or severely limit Plaintiffs' claims through summary judgment
11 and trial. Even if Plaintiffs prevailed at trial, Paramount would have likely appealed the Court's
12 class certification decision and judgment at trial. While Plaintiffs are confident that this action can
13 be properly maintained as a class action, these risks of maintaining class action status through trial
14 weigh in favor of preliminary approval.

15 **4. The Amount Offered in Settlement**

16 The Settlement provides substantial relief to Class Members to compensate them for
17 Paramount's alleged policy of wrongly accounting for Home Video, EST, and Streaming
18 Revenues on a 20% royalty basis. Under the Settlement, Recouped Class Members will receive
19 monetary payments from the \$3.405 million Settlement Fund that will compensate them for past
20 and future Home Video, EST, and Streaming Revenues earned on their titles. Unrecouped Class
21 Members will receive the benefit of accounting adjustments from the \$3.405 million Accounting
22 Relief Fund which should cause some of them to be fully recouped (such that they could be owed
23 profits in the future) or, at the very least, closer to being fully recouped. In addition, after the
24 Effective Date of the Settlement Paramount will account to each Class Member for Streaming
25 Revenue, and any future methods of streaming now known or hereafter created, on the basis of
26 100% of such revenue.

27 In exchange for this relief, Class Members will release their claims relating to
28 Paramount's accounting of Home Video, EST, and Streaming Revenues. Class Members agree to

1 accounting on Home Video and EST Revenues on a 20% royalty basis going forward but, as
2 mentioned above, Paramount will account to Plaintiffs on Streaming Revenue, and any future
3 methods of streaming now known or hereafter created, on the basis of 100% of such revenue after
4 the Effective Date of the Settlement. The amount and relief offered in settlement is a significant
5 recovery for the Class in light of the risks of further litigation and Paramount’s likely defenses.

6 **5. The Extent of Discovery Completed**

7 Before entering into the Settlement the parties conducted significant discovery. They
8 exchanged written discovery, including multiple sets of Form Interrogatories, Special
9 Interrogatories and Requests for Admissions. *See* Koncius Decl. ¶¶ 5-6. They also exchanged and
10 reviewed all documents in their possession, custody and control relating to Plaintiffs’ films at
11 issue in this case. *Id.* Pursuant to orders of the Court, Paramount produced the contracts, Profit
12 Participation statements, correspondence and other documents relating to a random *Pioneer*
13 sample of films that fell within Plaintiffs’ class definition. *Id.* Plaintiffs also reviewed discovery
14 and documents regarding the commerce at issue and size of the Class and took depositions of
15 Paramount employees. *Id.* ¶ 6. This discovery ensured that Plaintiffs entered into the Settlement
16 with a sound understanding of the issues and risks involved, and helped Plaintiffs achieve the best
17 result for the Class.

18 **6. The Experience and Views of Counsel**

19 Plaintiffs and Class Members are represented in this case by counsel who have vast
20 experience in class action, complex, and entertainment litigation, have negotiated numerous other
21 substantial settlements, and have the ability to litigate this case on a class-wide basis if a fair
22 settlement were not offered. *See* Koncius Decl. ¶¶ 19-21; Declaration of Neville L. Johnson
23 (“Johnson Decl.”) ¶¶ 3-5; Declaration of Daniel L. Warshaw (“Warshaw Decl.”) ¶¶ 5-9;
24 Declaration of Raymond P. Boucher (“Boucher Decl.”) ¶¶ 3-10. Significantly, they are also Class
25 Counsel in four other related cases pending before this Court against other major movie studios
26 involving identical factual and legal issues, which helped inform the settlement negotiations in
27 this case. *See* Koncius Decl. ¶ 19. In addition, Class Counsel previously negotiated the similarly
28 constructed settlement approved by this Court, and were appointed class counsel, in the *Universal*

1 Matter. *Id.* Class Counsel were satisfied with this Settlement only after extensive negotiations and
2 thorough investigation into the factual and legal issues raised in this case. *See id.* ¶¶ 5-10. Based
3 upon their experience in class action cases, Class Counsel views the Settlement favorably. *See*
4 Koncius Decl. ¶ 21; Johnson Decl. ¶ 8; Warshaw Decl. ¶ 10; Boucher Decl. ¶ 13.

5 **B. The Proposed Settlement Class Satisfies the Requirements for Class**
6 **Certification**

7 Before granting preliminary approval, the Court must determine that the proposed
8 Settlement Class can be properly certified for settlement purposes. Cal. R. Ct. 3.769(d)(1). The
9 Supreme Court of California has explained that certification of a class “requires proof (1) of a
10 sufficiently numerous, ascertainable class, (2) of a well-defined community of interest, and (3) that
11 certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a
12 class is superior to other methods. In turn, the community of interest requirement embodies three
13 factors: (1) predominant common questions of law or fact; (2) class representatives with claims or
14 defenses typical of the class; and (3) class representatives who can adequately represent the
15 class.” *In re Tobacco II Cases*, 46 Cal. 4th 298, 313 (2009) (internal citation omitted). As detailed
16 below, the Settlement Class satisfies all of the requirements for class certification.

17 **1. The Settlement Class Is Sufficiently Numerous**

18 Case law indicates that 30 to 40 plaintiffs satisfy the numerosity requirement because at
19 that point, individual joinder is impractical. *See Rose v. City of Hayward*, 126 Cal. App. 3d 926,
20 934 (1981); *Collins v. Rocha*, 7 Cal. 3d 232, 235 (1972). Here, there are at least 145 Settlement
21 Class Members, which easily satisfies the numerosity requirement.

22 **2. The Settlement Class Is Ascertainable**

23 “The class is ascertainable if it identifies a group of unnamed plaintiffs by describing a set
24 of common characteristics sufficient to allow a member of that group to identify himself as having
25 a right to recover based on the description.” *Harper v. 24 Hour Fitness, Inc.*, 167 Cal. App. 4th
26 966, 976-77 (2008) (citing *Estrada v. FedEx Ground Package Sys., Inc.*, 154 Cal. App. 4th 1, 14
27 (2007)); *see also Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 333 (2004) (“a class
28 action is not inappropriate simply because each member of the class may at some point be required

1 to make an individual showing as to his or her eligibility for recovery.”).

2 In this case, the Class Members have an ongoing relationship with Paramount as Profit
3 Participants on motion pictures. As such, the vast majority of Class Members has been identified
4 and is being provided with direct mail notice pursuant to the Settlement. The existence of records
5 which enables the identification of individual class members (a circumstance not required or even
6 available in every class action) strongly supports a finding of ascertainability.

7 A finding of ascertainability is further supported by the fact that the Settlement Class
8 definition sets forth “common characteristics sufficient to allow a member of that group to identify
9 himself as having a right to recover based on the description” – *i.e.*, that he is a party to a Class
10 Profit Participation Contract. *See Harper*, 167 Cal. App. 4th at 976-77. When coupled with the
11 comprehensive notice and claims processing program under the Settlement, this Class definition
12 allows individual Class Members to determine their Class eligibility and exercise their rights
13 under the Settlement.

14 3. Common Questions of Law and Fact Predominate

15 The predominance requirement is satisfied when questions of law or fact common to the
16 class predominate over individual questions. Common questions may predominate even if “each
17 member of the class must prove his separate claim to a portion of any recovery by the class”
18 *Vasquez v. Superior Court*, 4 Cal. 3d 800, 809 (1971). While in a disputed class certification
19 motion the predominance element is extremely important, courts apply a “lesser standard of
20 scrutiny in settlement cases” where the court does not need to concentrate on whether the lawsuit
21 is manageable for a common trial. *See Dunk*, 48 Cal. App. 4th at 1807 n.19.

22 Here, Plaintiffs have satisfied the predominance requirement for settlement purposes
23 because this lawsuit centers on common legal questions relating to whether Paramount’s practice
24 of accounting for Home Video, EST, and Streaming Revenues on a 20% royalty basis violates the
25 contracts and rights of the Class Members. The Settlement resolves the parties’ dispute arising
26 from this core issue by providing all Settlement Class Members with relief concerning the alleged
27 underpayment of Home Video, EST and Streaming Revenues. The fact that each Class Member
28 will be entitled to a different amount of the recovery based on the revenues of their film(s) does

1 not defeat predominance. *See Vasquez*, 4 Cal. 3d at 809; *Sav-on*, 34 Cal. 4th at 332-33. The
2 Settlement equitably provides Class Members with a recovery that corresponds with the profits of
3 their films and revenues thereunder.

4 **4. Plaintiffs' Claims Are Typical of the Class**

5 A class representative's claims are typical of the class if the individual facts applicable to
6 the class representative are very similar, but not necessarily identical, to the facts that are common
7 to the class. *See Classen v. Weller*, 145 Cal. App. 3d 27, 45 (1983); *Richmond v. Dart Indus.*, 29
8 Cal. 3d 462, 470 (1981). It is sufficient that the class representative is similarly situated so that he
9 or she will have the motive to litigate on behalf of all class members. *Classen*, 145 Cal. App. 3d at
10 46. Furthermore, "[t]he fact that the class representatives had not personally incurred all of the
11 damages suffered by each different class member" does not defeat a motion for class certification.
12 *See Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 238 (2001).

13 Here, the named Plaintiffs are Profit Participants on motion pictures distributed by
14 Paramount and members of the Settlement Class. They allege the same injury arising from the
15 same conduct by Paramount as every other member of the Settlement Class. Because their claims
16 are aligned with the Class Members, Plaintiffs were motivated to obtain the best possible
17 settlement not only on behalf of themselves, but on behalf of the entire Settlement Class.
18 Therefore, Plaintiffs' claims are typical of the Class Members.

19 **5. Plaintiffs and their Counsel Are Adequate Representatives of the Class**

20 "Class status may be denied [on the basis of adequacy of representation] only if
21 antagonism of such a substantial degree is shown that the purpose of class certification would be
22 defeated if the motion were granted." *Richmond*, 29 Cal. 3d at 472; *see also Hicks v. Kaufman &*
23 *Broad Home Corp.*, 89 Cal. App. 4th 908, 925-26 (2001). There are two components of the
24 adequacy requirement: (1) adequacy of the proposed class representative; and (2) adequacy of
25 proposed class counsel. Plaintiffs and Class Counsel satisfy both of these requirements.

26 Plaintiffs have no antagonism or conflicts of interest with the proposed Class. Plaintiffs'
27 claims are identical to the claims of the other Class Members and arise from the same conduct by
28 Paramount. Plaintiffs have embraced their responsibilities as class representatives by actively

1 participating in the case, including responding to written discovery and producing documents,
2 preparing for and attending depositions, and engaging in the settlement process.

3 Further, Plaintiffs are represented by qualified and competent counsel who have the
4 experience and resources necessary to vigorously pursue this action. *See* Koncius Decl. ¶ 21;
5 Warshaw Decl. ¶¶ 5-9; Johnson Decl. ¶¶ 3-5; Boucher Decl. ¶¶ 3-10. The knowledge and
6 experience of Class Counsel were essential in ensuring that the Class Members' interests were
7 protected in this case.

8 **6. A Class Action Is the Superior Method of Adjudicating this Litigation**

9 A class action is the superior method of adjudicating a controversy where there are
10 numerous affected individuals and the relatively small size of their claims makes it prohibitively
11 expensive to litigate on an individual basis. *See Southland Corp. v. Keating*, 465 U.S. 1 (1984);
12 *Reyes v. Board of Supervisors of San Diego Cnty.*, 196 Cal. App. 3d 1263, 1270 (1987). These
13 circumstances favor the use of the class action device for vindicating the rights asserted by large
14 groups of people whose claims, because of their relative size, do not lend themselves to individual
15 litigation, resulting in few or no individual cases being filed. *See id.* Furthermore, a class action
16 benefits the court and the parties because it allows the claims of numerous similarly situated class
17 members to be adjudicated in a single litigation.

18 This case is ideally suited for class adjudication because the class action device allows
19 Profit Participants to obtain relief from Paramount's alleged failure to properly account for Home
20 Video, EST, and Streaming Revenues without incurring significant out-of-pocket costs associated
21 with individual audits and lawsuits. For most Class Members, the amount at issue relating to
22 Home Video, EST, and Streaming Revenues is outweighed by the tens of thousands of dollars
23 necessary to conduct an individual audit or litigate an individually filed lawsuit. As a result, most
24 Class Members would not have had the resources or financial incentive to pursue these claims
25 against Paramount on an individual basis.

26 The class action procedure is also the superior method of adjudicating this case because it
27 alleviates the heavy burden on the Court that would arise from individual adjudication of the home
28 video royalty issue. The Settlement eliminates the substantial risk of multiple duplicative lawsuits

1 and ensures that the Class Members' claims are resolved in the most efficient and cost-effective
2 way possible.

3 For all of these reasons, this case should be certified as a class for settlement purposes.

4 **C. The Proposed Incentive Awards to the Plaintiffs Are Reasonable**

5 The proposed incentive payments to the named Plaintiffs are intended to recognize the
6 critical role they played in this case and the substantial time, efforts and risks undertaken to secure
7 the result obtained on behalf of the Class. As was recently observed in *In re Cellphone Fee*
8 *Termination Cases*, 186 Cal. App. 4th 1380, 1393 (2010) ("*Cellphone*") (citations omitted),
9 "[i]ncentive awards are fairly typical in class action cases." Further, such "awards are
10 discretionary, and are intended to compensate class representatives for work done on behalf of the
11 class, to make up for financial or reputational risk undertaken in bringing the action, and,
12 sometimes, to recognize their willingness to act as a private attorney general." *Cellphone*, 186 Cal.
13 App. 4th at 1393-94. All of these factors support the incentive payment requested in this case
14 which, it should be noted, are identical to the amounts awarded in the *Universal Matter*. The
15 Plaintiffs took action after realizing that they were not being compensated fully for Home Video,
16 EST, and Streaming Revenues and despite the film industry being notoriously small, the named
17 Plaintiffs filed suit not just on their own behalves but also for all others similarly situated. The
18 named Plaintiffs sat for their depositions and responded to discovery. Thus, the proposed
19 payments to the Plaintiffs are intended to recognize the critical role they played in this case and
20 the substantial time, efforts and risks undertaken to secure the result obtained on behalf of the
21 Class. *Munoz v. BCI Coca - Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 412 (2010);
22 *Radcliffe v. Experian Info. Solutions Inc.*, 715 F.3d 1157, 1165 (9th Cir. 2013).

23 **D. The Proposed Cy Pres Recipient Is Appropriate**

24 Pursuant to Section 4.3 of the Settlement Agreement *cy pres* distribution will only occur in
25 the event that the amount of stale checks remaining after distribution of the Settlement proceeds to
26 the Class Members does not justify the administrative cost of a second distribution. *See* Settlement
27 Agreement § 4.3. As in the settlement reached in the *Universal Matter*, the parties have agreed that
28 the *cy pres* recipient of this limited fund shall be the Motion Picture & Television Fund. *Id.* When

1 evaluating a *cy pres* distribution of the remainder of class action proceeds a court must “consider
2 whether the proposed *cy pres* distribution is useful in fulfilling the purposes of the underlying
3 cause of action.” *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 722 (2006). Here, the proposed
4 limited *cy pres* distribution to the Motion Picture & Television Fund fulfills the purpose of the
5 lawsuit because it directly benefits the interests of individuals involved in the film industry by
6 providing, for example, health care services, retirement residences, financial aid to offset care and
7 living expense, social services and charitable assistance programs. *See* Koncius Decl. ¶ 13.
8 Further, none of the firms has an interest or involvement in the governance or work of the *cy pres*
9 recipient. *Id.*; Warsaw Decl. ¶ 11; Johnson Decl. ¶ 9; Boucher Decl. ¶ 14. Moreover, the funds
10 will allow the *cy pres* recipient to continue its work in a time of shrinking budgets. Accordingly,
11 as it did in the *Universal Matter*, this Court should approve the *cy pres* distribution recommended
12 herein. *State of California v. Levi Strauss & Co.*, 41 Cal. 3d 460, 472 (1986); *In re Microsoft I - V*
13 *Cases*, 135 Cal. App. 4th at 722; *Nachshin v. AOL, Inc.*, 663 F.3d 1034, 1038-41 (9th Cir. 2011);
14 *Dennis v. Kellogg Co.*, 697 F.3d 858, 865 (9th Cir. 2012); Cal. Civ. Proc. Code § 384.

15 **E. The Notice Program Adequately Apprises Class Members of their Rights and**
16 **Options Under the Settlement**

17 The California Rules of Court and case law provide trial courts with, ““virtually complete
18 discretion as to the manner of giving notice to class members.”” *Chavez v. Netflix, Inc.*, 162 Cal.
19 App. 4th 43, 57 (2008) (quoting *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85
20 Cal. App. 4th 1135, 1164 (2000)); Cal. R. Ct. 3.766(c). As detailed below, the comprehensive
21 notice program in this case satisfies the requirements of Rules of Court 3.766 and 3.769 and is
22 designed to give members of the Class the best notice practicable. Therefore, the Court should
23 approve the proposed notice program because it ““fairly apprise[s] the prospective members of the
24 class of the terms of the proposed settlement and of the options that are open to them in
25 connection with [the] proceedings.”” *Cellphone* 186 Cal. App. 4th at 1393 (quoting *7-Eleven*
26 *Owners*, 85 Cal. App. 4th at 1164).

27
28

1 **1. The Notice Program Is Comprehensive and Provides Direct Notice to**
2 **the Class Members**

3 In exercising its discretion to determine the appropriate manner of notice the Court should
4 consider the following factors: “(1) The interests of the class; (2) The type of relief requested; (3)
5 The stake of the individual class members; (4) The cost of notifying class members; (5) The
6 resources of the parties; (6) The possible prejudice to class members who do not receive notice;
7 and (7) The res judicata effect on class members.” *See* Cal. R. Ct. 3.766(e).

8 The notice program in this case is more than sufficient because it is centered on providing
9 Class Members with direct notice via mail to all Class Members whose contact information is
10 available and maintained in Paramount’s records. *See* Settlement Agreement § 10.2. Since
11 Paramount has an ongoing business relationship with the profit participants in this case the direct
12 notice required by the Settlement will reach and cover the vast majority of the Settlement Class
13 Members. Nevertheless, in order to ensure that the notice program is robust and complete, the
14 Settlement also calls for a supplemental publication notice that will be distributed in the
15 entertainment industry print publications *Variety* and *The Hollywood Reporter*. *See* Settlement
16 Agreement § 10.3. E-Newsletters will be sent to subscribers of *Variety*, *The Hollywood Reporter*
17 and *The Wrap*. *Id.* Notice will be disseminated to social media outlets via online advertising in
18 Facebook, Twitter and LinkedIn. *Id.* Lastly, a press release will be issued via the major media
19 outlets. *Id.* The publication notice will provide notice to the few Class Members whose contact
20 information is no longer accurate or maintained in Paramount’s records.

21 Thus, the notice program more than satisfies its purpose which “is the protection of the
22 integrity of the class action process, one of the functions of which is to prevent burdening the
23 courts with multiple claims where one will do.” *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal.
24 App. 4th 734, 745-46 (2009); *see also*, *Wershba*, 91 Cal. App. 4th at 252 (stating the purpose of
25 notice is “to give class members sufficient information to decide whether they should accept the
26 benefits offered, opt out and pursue their own remedies, or object to the settlement. [Citation.] As
27 a general rule, class notice must strike a balance between thoroughness and the need to avoid
28 unduly complicating the content of the notice and confusing class members.”). As the Notice is

1 content neutral and clearly sets out the terms of the Settlement it complies with all standards of
2 fairness, completeness and neutrality and should be approved. *See, Cho*, 177 Cal. App. 4th at 745-
3 46; *see also, Wershba*, 91 Cal. App. 4th at 252.

4 **2. The Notice Documents Adequately Apprise Class Members of their**
5 **Rights and Options**

6 The content of the notice must “contain an explanation of the proposed settlement and
7 procedures for class members to follow in filing written objections to it and in arranging to appear
8 at the settlement hearing and state any objections to the proposed settlement.” Cal. R. Ct. 3.769(f).
9 Pursuant to California Rule of Court 3.766(d) the notice must contain the following information:

- 10 (1) A brief explanation of the case, including the basic contentions or denials of the
11 parties; (2) A statement that the court will exclude the member from the class if the
12 member so requests by a specified date; (3) A procedure for the member to follow
13 in requesting exclusion from the class; (4) A statement that the judgment, whether
14 favorable or not, will bind all members who do not request exclusion; and (5) A
15 statement that any member who does not request exclusion may, if the member so
16 desires, enter an appearance through counsel.

17 As set forth in the Long Form and Short Form notices attached to the Settlement
18 Agreement the parties have satisfied the content requirements of California Rule of Court 3.766(d)
19 and 3.769 by drafting notice documents which explain the basic contentions and denials of the
20 parties, explain the terms of the Settlement, set forth the rights of Class Members to exclude
21 themselves or participate in the Settlement, and explain the manner in which Class Members can
22 participate in the Settlement. *See Exhibits “1” and “2” to the Settlement Agreement. The*
23 *Settlement Agreement further details the requirements for the effectuation of notice by the*
24 *settlement administrator and the rights of Class Members under the Settlement. Settlement*
25 *Agreement §§ 10 et seq.*

26 **3. Angeion Group Should Be Appointed As Claims Administrator**

27 After a competitive bidding process, the Parties have agreed to task Angeion Group with
28 handling the notice and claims administration process as outlined in the Settlement Agreement.
Angeion Group is experienced and qualified in the area of class action administration and notice
and is a neutral third-party administrator. *See Declaration of Charles Ferrara ¶¶ 3-4. All fees and*
expenses charged by Angeion Group shall be paid from the Settlement Fund. Significantly, the

1 parties sought capped bids from reputable claims administrators and chose the lowest bid. Koncius
2 Decl. ¶ 14. Thus, the parties respectfully request that this Court appoint Angeion Group to
3 administer the notice and the claims administration procedures as set forth in the Settlement.

4 **V. CONCLUSION**

5 For the foregoing reasons, the parties respectfully request that the Court grant Plaintiffs'
6 Motion for Preliminary Approval of Class Settlement, enter an order distributing notice to the
7 Class Members, and set a schedule for final approval of the Settlement.

8 DATED: May 16, 2016

KIESEL LAW LLP

9
10 By: 

11 Paul R. Kiesel
12 Jeffrey A. Koncius
13 Mariana Aroditis
14 Melanie Meneses Palmer

15 Neville L. Johnson, State Bar No. 66329
16 njohnson@jllplaw.com
17 Douglas L. Johnson, State Bar No. 209216
18 djohnson@jllplaw.com
19 James T. Ryan, State Bar No. 210515
20 jryan@jllplaw.com

JOHNSON & JOHNSON LLP
439 North Canon Drive, Suite 200
Beverly Hills, California 90210
Tel: 310-975-1080
Fax: 310-975-1095

21 Raymond P. Boucher, State Bar No. 115364
22 ray@boucher.la
23 Shehnaz M. Bhujwala, State Bar No. 223484
24 bhujwala@boucher.la
25 Maria L. Weitz, State Bar No. 268100
26 weitz@boucher.la

BOUCHER LLP
21600 Oxnard Street, Suite 600
Woodland Hills, California 91367
Tel.: 818-340-5400
Fax: 818-340-5401

27 Clifford H. Pearson, State Bar No. 108523
28 cpearson@pswlaw.com
Daniel L. Warshaw, State Bar No. 185365
dwarshaw@pswlaw.com
Bobby Pouya, State Bar No. 245527
bpouya@pswlaw.com

KIESEL LAW LLP
Attorneys at Law
Beverly Hills, California

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

PEARSON, SIMON & WARSHAW LLP
15165 Ventura Boulevard, Suite 400
Sherman Oaks, California 91403
Tel: 818-788-8300
Fax: 818-788-8104

Attorneys for Plaintiffs and the Class