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Superior Court of California
County of Los Angeles

SEP 08 2016

Sherri R. Carter, Executive Officer/Clerk
By: Isabel Arellanes, Deputy

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES, CENTRAL CIVIL WEST DISTRICT**

11 COLIN HIGGINS PRODUCTIONS, LTD.,

12 Plaintiff,

13 v.

14 PARAMOUNT PICTURES
CORPORATION, and DOES 1-100,

15 Defendant.
16

Case No. BC499179

Related Cases: BC499181, BC499182,
BC500040, and BC540146

CLASS ACTIONS

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR ATTORNEYS' FEES,
COSTS, AND SERVICE AWARDS**

Date: November 7, 2016
Time: 10:00 A.M.
Dept.: 323

17
18 AND RELATED CASES
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Assigned for All Purposes to:
Hon. Elihu M. Berle, Dept. 323

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TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on November 7, 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, Named Plaintiffs and Class Representatives, Colin Higgins Productions, Ltd. (“CHP”) and Michael Elias (“Elias”) (collectively, “Plaintiffs”) will and hereby do move for the Court for an order approving and awarding attorneys’ fees, costs and service awards. By way of this motion, Plaintiffs seek:

1. \$1,135,000 in attorneys’ fees to Class Counsel (identified below);
2. \$38,286.69 in verified litigation costs to Class Counsel;
3. \$49,500 in administrative costs to the Settlement Administrator; and
4. \$10,000 in service awards to each of the class representatives, CHP and Elias.


This motion is made on the grounds that: (1) Plaintiffs’ requested attorneys’ fees are fair and reasonable in light of the efforts of Class Counsel in obtaining the settlement herein; (2) the requested attorneys’ fees comport with the applicable law; (3) the expenses for which reimbursement is sought were reasonably and necessarily incurred in connection with the prosecution and settlement of this action; and (4) a reasonable payment to the class representatives for their efforts on behalf of the Class is warranted and appropriate.

This motion is based upon this Notice of Motion, the accompanying Memorandum of Points and Authorities, the accompanying declarations of Class Counsel, the pleadings and records on file herein, and upon such additional evidence or argument as may be accepted by the Court at or prior to the hearing on this motion.

1 DATED: September 7, 2016

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Colin Higgins Productions, Ltd. (“CHP”) and Michael Elias (“Elias”)
4 (collectively, “Plaintiffs”) respectfully request attorneys’ fees, costs, and service awards in
5 connection with their settlement of this class action. Plaintiffs brought this class action alleging
6 that Defendant Paramount Pictures Corporation (“Paramount”) failed to properly report the
7 amount of Home Video Revenue and Electronic Sell-Through (“EST”) Revenue¹ on Paramount
8 motion pictures to Plaintiffs and similarly situated Profit Participants. Upon filing their original
9 complaint in January 2013, Plaintiffs and Class Counsel² faced the daunting task of taking on a
10 major movie studio and challenging an ingrained industry-wide practice of calculating profit
11 participation. Despite the many obstacles they faced, Plaintiffs and Class Counsel persevered and
12 achieved a class settlement that offers significant monetary relief to the Class.

13 The Settlement provides \$6,810,000 in total compensation to Class Members by creating:
14 (1) a \$3,405,000 Settlement Fund, which will be used to pay the Recouped Class Members; and
15 (2) a separate \$3,405,000 Accounting Relief Fund, which will be used to credit the accounts of
16 Unrecouped Class Members. All Class Members will automatically receive monetary and/or
17 accounting relief under the Settlement without having to take any affirmative action, such as
18 pursuing an expensive audit or even filing a claim. This is an exceptional result for the Class,
19 especially in light of Paramount’s many defenses in this case.

20 Plaintiffs request attorneys’ fees in the amount of \$1,135,000, litigation costs in the
21 amount of \$38,286.69, settlement administration costs in the amount of \$49,500, and service
22 awards in the amount of \$10,000 to each of the two class representatives. These requested
23 attorneys’ fees, costs and service awards are reasonable and justified by the facts of this case and
24 the relevant law. The requested fees represent one-third (33.33%) of the \$3,405,000 Settlement

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

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

1 Fund and one-sixth (16.67%) of the total \$6,810,000 settlement amount. The reasonableness of
2 Plaintiffs' fee request is confirmed by a lodestar cross-check, which reflects a *negative* multiplier
3 of 0.87 based on Class Counsel's historical hourly rates. Plaintiffs' requested litigation costs,
4 which were advanced by Class Counsel, were reasonably incurred and necessary to achieve the
5 result in this case. Likewise, settlement administration costs were reasonably incurred and
6 necessary to give notice and administer the settlement. Finally, Plaintiffs' requested service
7 awards are reasonable to reward the class representatives for their substantial work and service to
8 the Class. Thus, Plaintiffs request that the Court grant this motion.

9 **II. RELEVANT BACKGROUND**

10 Plaintiffs and Class Members in this case are writers, actors, directors, producers and other
11 Profit Participants on motion pictures distributed by Paramount. Plaintiff CHP filed the original
12 complaint on January 16, 2013, alleging that Paramount violated Class Members' Profit
13 Participation Contracts by accounting to them based on 20% of the gross receipts (i.e. revenues)
14 generated from the distribution of their movies, rather than 100% as required by their contracts.
15 Koncius Decl. ¶ 7. Plaintiff CHP alleged several state law and common law claims seeking to
16 compel Paramount to compensate Class Members for the monetary shortfall resulting from
17 Paramount's alleged breach of contract and failure to report Home Video and EST Revenues
18 based on 100% of gross receipts. Paramount demurred and moved to strike the complaint, which
19 the Court overruled and denied, respectively, on June 14, 2013. *Id.* On December 17, 2013,
20 Plaintiffs filed their First Amended Complaint adding Michael Elias as a named plaintiff. *Id.*

21 Prior to engaging in settlement negotiations, the parties conducted substantial discovery
22 relating to Plaintiffs' and Class Members' claims. Koncius Decl. ¶¶ 8-9. They exchanged written
23 discovery, including multiple sets of document requests, special interrogatories, form
24 interrogatories and requests for admissions. *Id.* at ¶ 8. Paramount produced more than 37,730
25 pages of documents encompassing all contracts, profit participation statements, correspondence
26 and other documents relating to the named Plaintiffs' films, as well as documents relating to a
27 random sample of other films in the Class. *Id.* at ¶ 9. The parties extensively negotiated the
28 parameters of Paramount's production relating to the random sample of films in the Class,

1 ensuring that the production was fairly representative of all of the films in the Class. *Id.* Plaintiffs
2 reviewed all of those documents as well as discovery and documents relating to the commerce at
3 issue and the size of the Class. *Id.* Plaintiffs also produced documents to Paramount, and took the
4 depositions of Paramount employees. *Id.* at ¶ 10. Paramount deposed the named Plaintiffs. *Id.*

5 On June 6, 2014, Paramount filed a Motion for Summary Judgment. Koncius Decl. at ¶ 11.
6 Plaintiffs opposed the motion and the Court entered an order on May 18, 2015, denying
7 Paramount’s Motion for Summary Judgment in its entirety but granting Paramount’s Motion for
8 Summary Adjudication as to Plaintiffs’ Conversion claim. *Id.*

9 On November 18, 2015, the parties participated in an all-day mediation with the Hon.
10 Louis M. Meisinger (Ret.) of ADR Services. Koncius Decl. ¶ 12. After a day of extensive
11 negotiations, the basic terms of a settlement were reached. *Id.* Numerous phone conferences and
12 correspondence then occurred and the parties negotiated and agreed to the terms of the settlement
13 now being presented to the Court. *Id.* The parties entered into a Stipulation and Agreement of
14 Settlement on May 13, 2016. *Id.* at ¶ 13.

15 On May 16, 2016, Plaintiffs filed their Motion for Preliminary Approval of the Settlement.
16 Following the hearing on this Motion, the Court granted preliminary approval to the Settlement.
17 Notice to the Class was distributed in the manner ordered by the Court. *See* Declaration of Brian
18 Devery, Project Manager of Angeion Group (“Devery Decl.”) ¶¶ 6-12, 18-19. In accordance with
19 the Court’s ordered schedule in its Preliminary Approval Order, Plaintiffs now file their motion
20 for attorneys’ fees, costs, and service awards.

21 **III. THE REQUESTED ATTORNEYS’ FEES ARE REASONABLE AND JUSTIFIED**
22 **AND SHOULD BE APPROVED BY THE COURT.**

23 As the Supreme Court of California recently affirmed, under California law, courts have
24 discretion in common fund cases to apply either the percentage-of-the-fund method or the lodestar
25 method in calculating an attorneys’ fee award. *Laffitte v. Robert Half Int’l., Inc.*, 205 Cal.Rptr.3d
26 555 (Cal. Aug. 11, 2016).³ In reaching this decision, the California Supreme Court stated:

27 ³ The Court’s Final Approval Checklist contains a quote regarding attorneys’ fees from *Dunk v.*
28 *Ford Motor Co.*, 48 Cal. App. 4th 1794, 1809 (1996), stating: “Later cases cast doubt on the use of

1 We join the overwhelming majority of federal and state courts in holding that when
2 class action litigation establishes a monetary fund for the benefit of the class
3 members, and the trial court in its equitable powers awards class counsel a fee out
4 of that fund, the court may determine the amount of a reasonable fee by choosing
5 an appropriate percentage of the fund created. The recognized advantages of the
6 percentage method—including relative ease of calculation, alignment of incentives
between counsel and the class, a better approximation of market conditions in a
contingency case, and the encouragement it provides counsel to seek an early
settlement and avoid unnecessarily prolonging the litigation (citations omitted)—
convince us the percentage method is a valuable tool that should not be denied our
trial courts.

7 *Id.* at 573.

8 The *Laffitte* decision followed numerous other authorities advocating for the use of the
9 percentage method because it promotes important values in the administration of justice. *See e.g.*
10 *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 27 (2000) (recognizing the traditional
11 approach in common fund cases has been to award a percentage of the total fund under the
12 “common fund” doctrine.); *In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 557-58 (2009);
13 *Natural Gas Anti-Trust Cases I, II, III & IV*, 2006 WL 5377849, at *3 (San Diego Super. Ct. Dec.
14 11, 2006) (“Both California state and federal courts recognize two methods for evaluating the
15 fairness and reasonableness of attorneys’ fees in class action settlements resulting in the creation
16 of a common fund for the distribution to class members: (1) the percentage-of-the-benefit method;
17 or (2) the lodestar method plus multiplier method.”); *Serrano*, 20 Cal. 3d at 34 (“when a number
18 of persons are entitled in common to a specific fund, and an action brought by a plaintiff or
19 plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or
20 plaintiffs may be awarded attorney’s fees out of the fund.”)

21 The percentage method “closely aligns the interests of the counsel and the class, i.e., class
22 counsel directly benefit from increasing the size of the class fund and working in the most efficient
23 manner.” *Lopez v. Youngblood*, 2011 WL 10483569, at *3 (E.D. Cal. Sept. 2, 2011). It also

24 _____
25 the percentage method to determine attorney fees in California class actions.” However, *Dunk*
26 was predicated on the fact that, in that case, there was no common fund and no easily calculable
27 sum of money. *See Laffitte*, 205 Cal.Rptr.3d at 571 (“The *Dunk* court, while finding the
28 percentage method inapplicable to the settlement before it due to the lack of a readily valued
common fund, did not purport to bar its usage generally in common fund cases.”) In any event,
Class Counsel are further entitled to attorneys’ fees under the “substantial benefit” doctrine. *See*
Serrano v. Priest, 20 Cal. 3d 25, 38-42 (Cal. Oct. 4, 1977); Code Civ. Proc. § 1021.5.

1 encourages early settlement of meritorious cases and “ensur[es] that competent counsel continue
2 to be willing to undertake risky, complex, and novel litigation.” *Manual for Complex Litigation*, §
3 14.121 (4th ed. 2004). As a practical matter, use of the percentage method makes eminently good
4 sense—it is easy to administer, conserves judicial resources and rewards counsel for efficiency
5 rather than focusing on the time counsel spent on the case.

6 Courts that use the percentage-of-the-fund method to calculate a fee award can apply the
7 lodestar method as a “cross-check.” *See Lealao*, 82 Cal. App. 4th at 45-46; *Chavez v. Netflix, Inc.*,
8 162 Cal. App. 4th 43, 65-66 (2008). Though not required, courts may in their discretion “cross-
9 check” an award of attorneys’ fees calculated by one method against an award calculated by the
10 other method in order to confirm the award is reasonable. *See Consumer Privacy Cases*, 175 Cal.
11 App. 4th at 557. The process should not require undue consumption of judicial resources because
12 “trial courts conducting lodestar cross-checks have generally not been required to closely
13 scrutinize each claimed attorney-hour, but have instead used information on attorney time spent to
14 ‘focus on the general question of whether the fee award appropriately reflects the degree of time
15 and effort expended by the attorneys.’” *Laffitte*, 205 Cal.Rptr.3d at 574, citing 5 Newberg on Class
16 Actions, (5th ed. 2015) § 15:86, p. 331.

17 Here, Plaintiffs request attorneys’ fees that are reasonable under both the percentage
18 method and the lodestar method. Their requested fees of \$1,135,000 represent one-third (33.33%)
19 of the \$3,405,000 Settlement Fund and one-sixth (16.67%) of the total \$6,810,000 settlement
20 amount. This falls within the range of percentages awarded in similar class action cases and is
21 justified by, *inter alia*, the risks involved in the litigation, Class Counsel’s experience and skill in
22 overcoming those risks, and the tremendous result achieved in the case. A lodestar cross-check
23 confirms the reasonableness of Plaintiffs’ fee request, as it represents a *negative* multiplier of 0.87
24 based on Class Counsel’s historical hourly rates.

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

27 Under the percentage method, California courts have recognized that “fee awards in class
28 actions average around one-third of the recovery.” *Chavez*, 162 Cal. App. 4th at 66 n.11. With

1 respect to the settlement fund amount, “the total fund could be used to measure whether the
2 portion allocated to the class and to attorney fees is reasonable.” *Consumer Privacy Cases*, 175
3 Cal. App. 4th at 554.

4 “Whether relying on the percentage or lodestar method for determining a fee award,
5 California courts consider the same basic factors.” *In re California Indirect Purchaser X-Ray Film*
6 *Antitrust Litig.*, 1998 WL 1031494, at *3 (San Francisco Super. Ct. Oct. 22, 1998). As relevant
7 here, those factors include: (1) the result Class Counsel obtained; (2) the novelty and difficulty of
8 the questions involved, and the skill displayed in presenting them; (3) the extent to which the
9 nature of the litigation precluded other employment by Class Counsel; and (4) the contingent
10 nature of the fee award.⁴ *See Serrano*, 20 Cal. 3d at 49; *Dunk*, 48 Cal. App. 4th at 1810 n.21.

11 Applying these factors, California courts have often approved attorney fee awards under
12 the percentage method of 33.33% or more. *See, e.g., Laffitte*, 205 Cal.Rptr.3d 555; *In re*
13 *California Indirect-Purchaser Plasticware Antitrust Litig., Case Nos. 961814, 963201 and 963590*
14 (San Francisco Super. Ct. 1995) (approving 33.33% award); *In re Liquid Carbon Dioxide Cases,*
15 *J.C.C.P. 3012* (San Diego Super. Ct. 1996) (approving 33.33% award); *In re Facsimile Paper*
16 *Antitrust Litig., Case Nos. 963598, 964899 and 967137* (San Francisco Super. Ct. 1997)
17 (approving 33.33% award); *In re Milk Antitrust Litigation*, Case No. BC070061 (L.A. Sup. Ct.
18 1998) (approving 33.33% award); *Wren v. RGIS Inventory Specialists*, 2011 WL 1230826, at *28
19 (N.D. Cal. Apr. 1, 2011) (approving lodestar-based fee equal to 42% of fund). As shown below,
20 consideration of the above factors in this case supports the reasonableness of Plaintiffs’ requested
21 fee award.

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

23 The Settlement in this case is truly an outstanding result for the Class. Through their hard
24 work and able negotiation, Class Counsel obtained \$6,810,000 in total compensation for the Class,
25 consisting of two separate funds that provide relief to all Class Members. The first fund, the

26 _____
27 ⁴ 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 \$3,405,000 Settlement Fund, will be used to pay Recouped Class Members both for past royalties
2 allegedly owed and for future royalties not yet earned. In this way, Recouped Class Members will
3 not only be paid for past profit participation they never received but will get the benefit of money
4 *now* for future profit participation they have not yet made. The parties estimate that, based on the
5 number of Recouped Class Members identified by Paramount (115), which results in
6 approximately \$20,726.09 in *pro rata* retroactive relief and approximately \$8,882.61 in *pro rata*
7 prospective relief. *See* Motion for Final Approval § III.B.1b. If any money is left after the initial
8 distribution of payments, either a second *pro rata* distribution will occur (if there are sufficient
9 funds to justify it) or the remaining funds will be donated *cy pres* to the Motion Picture &
10 Television Fund. *See* Settlement Agreement § 4.3. No money from the \$3,405,000 Settlement
11 Fund will revert to Paramount. *Id.* § 1.31.

12 The second fund created by the Settlement, the \$3,405,000 Accounting Relief Fund, will
13 be used to credit the accounts of Unrecouped Class Members, whose films have not yet realized
14 enough revenue for them to receive profit participation. The \$3,405,000 in accounting adjustments
15 will bring some Unrecouped Class Members into profits—meaning they will immediately begin
16 receiving profit participation on their previously underwater films—or, at the very least, bring
17 them closer to profits. Thus, as a direct result of the Settlement, Unrecouped Class Members will
18 either begin receiving actual payments or will move closer to receiving such payments, neither of
19 which would have occurred but for the Settlement. Paramount will apply the adjustments on each
20 eligible Class Member’s account automatically, without requiring the Class Member to do
21 anything to receive this benefit.

22 In fact, both Recouped and Unrecouped Class Members will be able to receive the benefits
23 of the Settlement without having to take any affirmative action. This obviates the need for Class
24 Members to file a claim to participate in the Settlement, as they will simply receive a check (if
25 they are Recouped) or the benefit of an accounting adjustment (if they are Unrecouped). For many
26 Class Members, the relief under the Settlement is particularly valuable because, in the absence of
27 the Settlement, they would have to incur significant out-of-pocket costs to conduct an audit in
28 order to calculate how much money they are potentially owed.

1 Because Class Members will receive the full benefits of the Settlement (\$3,405,000 in cash
2 and \$3,405,000 in accounting credits), Plaintiffs submit that the value of the Settlement can be
3 accurately monetized at \$6,810,000. This is not a case where the relief to the Class depends on the
4 number of claims made or the ultimate value of injunctive relief; rather, Paramount’s
5 responsibility to the Class is fixed at \$6,810,000. Thus, while Plaintiffs’ requested attorneys’ fees
6 represent 33.33% of the \$3,405,000 Settlement Fund—which, as shown herein, on its own is
7 reasonable—they represent only 16.67% of the total \$6,810,000 settlement amount. Plaintiffs
8 believe that \$6,810,000 is the true value of the Settlement, which is an extraordinary result for the
9 Class in light of the challenges and risks Plaintiffs faced in this case (discussed in detail below).

10 **2. The Case Involved Novel and Complex Legal Issues, Requiring Skill**
11 **and Superior Work to Overcome.**

12 This litigation was significant because it challenged an ingrained *industry-wide* practice of
13 calculating profit participation based on 20% of gross receipts. As the Court is aware, this case is
14 one of six, parallel class actions against the major movie studios, all of which allege a similar
15 theory that Home Video and EST Revenue should be reported based on 100% of gross receipts,
16 rather than 20%. Plaintiffs in this case took on one of the major movie studios, Paramount, and
17 argued for a sea change in an industry that has been following the same practice for many decades.
18 This was no easy feat, and Paramount had numerous defenses to Plaintiffs’ claims at every step of
19 the litigation. Paramount argued, *inter alia*, that its practice of accounting for Home Video and
20 EST Revenue did not violate Class Members’ Profit Participation Contracts; that its practice did
21 not cause damage to Plaintiffs because it did not deduct certain charges under the 100% gross
22 receipts calculation; that Plaintiffs would not be able to obtain class certification due to differences
23 in the contracts and experiences of the Class Members; and the claims of Plaintiffs and class
24 members were limited by applicable statutes of limitations.

25 Despite these challenges, Plaintiffs persevered and prevailed at critical points in the
26 litigation. Plaintiffs defeated Paramount’s demurrer and motion to strike, and later defeated
27 Paramount’s Motion for Summary Judgment in its entirety. Although the Court granted
28 Paramount’s motion for summary adjudication, it was as to Paramount’s conversion cause of

1 action only. Plaintiffs believed that they would be able to obtain class certification and prevail at
2 trial. Still, there was no way to guarantee either of these outcomes, especially in this case which
3 involved novel and complex issues without any precedent. The fact that Class Counsel were able
4 to achieve the results they did for the Class despite the risks they faced speaks to the level of skill
5 Class Counsel brought to bear in this case. Negotiating the details of the Settlement was protracted
6 and difficult, requiring additional negotiation following the parties' formal mediation. *See*
7 Koncius Decl. ¶¶ 12-13. Before beginning settlement negotiations, the parties conducted
8 substantial discovery, including multiple rounds of written discovery; the production and review
9 of thousands of pages of contracts, profit participation statements and correspondence; and the
10 depositions of Paramount employees and representatives for each of the named Plaintiffs. *Id.* at ¶¶
11 8-10. After the parties executed the Settlement Agreement, Class Counsel continued to work
12 diligently on the case, working closely with the Settlement Administrator to oversee the notice
13 process. In short, "prosecuting this case required a significant commitment of time, resources, and
14 energy from Class Counsel, and the relief achieved simply would not have been possible but for
15 the commitment and skill of Class Counsel." *Garner v. State Farm Mutual Auto. Ins. Co.*, 2010
16 WL 1687829, at *2 (N.D. Cal. Apr. 22, 2010).

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

19 The contingent risk of receiving little or no recovery for significant legal work is another
20 major factor in considering an appropriate award of attorneys' fees. *See, e.g., Ketchum v. Moses*,
21 24 Cal. 4th 1128, 1132 (Cal. Feb. 26, 2001) ("A contingent fee contract, since it involves a gamble
22 on the result, may properly provide for a larger compensation than would otherwise be
23 reasonable."). As the accompanying declarations of Class Counsel attest, Class Counsel have been
24 working diligently on this case for over three years on a pure contingency basis with no guarantee
25 of recovery. Class Counsel have collectively spent over 2,386.35 hours working on this case as of
26 August 19, 2016, and have advanced all out-of-pocket expenses, including discovery costs and
27 mediation-related costs, totaling \$38,286.69 to date, with no promise of repayment. *See* Koncius
28 Decl. ¶ 23, Ex. B; Warshaw Decl. ¶ 21, Ex. 2; Johnson Decl. ¶ 11, Ex. 2 and 3; Boucher Decl. ¶

1 10, Ex. 3. Indeed, Class Counsel faced the possibility that they would spend years litigating this
2 complex case and recover nothing. Class Counsel’s high-risk and successful efforts on behalf of
3 the Class further warrant their requested attorneys’ fees.

4 For all the reasons discussed above, particularly the outstanding result obtained by Class
5 Counsel; the issues and challenges Class Counsel faced and overcame; the extensive and high-
6 quality work Class Counsel performed; and the burdens Class Counsel bore in pursuing this
7 litigation on a pure contingency basis, Plaintiffs’ requested fee award is reasonable as a percentage
8 of either the \$ 3,405,000 Settlement Fund (33.33%) or the total \$6,810,000 settlement amount,
9 which includes both the Settlement Fund and the Accounting Relief Fund (16.67%). *See Laffitte*,
10 2016 Cal. LEXIS 6387, at *4-9.

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

13 The first step in awarding fees under the lodestar method is to calculate the lodestar
14 amount, which is the number of hours reasonably performed at a reasonable hourly rate. *Serrano*,
15 20 Cal. 3d at 48; *Vo v. Las Virgines Mun. Water Dist.*, 79 Cal. App. 4th 440 (2000). The court
16 may then adjust the lodestar amount based on the factors discussed above, including: “(1) the
17 novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the
18 extent to which the nature of the litigation precluded other employment by the attorneys, [and] (4)
19 the contingent nature of the fee award.” *Ketchum*, 24 Cal. 4th at 1132. Other relevant factors
20 include “the time limitations imposed by the litigation, the amount at stake, and the result obtained
21 by counsel.” *City of Oakland v. Oakland Raiders*, 203 Cal. App. 3d 78, 83 (1988).

22 Here, Class Counsel’s requested fee represents a *negative* multiplier on their lodestar of
23 0.87 based on their historical hourly rates, which falls well within the range of reasonableness.

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

25 “Under the lodestar method, a party who qualifies for a fee should recover for all hours
26 reasonably spent unless special circumstances would render the award unjust.” *Vo*, 79 Cal. App.
27 4th at 446; *see also Weeks v. Baker & McKenzie*, 63 Cal. App. 4th 1128, 1175 (1998) (“[A]n
28 attorney who takes on [a complex] case can anticipate receiving full compensation for every hour

1 spent litigating a claim against even the most polemic opponent.”); *Ketchum*, 24 Cal. 4th at 1132.
 2 Compensable activities under the lodestar method include both pre-litigation activities (*e.g.*,
 3 interviewing the client, investigating the facts, researching the law and preparing the initial
 4 pleading) and litigation activities (*e.g.*, conducting discovery, conferring with clients, drafting
 5 pleadings, making court appearances, travel time and settlement negotiations). *Webb v. Bd. of*
 6 *Edu.*, 471 U.S. 234, 243 (1985); *Stokus v. Marsh*, 217 Cal. App. 3d 647, 655-56 (1990). A review
 7 of billing records is not necessary to award attorneys’ fees; the court can accept declarations of
 8 counsel setting forth the hours worked and tasks performed. *See In re Sutter Health Uninsured*
 9 *Pricing Cases*, 171 Cal. App. 4th 495, 511-12 (2009) (“We see no reason why [the court] could
 10 not accept the declarations of counsel attesting to the hours worked, particularly as he was in the
 11 best position to verify those claims by reference to the various proceedings in the case.”); *Wershba*
 12 *v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254-55 (2001) (“California case law permits fee
 13 awards in the absence of detailed time sheets.”).⁵

14 As of August 19, 2016, Class Counsel spent a total of 2,386.35 hours working on this case
 15 and incurred a combined lodestar of \$1,300,765.38 based on their historical hourly rates. A
 16 breakdown of these fees and hours between the law firms is set forth in the below chart:

Class Counsel	Hours	Lodestar
Kiesel Law LLP	1,300.60	\$608,169.50
Johnson & Johnson LLP	597.80	\$371,172.50
Pearson, Simon & Warshaw, LLP	354.95	\$216,345.88
Boucher LLP (including Khorrami)	133.00	\$105,077.50
Total	2,386.35	\$1,300,765.38

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 24 The work performed, hours and lodestar for each of the above law firms are detailed in the
 25 concurrently filed declarations of Class Counsel and in the detailed time records lodged by each
 26 firm for the Court’s *in camera* review. These declarations detail the amount of work that was

27 ⁵ 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.

1 necessary in order to obtain a successful result on behalf of the Class Members at every stage of
2 the litigation, including: (1) pre-litigation research and investigation; (2) drafting the relevant
3 pleadings and motions, including complaints, oppositions to Paramount’s demurrer and motion to
4 strike, motions for summary judgment and summary adjudication, and motions to approve the
5 Settlement; (3) conducting discovery, including multiple rounds of written discovery, reviewing
6 documents produced by Paramount, taking depositions of Paramount employees, and defending
7 Plaintiffs’ depositions; (4) settlement related activities, including preparing for and attending
8 mediation, drafting mediation briefs and engaging in numerous settlement discussions; and (5)
9 obtaining Court approval of the Settlement Agreement. *See* Warshaw Decl. ¶¶ 4-15; Johnson Decl.
10 ¶¶ 4-5; Koncius Decl. ¶¶ 4-13, 17; Boucher Decl. ¶¶ 6. Each hour expended by Class Counsel on
11 this case has ultimately benefitted the Class Members, and Class Counsel’s lodestar amount is
12 reasonable and compensable.

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

15 The test for the reasonableness of an attorney’s hourly rate is whether it is “within the
16 range of reasonable rates charged by and judicially awarded to comparable attorneys for
17 comparable work.” *Children’s Hosp. & Med. Ctr. v. Bunt*, 97 Cal.App.4th 740, 783 (2002); *see*
18 *also PCLM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000) (“The reasonable hourly rate is
19 that prevailing in the community for similar work.”). In performing this analysis, courts look to
20 the experience and reputation of class counsel, the complexity of the issues involved, the
21 geographic market in which the case is litigated, and other factors affecting the litigation. *See*
22 *Oakland Raiders*, 203 Cal. App. 3d at 82 (affirming a trial court’s award based on an hourly rate
23 that falls in line with the rates charged by “top law firms in the Bay Area”).

24 The attorney declarations and supporting exhibits establish the basis and calculation for the
25 hourly rates of the attorneys and paralegals at each firm who worked on this case. Each of the
26 firms composing Class Counsel has experience handling class actions and complex litigation.
27 Moreover, each of the firms involved in this case has specific experience litigating class actions in
28 the entertainment industry, including the alleged underpayment of royalties to professionals in the

1 film and music industries. This experience was invaluable in adjudicating the issues presented in
2 this case, and supports the reasonableness of Class Counsel’s hourly rates. Class Counsel billed
3 this case at their usual and customary hourly billing rates, which have been approved by other
4 courts presiding over similar complex class action lawsuits, including in California. *See* Warshaw
5 Decl. ¶ 20; Johnson Decl. ¶ 10; Koncius Decl. ¶ 23; Boucher Decl. ¶ 16. Notably, this Court
6 already approved the hourly rates of Class Counsel in the related *Universal* matter.

7 **3. The Negative Lodestar Multiplier Applied Here Highlights the**
8 **Significant Efforts of Counsel.**

9 Once calculated, the lodestar can be adjusted upward using a “multiplier” based on several
10 factors, including: the novelty and difficulty of the litigation; class counsel’s skill in handling it;
11 the burdens imposed by taking on the case; the contingent nature of the fee award; and the quality
12 of the results achieved. *See Ketchum*, 24 Cal. 4th at 1132; *Oakland Raiders*, 203 Cal. App. 3d at
13 83. There is no rigid formula and each factor should be considered only where appropriate. *See*
14 *Serrano*, 20 Cal.3d at 49; *The People ex rel. Dep’t. of Transp. v. Yuki*, 31 Cal. App. 4th 1754,
15 1771 (1995). In appropriate cases, “[m]ultipliers can range from 2 to 4 or even higher.” *Wershba*,
16 91 Cal.App.4th at 225; *see also Chavez*, 162 Cal. App. 4th at 66 (affirming use of 2.5 multiplier to
17 award attorneys’ fee of \$2,040,000 in a case where lodestar was \$805,000 based on, *inter alia*, the
18 success achieved and the quality of class counsel’s representation). In this case, the requested fee
19 represents a negative multiplier of 0.87 based on Class Counsel’s historical hourly rates. As a
20 result, the lodestar cross-check supports an award of Plaintiffs’ requested attorneys’ fees.

21 **IV. CLASS COUNSEL SHOULD BE REIMBURSED THEIR LITIGATION COSTS.**

22 In addition to attorneys’ fees incurred, attorneys in a class action may be reimbursed for
23 costs incurred “in the ordinary course of prosecuting [a] case.” *California Indirect Purchaser X-*
24 *Ray Film Antitrust Litig.*, 1998 WL 1031494, at *11 (Oct. 22, 1998); *Natural Gas Anti-Trust*
25 *Cases*, 2006 WL 5377849, at *4. Under the Settlement Agreement, Class Counsel are entitled to
26 apply to the Court for reimbursement of up to \$105,000 in litigation costs and expenses. *See*
27 Settlement Agreement § 19. However, Class Counsel have incurred less than that amount and
28 request reimbursement only for the amount actually incurred. As set forth in the attorney

1 declarations, Class Counsel have incurred \$38,286.69 in litigation costs to date during the ordinary
2 course of this litigation. *See* Koncius Decl. ¶ 26, Ex. C; Warshaw Decl. ¶ 21, Ex. 2; Johnson Decl.
3 ¶ 11, Ex. 2 and 3; Boucher Decl. ¶ 10, Ex. 3. These verified costs include filing fees, computerized
4 legal research, travel expenses, deposition expenses and mediation-related expenses that were
5 incurred in the normal course of business. *See id.* Their costs incurred were reasonable and
6 essential to the successful prosecution of this lawsuit, and should be awarded by the Court.

7 **V. THE COURT SHOULD AWARD ANGEION GROUP ADMINISTRATIVE COSTS.**

8 The parties selected, and the Court preliminarily appointed, Angeion Group (“Angeion”) to
9 act as the settlement administrator and to, among other tasks, mail the Class Action Settlement
10 Notice, (“Notice”); establish and maintain a case specific website and email address; respond to
11 Class Member inquiries; publish Notice and perform other duties as specified in the Settlement
12 Agreement, following the Court’s Order Granting Preliminary Approval of Paramount Pictures
13 Corporation Class Action Settlement dated June 27, 2016. Declaration of Brian Devery, Project
14 Manager of Angeion Group (“Devery Decl.”) ¶ 3. Angeion has performed all of its responsibilities
15 to date and continues to do so. *Id.* ¶¶ 6-24. The capped cost of Angeion’s service, \$49,500, is
16 reasonable and fair given the work performed and should be granted final approval.

17 **VI. THE COURT SHOULD AWARD SERVICE AWARDS TO THE CLASS REPRESENTATIVES.**

18
19 Courts typically award service awards to the named plaintiffs in a class action for their
20 work performed on behalf of the class. *In re Cellphone Fee Termination Cases*, 186 Cal. App. 4th
21 1380, 1393-94 (2010). “Incentive awards are fairly typical in class action cases . . . and are
22 intended to compensate class representatives for work done on behalf of the class, to make up for
23 financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their
24 willingness to act as a private attorney general.” *Id.* (citing *Rodriguez v. West Publ’g Corp.*, 563
25 F.3d 948, 958-59 (9th Cir. 2009)) (emphasis omitted). Here, Plaintiffs request a service award of
26 \$10,000 each for the two class representatives, CHP and Elias. These awards are justified by the
27 time and effort the class representatives dedicated to this case and the reputational risks they faced
28 in associating their names with a well-publicized class action lawsuit against a major movie

1 studio. *See In re Netflix Privacy Litig.*, 2013 WL 1120801, at *11 (N.D. Cal. Mar. 18, 2013)
2 (service awards recognized that class representatives “assumed the responsibilities and burdens of
3 acting as representatives” and faced “public scrutiny through media coverage of this high profile
4 suit”). More than the typical class representative, Plaintiffs here put their names and livelihoods at
5 risk by pursuing significant litigation against a movie studio with whom they have an ongoing
6 relationship. Declaration of James Cass Rogers, President of CHP (“Rogers Decl.”) ¶ 3;
7 Declaration of Michael Elias (“Elias Decl.”) ¶ 3. Moreover, Plaintiffs were actively engaged in the
8 litigation, including by participating in the discovery process, reviewing documents and having
9 their depositions taken. *Id.* ¶ 4.

10 The requested service awards for the class representatives comport with previous case law.
11 California state and federal courts have approved service awards of \$10,000 or more, particularly
12 in class actions that involved significant risk and substantial efforts expended by the class
13 representatives. *See, e.g., Cellphone Fee Termination Cases*, 186 Cal. App. 4th at 1395 (approving
14 \$10,000 service awards to each of the four class representatives); *In re Warner Music Group*
15 *Corp. Digital Downloads Litig.*, Case No. 12-cv-00559-RS (N.D. Cal. Jan. 12, 2015) (approving
16 \$10,000 service awards to each of the six class representatives in a class action against a major
17 music label alleging the underpayment of royalties); *In re TFT-LCD (Flat Panel) Antitrust Litig.*,
18 2013 WL 1365900, at *17 (N.D. Cal. Apr. 3, 2013) (approving \$15,000 service awards to each of
19 the 40 class representatives). Indeed, this Court approved \$10,000 service awards in the related
20 case, *Colin Higgins Productions, Ltd. v. Universal City Studios, LLC.*, BC499180 (L.A. Sup. Ct.).
21 The \$10,000 service awards sought by Plaintiffs in this case are justified and should be approved.

22 **VII. CONCLUSION**

23 Based on the foregoing, Plaintiffs respectfully request an award of attorneys’ fees, costs
24 and service awards in the amounts set forth above.
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Respectfully submitted,

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