

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ROBERT A. NITSCH, et al.,

Plaintiffs,

v.

DREAMWORKS ANIMATION SKG INC.,
et al.,

Defendants.

Case No. 14-CV-04062-LHK

**ORDER AMENDING SETTLEMENT
NOTICE AND GRANTING MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Re: Dkt. No. 358

On October 17, 2016, Plaintiffs filed a motion for preliminary approval of class action settlement with Defendant DreamWorks Animation SKG, Inc. ("DreamWorks"). ECF No. 338. On January 19, 2017, the Court held a preliminary approval hearing and preliminarily approved the DreamWorks Settlement and proposed notice with modifications. ECF No. 353.

On January 31, 2017, Plaintiffs filed a motion for preliminary approval of class action settlement with Defendants The Walt Disney Company, Pixar, Lucasfilm Ltd., LLC, and Two Pic MC LLC (collectively, "Disney Defendants"). ECF No. 358. Therewith, Plaintiffs filed an amended notice of settlements, noticing both the DreamWorks and Disney settlements in one comprehensive notice.

1 On March 2, 2017, the Court held a hearing on Plaintiffs’ motions for preliminary approval of class
2 action settlement with the Disney Defendants. ECF No. [xyz].

3 WHEREAS plaintiffs, on behalf of themselves and of the class, and the Disney Defendants
4 have agreed, subject to Court approval following notice to the class and a hearing, to settle the above-
5 captioned matter (“Lawsuit”) upon the terms set forth in the Settlement Agreement;

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

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

11 WHEREAS, this Court certified a class in the ongoing litigation on May 25, 2016;

12 NOW, THEREFORE, IT IS HEREBY ORDERED:

13 1. Unless otherwise defined herein, all terms that are capitalized herein shall have the
14 same meaning ascribed to those terms in the Settlement Agreements.
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16 2. The Court has jurisdiction over this Action (and all actions and proceedings
17 consolidated in the Action), Plaintiffs, Class Members, the Disney Defendants, and any party to any
18 agreement that is part of or related to the Settlement Agreement.

19 3. Federal Rule of Civil Procedure 23(e) provides that a proposed settlement in a class
20 action case must be initially approved by the Court. The Court is to determine whether the proposed
21 settlement is “fair, reasonable, and adequate.” Rule 23(e)(2). As a first step, plaintiffs must seek
22 preliminary approval of the proposed settlement, which is an “initial evaluation” of the fairness of a
23 proposed settlement. Manual for Complex Litigation (Fourth) § 21.632 (2015). In determining whether
24 the proposed settlement is “fundamentally fair, adequate, and reasonable” the Court makes a
25 preliminary determination of whether to give notice of the proposed settlement to the class members
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and an opportunity to voice approval or disapproval of the settlement. *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)); see Manual for Complex Litigation (Fourth) § 21.631 (2015). Preliminary approval is not a dispositive assessment of the fairness of the proposed settlement, but rather determines whether the proposed settlement falls within the “range of reasonableness.” *In re High-Tech Employee Litig.*, No. 11-cv-2509, 2013 WL 6328811, at *1 (N.D. Cal. Oct. 30, 2013) (“*High-Tech I*”) (citation omitted); see also *Collins v. Cargill Meat Solutions Corp.*, 274 F.R.D. 294, 301-302 (E.D. Cal. 2011). Preliminary approval establishes an “initial presumption” of fairness, such that notice may be given to the class and the class may have a “full and fair opportunity to consider the proposed [settlement] and develop a response.” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007); *Williams v. Vukovich*, 720 F.2d 909, 921 (6th Cir. 1983).

4. While the Court is not to consider at this stage whether final approval is warranted, all the relevant factors weigh in favor of preliminarily approving the proposed Settlement Agreement with the Disney Defendants. First, the settlement is the result of arm’s length negotiations among experienced counsel, following extensive discovery on both sides, and a mediation with an experienced, impartial mediator. Second, the Court finds that the agreed-upon consideration of \$100 million for the Disney Defendants is fair and reasonable based on the circumstances, the risks involved, and the significant recovery from four of the defendant companies. Third, although final approval of the settlement with the Disney Defendants would bring an end to this litigation—rendering further cooperation and joint-and-several liability irrelevant—the total amount recovered and in the common settlement fund will be \$168.95 million, or nearly one-third of Plaintiffs’ total single damages estimate of \$553,425,117. As a result, the Court finds that the proposed settlement falls within the “range of reasonableness” and therefore warrants preliminary approval. *High-Tech I*, 2013 WL 6328811, at *1.

1 5. The Court further finds that the proposed Plan of Allocation, which is attached to
2 Plaintiffs' motion for preliminary approval of the settlement with the Disney Defendants, is fair,
3 reasonable, and adequate, and is hereby preliminarily approved, subject to further consideration at the
4 Fairness Hearing.

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

7 **NOTICE OF SETTLEMENTS TO CLASS MEMBERS**

8 19. The Court appoints the firm of Kurtzman Carson Consultants ("KCC") as Notice and
9 Claims Administrator.

10 20. The parties' proposed Settlement Notice, ECF No. 539-2, contains two errors and one
11 obsolete sentence. First, in the chart entitled "Summary of Your Legal Rights as a Class Member and
12 Options with Respect to the Settling Defendants," in both the third row entitled "Object to One or Both
13 of the Settlements" and in the fourth row entitled "Go to the Court's Fairness Hearing About the
14 Settlements," the chart refers to "the instructions in Question 23." *Id.* at 3–4. In both places, the chart
15 should instead refer to "the instructions in Question 25." Second, the last sentence under Question 7 is
16 now obsolete. *Id.* at 6. The sentence states that if the Court finally approves the settlements, the June
17 12, 2017 trial date will be vacated. However, the Court vacated the June 12, 2017 at the March 2, 2017
18 preliminary approval hearing, and therefore this sentence is now unnecessary. The last sentence in
19 Question 7 should therefore be deleted. The Court hereby orders the parties to make these changes to
20 the Settlement Notice. The Court approves the Settlement Notice with the above changes ("Amended
21 Settlement Notice") and finds that the dissemination plan complies fully with the requirements of Rule
22 23 and due process of law and is the best notice practicable under the circumstances. Hence, when
23 notice is completed, it shall constitute due and sufficient notice of the proposed Settlement Agreements
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1 and the Fairness Hearing to all persons affected by and/or entitled to participate in the Settlement
2 Agreements, in full compliance with the applicable requirements of Rule 23 and due process.

3 21. The Notice and Claims Administrator will be responsible for providing notice to
4 potential class members consistent with Rule 23(c)(2)(B). The Notice and Claims Administrator will
5 mail and/or email the Amended Settlement Notice to the potential class members and post the
6 Amended Settlement Notice on the internet within 7 days from the date of this order preliminarily
7 approving the Disney Defendants' Settlement.

8 **PRODUCTION OF CONTACT AND COMPENSATION INFORMATION FOR CLASS**
9 **MEMBERS**

10 22. Within six (6) days after this Order is entered, to the extent they have not already done
11 so, the defendants shall provide to the Notice and Claims Administrator in an electronic format for the
12 following time periods:

- 13 • Pixar (Jan. 1, 2004 – Dec. 31, 2010)
- 14 • Lucasfilm Ltd., LLC (Jan. 1, 2004 – Dec. 31, 2010)
- 15 • DreamWorks Animation SKG, Inc. (Jan. 1, 2004 – Dec. 31, 2010)
- 16 • The Walt Disney Company (Jan. 1, 2004 – Dec. 31, 2010)
- 17 • Two Pic MC LLC f/k/a ImageMovers Digital LLC (Jan. 1, 2007 – Dec. 31, 2010)

18 contact information, Social Security Numbers, the last location (by state) where the employee worked
19 for the defendant for state tax reporting purposes, and compensation information for Class Members,
20 identified by job titles, to the extent such information exists in each defendant's human resources
21 databases. The Notice and Claims Administrator shall utilize Class Members' information provided by
22 the defendants solely for purposes of effectuating notice and administering the Settlement Fund,
23 including withholding taxes, and shall keep the information confidential.

24 **ADMINISTRATION OF THE SETTLEMENT FUND**

25 23. The Amended Settlement Notice satisfies the requirements of due process and the
26 Federal Rules of Civil Procedure and, accordingly, is approved for dissemination to the Class. The
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1 Notice and Claims Administrator shall cause the Amended Settlement Notice to be emailed and/or
2 mailed to Class Members and potential Class Members pursuant to procedures described in the
3 Settlement Agreements, and to any potential Class Member who requests one; and, in conjunction with
4 Class Counsel, shall create a case-specific website with case information, court documents relating to
5 the Settlements and the Amended Settlement Notice. By no later than 14 days after the opt-out
6 deadline, the Notice and Claims Administrator shall file with the Court an Affidavit of Compliance
7 with Notice Requirements.

8 24. All costs incurred in disseminating the Amended Settlement Notice and administering
9 the Settlements shall be paid from the Settlement Funds pursuant to the Settlement Agreements.

10 **CLASS MEMBER RESPONSE AND SCHEDULING OF FAIRNESS HEARING**

11 25. Class Members will have until 46 days after the Amended Settlement Notice is mailed
12 to opt out (the “Opt-Out Deadline”) of the proposed Settlements. Class Members have the option of
13 opting out of either Settlement, or both Settlements.

14 26. Any Class Member who wishes to be excluded (opt out) from either or both of the
15 Settlements must send a written request for exclusion to the Notice and Claims Administrator on or
16 before the close of the Opt-Out Deadline identifying which Settlement or Settlements from which they
17 wish to be excluded. Class Members may not exclude themselves by filing requests for exclusion as a
18 group or class, but must in each instance individually and personally execute a request for exclusion.
19 Class Members who exclude themselves from the Settlement(s) will not be eligible to receive any
20 benefits under the Settlement(s), will not be bound by any further orders or judgments entered for or
21 against the Class related thereto, and will preserve their ability independently to pursue any claims
22 they may have against DreamWorks and/or The Walt Disney Company, Pixar, Lucasfilm, Ltd., LLC,
23 and Two Pic MC LLC.
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27. Class Counsel shall file their motion for payment of attorneys' fees, costs, and for Plaintiff Service Awards, no later than 32 days after the Amended Settlement Notice is mailed.

28. All Class Members who did not properly and timely request exclusion from the DreamWorks and/or Disney Settlements shall, upon entry of the Final Approval Order and Judgment, be bound by all the terms and provisions of those Settlement Agreements, including the release provisions, whether or not such Class Member objected to the Settlement(s) and whether or not such Class Member received consideration under the Settlement Agreement(s).

30. A final hearing on the Settlement Agreements ("Fairness Hearing") shall be held before the Court at 1:30 p.m. on May 18, 2017, in Courtroom 8, 4th Floor, of the Northern District of California, 280 South 1st Street, San Jose, CA 95113. Such hearing shall be at least 95 days from the date of the Motion for Preliminary Approval to allow DreamWorks and the Disney Defendants time to complete their obligations under the Class Action Fairness Act.

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

32. The date and time of the Fairness Hearing shall be subject to adjournment by the Court without further notice to the Class Members, other than by the Notice and Claims Administrator on the case-specific website and any notice that may be posted by the Court. Should the Court adjourn the date for the Fairness Hearing, such adjournment shall not alter the deadlines for mailing of the Amended Settlement Notice, nor the deadlines for submissions of settlement objections, claims,

1 requests for exclusion, or notices of intention to appear at the Fairness Hearing unless those dates are
2 explicitly changed by subsequent Order.

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

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

13 35. Any Class Member making an objection (an "Objector") must sign the objection
14 personally, even if represented by counsel, and must provide the Settlement Class Member's name and
15 full residence or business address and a statement that the Class Member was an employee and
16 member of the Class. An objection must state which Settlement Agreement the Objector is objecting
17 to, why the Objector objects to the Settlement Agreement(s), together with any documents such person
18 wishes to be considered in support of the objection. If an Objector intends to appear at the hearing,
19 personally or through counsel, the Objector should include with the objection a statement of the
20 Objector's intent to appear at the hearing. The Objector must also list any other objections by the
21 Objector, or the Objector's attorney, to any class action settlements submitted to any court in the
22 United States in the previous five years.

23 36. Objections, along with any statements of intent to appear, must be postmarked no later
24 than 46 days after the Amended Settlement Notice is mailed, and mailed to the addresses provided by
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the Notice and Claims Administrator in the Amended Settlement Notice. If counsel is appearing on behalf of more than one Class Member, counsel must identify each such Class Member and each such Class Member must have complied with this Order.

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

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

39. Upon entry of the Final Approval Order and Judgment, all Class Members who have not personally and timely requested to be excluded from the Class will be enjoined from proceeding against DreamWorks, The Walt Disney Company, Pixar, Lucasfilm, Ltd., LLC, and Two Pic MC LLC and all other released parties as defined in the Settlement Agreements, with respect to all of the released claims as defined in the Settlement Agreements.

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

Event	Due Date
Administrator receives DreamWorks, and Disney Defendants data on potential class members, if not already received.	March 8, 2017
Amended Settlement Notice mailed and posted on internet	March 9, 2017
Deadline for motion for attorneys' fees,	April 10, 2017

costs, and service awards	
Objections and Opt-Outs deadline	April 24, 2017
Administrator files Affidavit of Compliance with Court regarding notice requirements	May 8, 2017
Deadline for Motion for Final Approval	May 8, 2017
Final Fairness Hearing	May 18, 2017 at 1:30 p.m.

41. All further proceedings as to DreamWorks and the Disney Defendants are hereby stayed, except for any actions required to effectuate or enforce the Settlement Agreements, or matters related to the Settlement Funds, including applications for attorneys' fees, payment of costs, and service awards to Named Plaintiffs.

42. With respect to the DreamWorks Settlement Agreement ("DreamWorks Agreement") only, in the event the DreamWorks Agreement is terminated pursuant to the applicable provisions of the DreamWorks Agreement, the DreamWorks Agreement and all related proceedings shall, except as expressly provided in the DreamWorks Agreement, become void and shall have no further force or effect, and Class Plaintiffs shall retain all of their current rights against DreamWorks, and DreamWorks shall retain any and all of its current defenses and arguments thereto so that the Settling Parties may take such litigation steps (including without limitation serving expert reports, deposing experts, and filing motions) that the Settling Parties otherwise would have been able to take absent the pendency of this Settlement. These Actions shall thereupon revert forthwith to their respective procedural and substantive status prior to October 4, 2016, and shall proceed as if the DreamWorks Agreement had not been executed.

43. With respect to the Disney Defendants Settlement Agreement ("Disney Defendants Agreement") only, in the event the Disney Defendants Agreement is terminated pursuant to the applicable provisions of the Disney Defendants Agreement, the Disney Defendants Agreement and all

1 related proceedings shall, except as expressly provided in the Disney Defendants Agreement, become
2 void and shall have no further force or effect, and Class Plaintiffs shall retain all of their current rights
3 against the Disney Defendants, and the Disney Defendants shall retain any and all of its current
4 defenses and arguments thereto so that the Settling Parties may take such litigation steps (including
5 without limitation serving expert reports, deposing experts, and filing motions) that the Settling Parties
6 otherwise would have been able to take absent the pendency of this Settlement. These Actions shall
7 thereupon revert forthwith to their respective procedural and substantive status prior to December 9,
8 2016, and, as further specified in the Disney Defendants Agreement, shall proceed as if the Disney
9 Defendants Agreement had not been executed.

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11 44. Neither this Order nor the Settlement Agreements, nor any other Settlement-related
12 document nor anything contained or contemplated therein, nor any proceedings undertaken in
13 accordance with the terms set forth in the Settlement Agreements or herein or in any other Settlement-
14 related document, shall constitute, be construed as or be deemed to be evidence of or an admission or
15 concession by DreamWorks or the Disney Defendants as to (a) the validity of any claim that has been
16 or could have been asserted against either or as to any liability by either as to any matter encompassed
17 by the Settlement Agreement or (b) the propriety of certifying any litigation class against DreamWorks
18 or the Disney Defendants.

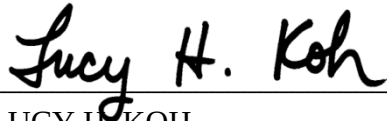
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20 45. Neither the Settlement Agreements, nor any of their terms or provisions, nor any of the
21 negotiations or proceedings connected with them, shall be construed as an admission or concession by
22 plaintiffs or defendants, respectively, of the truth or falsity of any of the allegations in the Lawsuit, or
23 of any liability, fault or wrongdoing of any kind.

24 46. All members of the Class are temporarily barred and enjoined from instituting or
25 continuing the prosecution of any action asserting the claims released in the proposed settlements, until
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1 the Court enters final judgment with respect to the fairness, reasonableness, and adequacy of the
2 settlements.

3 **IT IS SO ORDERED.**

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5 Dated: March 2, 2017

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7 LUCY H. KOH
8 United States District Judge
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