

CONFIRMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

FEB 02 2018

Sherri R. Carter, Executive Officer/Clerk
By: Rita Nazaryan, Deputy

1 Clifford H. Pearson (Bar No. 108523)
 cpearson@pswlaw.com
2 Daniel L. Warshaw (Bar No. 185365)
 dwarshaw@pswlaw.com
3 Bobby Pouya (Bar No. 245527)
 bpouya@pswlaw.com
4 **PEARSON, SIMON & WARSHAW, LLP**
5 15165 Ventura Boulevard, Suite 400
6 Sherman Oaks, California 91403
7 Telephone: (818) 788-8300
8 Facsimile: (818) 788-8104

9 *Attorneys for Plaintiff and the Plaintiff Classes*
10 *(Additional Counsel Listed on Signature Page)*

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

13 STANLEY DONEN FILMS, INC.,

14 Plaintiff,

15 vs.

16 TWENTIETH CENTURY FOX FILM
17 CORPORATION, and DOES 1-100,

18 Defendants.

CASE NO. BC499181

Related to BC499179, BC499180, BC499182,
BC500040

CLASS ACTION

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

Date: April 9, 2018
Time: 11:00 a.m.
Dept.: 323

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

PEARSON, SIMON & WARSHAW, LLP
15165 VENTURA BOULEVARD, SUITE 400
SHERMAN OAKS, CALIFORNIA 91403

875606.2

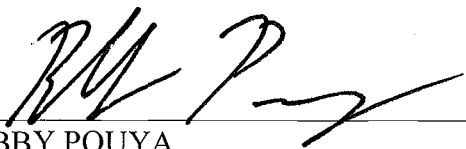
PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES, COSTS AND SERVICE AWARDS

1 DATED: February 2, 2018

Respectfully submitted,

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

By: 
BOBBY POUYA

Clifford H. Pearson (Bar No. 108523)
Daniel L. Warshaw (Bar No. 185365)
Bobby Pouya (Bar No. 245527)
PEARSON, SIMON & WARSHAW, LLP
15165 Ventura Boulevard, Suite 400
Sherman Oaks, CA 91403
Telephone: (818) 788-8300
Facsimile: (818) 788-8104

Neville L. Johnson (Bar No. 66329)
Douglas L. Johnson (Bar No. 209216)
James T. Ryan (Bar No. 210515)
JOHNSON & JOHNSON LLP
439 North Canon Drive, Suite 200
Beverly Hills, CA 90210
Telephone: (310) 975-1080;
Facsimile: (310) 975-1095

Paul R. Kiesel (Bar No. 119854)
Jeffrey A. Koncius (Bar No. 189803)
Nicole Ramirez (Bar No. 279017)
KIESEL LAW LLP
8648 Wilshire Boulevard
Beverly Hills, CA 90211
Telephone: (310) 854-4444
Facsimile: (310) 854-0812

Raymond P. Boucher (Bar No. 115364)
Shehnaz M. Bhujwala (Bar No. 223484)
BOUCHER, LLP
21600 Oxnard St., Suite 600
Woodland Hills, CA 91367
Telephone: (818) 340-5400
Facsimile: (818) 340-5401

Attorneys for Plaintiff and the Class

PEARSON, SIMON & WARSHAW, LLP
15165 VENTURA BOULEVARD, SUITE 400
SHERMAN OAKS, CALIFORNIA 91403

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. RELEVANT BACKGROUND..... 2

III. THE REQUESTED ATTORNEYS’ FEES ARE REASONABLE AND JUSTIFIED AND SHOULD BE APPROVED BY THE COURT..... 4

 A. The Requested Attorneys’ Fees Are Reasonable, Fair and Appropriate Under the Percentage-of-the-Fund Approach. 6

 1. Class Counsel Achieved an Extraordinary Result for the Class. 7

 2. The Case Involved Novel and Complex Legal Issues..... 7

 3. Class Counsel Took on a Heavy Contingent Risk, Advanced All Costs and Worked on this Case Without Any Guarantee of Success. 8

 B. The Requested Attorneys’ Fees Are Reasonable, Fair and Appropriate Under the Lodestar Approach. 9

 1. Class Counsel’s Lodestar Is Reasonable and Compensable. 10

 2. Class Counsel’s Hourly Rates Are Reasonable and Have Been Approved By Other Courts. 12

 3. A Lodestar Multiplier Is Warranted Based on Class Counsel’s Handling of this Case and the Results Obtained. 12

IV. CLASS COUNSEL SHOULD BE REIMBURSED THEIR COSTS..... 13

V. THE COURT SHOULD AWARD ANGEION GROUP’S COSTS. 14

VI. THE COURT SHOULD APPROVE THE SERVICE AWARD TO THE CLASS REPRESENTATIVE. 14

VII. CONCLUSION 15

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

TABLE OF AUTHORITIES

Page(s)

CASES

In re California Indirect Purchaser X-Ray Film Antitrust Litig.,
 1998 WL 1031494 (San Francisco Super. Ct. Oct. 22, 1998).....6, 13

In re Cellphone Fee Termination Cases,
 186 Cal. App. 4th 1380 (2010).....14, 15

Chavez v. Netflix, Inc.,
 162 Cal. App. 4th 43 (2008).....5, 6, 13

Children’s Hosp. & Med. Ctr. v. Bunt,
 97 Cal. App. 4th 740 (2002).....12

City of Oakland v. Oakland Raiders,
 203 Cal. App. 3d 78 (1988).....9, 12, 13

Clark v. American Residential Services LLC,
 175 Cal. App. 4th 785 (2009).....14

Colin Higgins Prods., Ltd. v. Universal City Studios, LLC,
 Case No: BC499180 (L.A. Super. Ct. Dec. 29, 2015)12, 13, 15

In re Consumer Privacy Cases,
 175 Cal. App. 4th 545 (2009).....4, 5, 6

The People ex rel. Dep’t. of Transp. v. Yuki,
 31 Cal. App. 4th 1754 (1995).....13

Dunk v. Ford Motor Co.,
 48 Cal. App. 4th 1794 (1996).....4, 6

In re Facsimile Paper Antitrust Litig.,
 Case Nos. 963598, 964899 and 967137 (San Francisco Super. Ct. 1997).....6

Garner v. State Farm Mutual Auto. Ins. Co.,
 2010 WL 1687829 (N.D. Cal. Apr. 22, 2010)8

Ketchum v. Moses,
 24 Cal. 4th 1122 (2001).....6, 8, 9, 10, 13

Laffitte v. Robert Half Int’l, Inc.,
 1 Cal. 5th 480 (2016).....4, 5, 6, 9

1 *Lealao v. Beneficial California, Inc.*,
 82 Cal. App. 4th 19 (2000).....4, 5

2

3 *In re Liquid Carbon Dioxide Cases*,
 J.C.C.P. 3012 (San Diego Super. Ct. 1996)6

4

5 *Lopez v. Youngblood*,
 2011 WL 10483569 (E.D. Cal. Sept. 2, 2011)5

6 *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*,
 186 Cal. App. 4th 399 (2010).....15

7

8 *Natural Gas Anti-Trust Cases, I, II, III & IV*, No. 4221, 4228, 4224, 4226,
 2006 WL 5377849 (Cal. Super. Ct. Dec. 11, 2006)13

9

10 *In re Netflix Privacy Litig.*,
 2013 WL 1120801 (N.D. Cal. Mar. 18, 2013)15

11 *PCLM Group, Inc. v. Drexler*,
 22 Cal. 4th 1084 (2000).....12

12

13 *Serrano v. Priest*,
 20 Cal. 3d 25 (1977)..... *passim*

14 *Shaffer v. Superior Court*,
 33 Cal. App. 4th 993 (1995).....12

15

16 *Stokus v. Marsh*,
 217 Cal. App. 3d 647 (1990).....10

17

18 *In re Sutter Health Uninsured Pricing Cases*,
 171 Cal. App. 4th 495 (2009).....10

19

20 *Vo v. Las Virgines Mun. Water Dist.*,
 79 Cal. App. 4th 440 (2000).....9, 10

21 *In re Warner Music Group Corp. Digital Downloads Litig.*,
 Case No. 12-cv-00559-RS (N.D. Cal. Jan. 12, 2015)15

22

23 *Weeks v. Baker & McKenzie*,
 63 Cal. App. 4th 1128 (1998).....10

24 *Wershba v. Apple Computer, Inc.*,
 91 Cal. App. 4th 224 (2001)10, 13

25

26 *Wren v. RGIS Inventory Specialists*,
 2011 WL 1230826 (N.D. Cal. Apr. 1, 2011)6

27

28

1 **Statutes**

2 Cal. Code Civ. Proc. § 1021.54

3 **Other Authorities**

4 *Manual for Complex Litig.*, § 14.121 (4th ed. 2004)5

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Concourse Productions, Inc. (“Plaintiff”) respectfully requests attorneys’ fees,
4 costs, and service award in connection with the settlement of this class action. This class action
5 alleges that Defendant Twentieth Century Fox Film Corporation (“Fox”) failed to properly report
6 the amount of Home Video Revenue and Electronic Sell-Through (“EST”) Revenue¹ on its motion
7 pictures to Plaintiff and similarly situated Profit Participants. Upon filing their original complaint
8 in January 2013, Class Counsel² faced the daunting task of taking on a major movie studio and
9 challenging its practice of calculating profit participation. Despite the many obstacles they faced,
10 Plaintiff and Class Counsel persevered and achieved a class settlement that offers significant
11 monetary relief to the Class.

12 The Settlement, memorialized in the Settlement Agreement, compensates the Class for a
13 total of \$12.6 million by creating: (1) an \$11.5 million Recouped Settlement Fund, which will be
14 used to compensate Recouped Class Members; and (2) a \$1.1 million Unrecouped Settlement
15 Fund, which will be used to compensate Unrecouped Class Members.³ In addition to such
16 monetary relief, after the Effective Date, Fox will continue to account to each Class Member for
17 Streaming Revenue,⁴ and any future methods of streaming now known or hereafter created, on the
18

19 _____
20 ¹ All capitalized terms herein shall have the definitions given to them in the Stipulation and
21 Agreement of Settlement dated September 22, 2017 (“Settlement Agreement”), attached as
22 Exhibit A to the concurrently filed Declaration of Jeffrey A. Koncius unless otherwise stated.

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

25 ³ As explained more fully *infra*, “Recouped Class Member” refers to a Class Member that is a
26 Profit Participant on one or more Class Films that have realized sufficient revenue to require
27 payment of Profit Participation to that Class Member under the terms of that person or entity’s
28 Class Profit Participation Contract, as such terms are defined in the parties’ Settlement Agreement.
An “Unrecouped Class Member” is one that has not reached the threshold which would require
such payment.

⁴ 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
(footnote continued)

1 basis of 100% of such revenue. Participating Class Members will receive these benefits without
2 having to initiate expensive audits or individual lawsuits against Fox, and will further maintain
3 any rights they have to pursue an audit or lawsuit for claims unrelated to the allegations alleged in
4 this lawsuit.

5 Through this Motion, Plaintiff requests attorneys' fees in the amount of \$4,195,800,
6 litigation costs in the amount of \$52,596.33, settlement administration costs in the amount up to
7 \$75,000, and a service award in the amount of \$10,000 to the class representative. The requested
8 attorneys' fees, costs and service award are reasonable and justified by the facts of this case and
9 the relevant law. The requested fees represent one-third (33.33%) of the \$12,600,000 of the
10 Settlement Fund. The reasonableness of Plaintiff's fee request is confirmed by a lodestar cross-
11 check, which reflects a multiplier of 2.74 based on Class Counsel's historical hourly rates.
12 Plaintiff's requested litigation costs, which were advanced by Class Counsel, were reasonably
13 incurred and necessary to achieve the result in this case. Likewise, the settlement administration
14 costs were reasonably incurred and necessary to provide notice to the Class and administer the
15 settlement. Finally, Plaintiff's requested service award is reasonable to reward the class
16 representative for its substantial work and service to the Class. Thus, Plaintiff requests that the
17 Court grant this Motion.

18 **II. RELEVANT BACKGROUND**

19 Plaintiff Stanley Donen Inc. originally filed this class action lawsuit on January 16, 2013.
20 On June 14, 2013, the Court denied Fox's demurrer and motion to strike the complaint. The
21 operative First Amended Complaint, filed on November 26, 2013, substituted Concourse
22 Productions, Inc. as the named Plaintiff and class representative.

23 On June 6, 2014, Fox filed a motion for summary adjudication as to Plaintiff's conversion
24 cause of action, and summary judgment as to the entire action on ground that Plaintiff was not
25 injured because its film, *The Rose*, had not reached net profits and was unrecouped. On December
26

27 _____
28 picture (e.g. Netflix or Hulu). See Settlement Agreement § 1.10.

1 17, 2014, the Court denied Fox’s motion for summary judgment, and found that Plaintiff had
2 standing to pursue its claims based on allegations that Fox failed to accurately account for and
3 credit Home Video Revenues on *The Rose*. The Court granted summary adjudication as to
4 Plaintiff’s conversion cause of action.

5 Prior to beginning settlement negotiations, the parties conducted extensive discovery
6 relating to the claims of Plaintiff and Class Members in this case. *See* Warshaw Decl. ¶¶ 7-8. The
7 parties exchanged written discovery, including multiple sets of Form Interrogatories, Special
8 Interrogatories and Requests for Admissions. *Id.* Fox produced more than 22,000 pages of
9 documents relating to all contracts, profit participation statements, correspondence and other
10 documents related to the named Plaintiff’s films and a random sample of other films in the
11 putative class. *Id.* Fox further disclosed information regarding the revenues for the Class Films
12 and profit participation paid to the Class Members during the class period. *Id.* Fox and Plaintiff
13 have both deposed the person most qualified from the opposing party regarding a number of
14 relevant topics. *Id.*

15 The settlement negotiations between the parties took place during the course of more than
16 a year and involved multiple mediations and negotiation sessions. *See* Warshaw Decl. ¶ 10. The
17 parties attended an initial full day mediation with the Honorable Carl J. West (Ret.) on June 8,
18 2016, which resulted in an impasse. *Id.* After this initial mediation session, the parties engaged in
19 further bilateral settlement discussions and exchanged further information regarding their claims,
20 defenses, and damages at issue in the case. *Id.* These further discussions led to an agreement to
21 attend a further mediation session with the Honorable Terry B. Friedman (Ret.), on May 2, 2017.
22 *Id.* During this second mediation, the parties were able to reach an agreement on the material
23 terms of the Settlement. *Id.* The parties then negotiated the final Settlement Agreement and
24 related documents, which was finalized on September 22, 2017. *Id.* ¶ 11; *see also* Settlement
25 Agreement. Plaintiff filed a Motion for Preliminary Approval which was granted on November
26 16, 2017.

27
28

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

3 As the California Supreme Court recently held, courts have discretion in common fund
4 cases to apply either the percentage-of-the-fund or the lodestar method in calculating an attorneys’
5 fee award. *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal. 5th 480 (2016).⁵ In reaching this decision, the
6 California Supreme Court stated:

7 We join the overwhelming majority of federal and state courts in holding that when
8 class action litigation establishes a monetary fund for the benefit of the class
9 members, and the trial court in its equitable powers awards class counsel a fee out
10 of that fund, the court may determine the amount of a reasonable fee by choosing
11 an appropriate percentage of the fund created. The recognized advantages of the
12 percentage method—including relative ease of calculation, alignment of incentives
13 between counsel and the class, a better approximation of market conditions in a
14 contingency case, and the encouragement it provides counsel to seek an early
15 settlement and avoid unnecessarily prolonging the litigation [citations]—convince
16 us the percentage method is a valuable tool that should not be denied our trial
17 courts.

18 *Id.* at 503.

19 The *Laffitte* decision followed numerous other authorities advocating for the use of the
20 percentage method because it promotes important values in the administration of justice. *See e.g.*
21 *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 27 (2000) (recognizing the traditional
22 approach in common fund cases has been to award a percentage of the total fund under the
23 “common fund” doctrine.); *In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 557-58 (2009);
24 *Natural Gas Anti-Trust Cases I, II, III & IV*, 2006 WL 5377849, at *3 (San Diego Super. Ct. Dec.
25 11, 2006) (“Both California state and federal courts recognize two methods for evaluating the
26 fairness and reasonableness of attorneys’ fees in class action settlements resulting in the creation
27 of a common fund.”)

28

⁵ The Court’s Final Approval Checklist contains a quote regarding attorneys’ fees from *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1809 (1996), stating: “Later cases cast doubt on the use of the percentage method to determine attorney fees in California class actions.” However, *Dunk* was predicated on the fact that, in that case, there was no common fund and no easily calculable sum of money. *See Laffitte*, 1 Cal. 5th at 501 (“The *Dunk* court, while finding the 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 (1977); Code Civ. Proc. § 1021.5.

1 of a common fund for the distribution to class members: (1) the percentage-of-the-benefit method;
2 or (2) the lodestar method plus multiplier method.”); *Serrano*, 20 Cal. 3d at 34 (“when a number
3 of persons are entitled in common to a specific fund, and an action brought by a plaintiff or
4 plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or
5 plaintiffs may be awarded attorney’s fees out of the fund.”).

6 The percentage method “closely aligns the interests of the counsel and the class, i.e., class
7 counsel directly benefit from increasing the size of the class fund and working in the most efficient
8 manner.” *Lopez v. Youngblood*, 2011 WL 10483569, at *3 (E.D. Cal. Sept. 2, 2011). It also
9 encourages early settlement of meritorious cases and “ensure[es] that competent counsel continue
10 to be willing to undertake risky, complex, and novel litigation.” *Manual for Complex Litigation*, §
11 14.121 (4th ed. 2004). As a practical matter, use of the percentage method makes eminently good
12 sense—it is easy to administer, conserves judicial resources and rewards counsel for efficiency
13 rather than focusing on the time counsel spent on the case.

14 Courts that use the percentage-of-the-fund method to calculate a fee award can apply the
15 lodestar method as a “cross-check.” See *Lealao*, 82 Cal. App. 4th at 45-46; *Chavez v. Netflix, Inc.*,
16 162 Cal. App. 4th 43, 65-66 (2008). Though not required, courts may in their discretion “cross-
17 check” an award of attorneys’ fees calculated by one method against an award calculated by the
18 other method in order to confirm the award is reasonable. See *Consumer Privacy Cases*, 175 Cal.
19 App. 4th at 557. The process should not require undue consumption of judicial resources because
20 “trial courts conducting lodestar cross-checks have generally not been required to closely
21 scrutinize each claimed attorney-hour, but have instead used information on attorney time spent to
22 ‘focus on the general question of whether the fee award appropriately reflects the degree of time
23 and effort expended by the attorneys.’” *Laffitte*, 1 Cal. 5th at 505 (citing 5 Newberg on Class
24 Actions, (5th ed. 2015) § 15:86, p. 331).

25 Here, Plaintiff requests attorneys’ fees that are reasonable under both the percentage
26 method and the lodestar method. Their requested fees of \$4,195,800 represents 33.33% of the
27 \$12,600,000 Settlement Fund. This falls within the range of percentages awarded in similar class
28 action cases and is justified by, *inter alia*, the risks involved in the litigation, Class Counsel’s

1 experience and skill in overcoming those risks, and the tremendous result achieved in the case. A
2 lodestar cross-check confirms the reasonableness of Plaintiff’s fee request, as it represents a
3 multiplier of 2.74 based on Class Counsel’s historical hourly rates.

4 **A. The Requested Attorneys’ Fees Are Reasonable, Fair and Appropriate**
5 **Under the Percentage-of-the-Fund Approach.**

6 Under the percentage method, California courts have recognized that “fee awards in class
7 actions average around one-third of the recovery.” *Chavez*, 162 Cal. App. 4th at 66 n.11. With
8 respect to the settlement fund amount, “the total fund could be used to measure whether the
9 portion allocated to the class and to attorney fees is reasonable.” *Consumer Privacy Cases*, 175
10 Cal. App. 4th at 554.

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

18 Applying these factors, courts have often approved attorney fee awards of 33.33% or more
19 under the percentage method. *See, e.g., Laffitte*, 1 Cal. 5th 480; *In re California Indirect-*
20 *Purchaser Plasticware Antitrust Litig.*, Case Nos. 961814, 963201 and 963590 (San Francisco
21 Super. Ct. 1995) (approving 33.33% award); *In re Liquid Carbon Dioxide Cases*, J.C.C.P. 3012
22 (San Diego Super. Ct. 1996) (approving 33.33% award); *In re Facsimile Paper Antitrust Litig.*,
23 Case Nos. 963598, 964899 and 967137 (San Francisco Super. Ct. 1997) (approving 33.33%
24 award); *In re Milk Antitrust Litig.*, Case No. BC070061 (L.A. Super. Ct. 1998) (approving 33.33%
25 award); *Wren v. RGIS Inventory Specialists*, 2011 WL 1230826, at *28 (N.D. Cal. Apr. 1, 2011)

26 _____
27 ⁶ 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 (approving lodestar-based fee equal to 42% of fund). As shown below, consideration of the above
2 factors in this case supports the reasonableness of Plaintiff's requested fee award.

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

4 The Settlement in this case is truly an outstanding result for the Class. The Settlement
5 provides a total of \$12.6 million in monetary relief which is comprised of the \$11.5 million
6 Recouped Settlement Relief Fund and the \$1.1 million Unrecouped Settlement Relief Fund.
7 Absent this Settlement, Recouped Class Members would not receive any additional compensation
8 for Home Video or EST revenue without first undertaking a very long and expensive audit process
9 without the guarantee of a successful result. Moreover, there was no guarantee that unrecouped
10 profit participants would ever receive payment for the work on Class Films that are decades old.

11 While the exact amounts recovered by individual Class Members will not be known until
12 the close of the claims process, it is guaranteed that class members will receive the full benefit of
13 the non-reversionary \$12.6 million Settlement Fund, after deduction of fees, costs, and
14 administrative fees. In addition, the Settlement provides that Fox will continue to account to Class
15 Members for Class Profit Participation Contracts for Streaming Revenue, and any future methods
16 of streaming now known or hereafter created, on the basis of 100% of such revenue. *See*
17 Settlement Agreement § 1.10. This constitutes a significant result and victory in light of the
18 numerous legal and factual challenges outlined in this Motion.

19 **2. The Case Involved Novel and Complex Legal Issues.**

20 This litigation was significant because it challenged a major studio's practice of calculating
21 profit participation on a class-wide basis. Plaintiff argued that the revenue should be reported
22 based on 100% of gross receipts, rather than 20%. Plaintiff took on a major studio, Fox, and
23 argued for a change in its practices that were in place for many decades. This was no easy feat,
24 and Fox had numerous defenses to Plaintiff's claims at every step of the litigation. Fox argued,
25 *inter alia*, that its practice of accounting for Home Video and EST Revenue did not violate Class
26 Members' Profit Participation Contracts; that its practice did not cause damage to Class Members
27 because it did not deduct certain charges under the 100% gross receipts calculation; that Plaintiff
28 would not be able to obtain class certification due to differences in the contracts and experiences

1 of the Class Members; and the claims of Plaintiff and Class Members were limited by applicable
2 statutory and contractual limitations period.

3 Despite these challenges, Plaintiff prevailed at critical points in the litigation. Plaintiff
4 defeated Fox’s demurrer and motion to strike. Plaintiff defeated Fox’s Motion for Summary
5 Judgment, which argued that Plaintiff could not pursue its claims against Fox as an unrecouped
6 profit participant. Plaintiff believed that it would be able to prevail at class certification and trial.
7 Still, there was no way to guarantee either of these outcomes, especially in this case which
8 involved novel and complex issues without any precedent. The fact that Class Counsel were able
9 to achieve these results speaks to skill level Class Counsel brought to bear. Negotiating the details
10 of the Settlement was protracted and difficult, requiring two mediations with separate mediators as
11 well as extensive bilateral discussions. *See* Warshaw Decl. ¶¶ 10-11. Before beginning settlement
12 negotiations, the parties conducted substantial discovery, including multiple rounds of written
13 discovery; the production and review of thousands of pages of contracts, profit participation
14 statements and correspondence; and the depositions of Fox employees, and the named Plaintiff.
15 *Id.* ¶¶ 7-8. After the parties executed the Settlement Agreement, Class Counsel continued to work
16 diligently on the case to obtain preliminary approval, and continues to work closely with the
17 Settlement Administrator to oversee the notice process. In short, “prosecuting this case required a
18 significant commitment of time, resources, and energy from Class Counsel, and the relief achieved
19 simply would not have been possible but for the commitment and skill of Class Counsel.” *Garner*
20 *v. State Farm Mutual Auto. Ins. Co.*, 2010 WL 1687829, at *2 (N.D. Cal. Apr. 22, 2010).

21 **3. Class Counsel Took on a Heavy Contingent Risk, Advanced All Costs**
22 **and Worked on this Case Without Any Guarantee of Success.**

23 The contingent risk of receiving little or no recovery for significant legal work is another
24 major factor in considering an appropriate award of attorneys’ fees. *See, e.g., Ketchum*, 24 Cal. 4th
25 at 1132 (“A contingent fee contract, since it involves a gamble on the result, may properly provide
26 for a larger compensation than would otherwise be reasonable.”). As the accompanying
27 declarations of Class Counsel attest, Class Counsel have been working diligently on this case for
28 over five years on a pure contingency basis with no guarantee of recovery. Class Counsel have

1 collectively spent over 2,200 hours working on this case as of January 19, 2018, and have
2 advanced all out-of-pocket expenses, including discovery costs and mediation-related costs,
3 totaling \$52,596.33 to date, with no promise of repayment. *See* Warshaw Decl. ¶¶ 19-24, Exhs.
4 A-B; Koncius Decl. ¶¶ 17-21, Exhs. B-C; Johnson Decl. ¶¶ 10-15, Exhs. B-D; Boucher Decl. ¶¶ 7-
5 15, Exhs. 1-4. Indeed, Class Counsel faced the possibility that they would spend years litigating
6 this complex case and recover nothing. Class Counsel’s high-risk and successful efforts on behalf
7 of the Class further warrant their requested attorneys’ fees.

8 For all the reasons discussed above, particularly the outstanding result obtained by Class
9 Counsel; the issues and challenges Class Counsel faced and overcame; the extensive and high-
10 quality work Class Counsel performed; and the burdens Class Counsel bore in pursuing this
11 litigation on a pure contingency basis, Plaintiff’s requested fee award is reasonable as a percentage
12 (33.33%) of the \$12,600,000 of the total Settlement Fund. *See Laffitte*, 1 Cal. 5th 480.

13 **B. The Requested Attorneys’ Fees Are Reasonable, Fair and Appropriate**
14 **Under the Lodestar Approach.**

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

26 In this case Class Counsel incurred a lodestar in the amount of \$1,533,842.45, in
27 prosecuting this lawsuit on behalf of Plaintiff and Class Members. Warshaw Decl. ¶ 22. This
28 lodestar amount is based on contemporaneously maintained hourly records which were calculated

1 at Class Counsel’s ordinary and customary hourly fee. Class Counsel’s fee request represents a
2 2.74 multiplier, which falls within the range of reasonableness and supports granting Plaintiff’s
3 request for attorneys’ fees.

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

5 “Under the lodestar method, a party who qualifies for a fee should recover for all hours
6 reasonably spent unless special circumstances would render the award unjust.” *Vo*, 79 Cal. App.
7 4th at 446; *see also Weeks v. Baker & McKenzie*, 63 Cal. App. 4th 1128, 1175 (1998) (“[A]n
8 attorney who takes on [a complex] case can anticipate receiving full compensation for every hour
9 spent litigating a claim against even the most polemic opponent.”); *Ketchum*, 24 Cal. 4th at 1132.
10 Compensable activities under the lodestar method include both pre-litigation activities (e.g.,
11 interviewing the client, investigating the facts, researching the law and preparing the initial
12 pleading) and litigation activities (e.g., conducting discovery, conferring with clients, drafting
13 pleadings, making court appearances, travel time and settlement negotiations). *Stokus v. Marsh*,
14 217 Cal. App. 3d 647, 655-56 (1990).

15 A review of billing records is not necessary to award attorneys’ fees; the court can accept
16 declarations of counsel setting forth the hours worked and tasks performed. *See Laffite*, 1 Cal. 5th
17 at 505 (“[T]rial courts conducting lodestar cross-checks have generally not been required to
18 closely scrutinize each claimed attorney-hour, but have instead used information on attorney time
19 spent to ‘focus on the general question of whether the fee award appropriately reflects the degree
20 of time and effort expended by the attorneys.’”);⁷ *In re Sutter Health Uninsured Pricing Cases*,
21 171 Cal. App. 4th 495, 511-12 (2009) (“We see no reason why [the court] could not accept the
22 declarations of counsel attesting to the hours worked, particularly as he was in the best position to
23 verify those claims by reference to the various proceedings in the case.”); *Wershba v. Apple*
24 *Computer, Inc.*, 91 Cal. App. 4th 224, 254-55 (2001) (“California case law permits fee awards in
25 the absence of detailed time sheets.”).

26 _____
27 ⁷ 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 As of January 19, 2018, Class Counsel spent a total of 2,286.34 hours working on this case
2 and incurred a combined lodestar of \$1,533,842.45 based on their historical hourly rates. A
3 breakdown of these fees and hours between the law firms is set forth in the below chart:

FIRM	Hours	LODESTAR
Pearson, Simon & Warshaw, LLP	1,240.50	\$780,243.63
Kiesel Law LLP	531.60	\$344,882.50
Johnson & Johnson LLP	269.44	\$205,471.82
Boucher LLP ⁸	244.80	\$203,244.50
TOTAL	2,286.34	\$1,533,842.45

4
5
6
7
8
9
10 The work performed, hours and lodestar for each of the above law firms are detailed in the
11 concurrently filed declarations of Class Counsel and in the detailed time records lodged by each
12 firm for the Court's *in camera* review. These declarations detail the amount of work that was
13 necessary in order to obtain a successful result on behalf of the Class Members at every stage of
14 the litigation, including: (1) pre-litigation research and investigation; (2) drafting the relevant
15 pleadings and motions, including complaints, oppositions to Fox's demurrer and motion to strike,
16 motion for summary judgment and adjudication, and motions to approve the Settlement; (3)
17 conducting discovery, including multiple rounds of written discovery, reviewing documents
18 produced by Fox, taking depositions of Fox employees, and defending Plaintiff's deposition; (4)
19 settlement related activities, including preparing for and attending mediations, drafting mediation
20 briefs and engaging in numerous settlement discussions; and (5) obtaining Court approval of the
21 Settlement. *See* Warshaw Decl. ¶¶ 4-14; Johnson Decl. ¶¶ 6-8; Koncius Decl. ¶¶ 6-9; Boucher
22 Decl. ¶¶ 4-6. Each hour expended by Class Counsel on this case has ultimately benefitted the
23 Class Members, and Class Counsel's lodestar amount is reasonable and compensable.
24
25
26

27 ⁸ Total includes lodestar for Law Office of Raymond Boucher, APC, Khorrami Boucher Sumner
28 Sanguinetti, LLP and Khorrami Boucher, LLP.

1 of the results achieved. *See Ketchum*, 24 Cal. 4th at 1132; *Oakland Raiders*, 203 Cal. App. 3d at
2 83. There is no rigid formula and each factor should be considered only where appropriate. *See*
3 *Serrano*, 20 Cal. 3d at 49; *The People ex rel. Dep't. of Transp. v. Yuki*, 31 Cal. App. 4th 1754,
4 1771 (1995). In appropriate cases, “[m]ultipliers can range from 2 to 4 or even higher.” *Wershba*,
5 91 Cal. App. 4th at 225; *see also Chavez*, 162 Cal. App. 4th at 66 (affirming use of 2.5 multiplier
6 to award attorneys’ fee of \$2,040,000 in a case where lodestar was \$805,000 based on, *inter alia*,
7 the success achieved and the quality of class counsel’s representation); *Natural Gas Anti-Trust*
8 *Cases, I, II, III & IV*, No. 4221, 4228, 4224, 4226 (Cal. Super. Ct. Dec. 11, 2006) 2006 WL
9 5377849, at *4 (“This Court and numerous cases have applied multipliers of between 4 and 12 to
10 counsel’s lodestar in awarding fees.”). Significantly, this Court approved an award of
11 \$4,333,333.33 to Class Counsel which represented a 3.39 multiplier in the related *Universal*
12 *action. See* Warshaw Decl. Exh. D (*Colin Higgins Prods., Ltd. v. Universal City Studios, LLC*,
13 Case No: BC499180 (L.A. Super. Ct. Dec. 29, 2015).

14 In this case, consideration of the above factors supports the lodestar multiplier sought by
15 Class Counsel. The requested fee represents a 2.74 multiplier based on Class Counsel’s historical
16 hourly rates. For the reasons discussed above, such a multiplier is warranted in light of the result
17 obtained by Class Counsel; the complex legal and factual issues involved in this litigation; the
18 skill and work performed by Class Counsel in handling those complex issues; and the significant
19 risks, costs and uncertainties borne by Class Counsel in taking on this case. Class Counsel’s
20 requested multiplier falls within the range approved in other complex, class action litigation, and
21 is reasonable given the circumstances of this case. As a result, the lodestar cross-check supports
22 an award of Plaintiff’s requested attorneys’ fees.

23 **IV. CLASS COUNSEL SHOULD BE REIMBURSED THEIR COSTS.**

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

1 20. As set forth in the attorney declarations, Class Counsel have incurred \$52,596.33 in litigation
2 costs through January 19, 2018, during the ordinary course of this litigation. *See* Warshaw Decl.
3 ¶¶ 23-24, Exh. B; Koncius Decl. ¶ 21, Exh. C; Johnson Decl. ¶ 15, Exhs. C-D; Boucher Decl. ¶
4 10, Exh. 3. These verified costs include filing fees, computerized legal research, travel expenses,
5 deposition expenses and mediation-related expenses that were incurred in the normal course of
6 business. *See id.* All costs incurred were reasonable and essential to the successful prosecution of
7 this lawsuit, and should be awarded by the Court.

8 **V. THE COURT SHOULD AWARD ANGEION GROUP'S COSTS.**

9 The Settlement calls for the payment of administration costs and fees incurred by the
10 settlement administrator in connection with the dissemination of the notice, processing of claims,
11 and distribution of the Settlement proceeds. *See* Settlement Agreement § 18. The parties selected,
12 and the Court preliminarily appointed, Angeion Group (“Angeion”) to act as the settlement
13 administrator and to, among other tasks, mail the Class Action Settlement Notice, (“Notice”);
14 establish and maintain a case specific website and email address; respond to Class Member
15 inquiries; publish Notice; process Class Member claims, and perform other duties as specified in
16 the Settlement Agreement, following the Court’s Order Granting Preliminary Approval.
17 Declaration of Brian S. Devery ¶¶ 6-24. Angeion has performed all of its responsibilities to date
18 and continues to do so. *Id.* The estimated cost of Angeion’s service, \$75,000, is reasonable and
19 fair given the work performed and should be approved. *Id.* ¶ 25.

20 **VI. THE COURT SHOULD APPROVE THE SERVICE AWARD TO THE**
21 **CLASS REPRESENTATIVE.**

22 Courts typically award service awards to the named plaintiffs in a class action for their
23 work performed on behalf of the class. *In re Cellphone Fee Termination Cases*, 186 Cal. App. 4th
24 1380, 1393-94 (2010). “Incentive awards are fairly typical in class action cases ... and are
25 intended to compensate class representatives for work done on behalf of the class, to make up for
26 financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their
27 willingness to act as a private attorney general.” *Id.* (citing *Rodriguez v. West Publ’g Corp.*, 563
28 F.3d 948, 958-59 (9th Cir. 2009)) (emphasis omitted); *see also Clark v. American Residential*

1 *Services LLC*, 175 Cal. App. 4th 785, 806-07 (2009). Here, Plaintiff Concourse Productions, Inc.
2 requests a service award of \$10,000. This award is reasonable and justified by the time and effort
3 the class representative dedicated to this case and the reputational risks it faced in associating its
4 name with a well-publicized class action lawsuit against a major movie studio. *See In re Netflix*
5 *Privacy Litig.*, 2013 WL 1120801, at *11 (N.D. Cal. Mar. 18, 2013) (service awards recognized
6 that class representatives “assumed the responsibilities and burdens of acting as representatives”
7 and faced “public scrutiny through media coverage of this high profile suit”); *see also Munoz v.*
8 *BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 412 (2010) (finding no basis
9 to conclude the enhancement awards to class representatives were not fair, reasonable and
10 appropriate given the class representatives’ services rendered in the case). More than the typical
11 class representative, Plaintiff here put its name and livelihood at risk by pursuing significant
12 litigation against a movie studio with whom it has an ongoing relationship. *See Declaration of*
13 *Amy Rydell* ¶¶ 5-6. Moreover, Plaintiff was actively engaged in the litigation, including by
14 participating in the discovery process, reviewing documents and having the deposition of its
15 representative taken. *Id.*

16 The requested service award comports with case law. California state and federal courts
17 have approved service awards of \$10,000 or more, particularly in class actions that involved
18 significant risk and substantial efforts expended by the class representatives. *See, e.g., Cellphone*
19 *Fee Termination Cases*, 186 Cal. App. 4th at 1395 (approving \$10,000 service awards to each of
20 the four class representatives); *In re Warner Music Group Corp. Digital Downloads Litig.*, Case
21 No. 12-cv-00559-RS (N.D. Cal. Jan. 12, 2015) (approving \$10,000 service awards to each of the
22 six class representatives in a class action against a major music label alleging the underpayment of
23 royalties). Indeed, this Court approved \$10,000 service awards in the related *Universal* and
24 *Paramount* matters. *See Warshaw Decl., Exh. D.*

25 **VII. CONCLUSION**

26 Based on the foregoing, Plaintiff respectfully requests an award of attorneys’ fees, costs
27 and service award in the amounts set forth above.

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

DATED: February 2, 2018

By:


BOBBY POUYA

Clifford H. Pearson (Bar No. 108523)
cpearson@pswlaw.com
Daniel L. Warshaw (Bar No. 185365)
dwarshaw@pswlaw.com
Bobby Pouya (Bar No. 245527)
bpouya@pswlaw.com

PEARSON, SIMON & WARSHAW, LLP
15165 Ventura Boulevard, Suite 400
Sherman Oaks, California 91403
Telephone: (818) 788-8300
Facsimile: (818) 788-8104

Neville L. Johnson (Bar No. 66329)
njohnson@jjllplaw.com
Douglas L. Johnson (Bar No. 209216)
djohnson@jjllplaw.com
James T. Ryan (Bar No. 210515)
jryan@jjllplaw.com

JOHNSON & JOHNSON LLP
439 North Canon Drive, Suite 200
Beverly Hills, California 90210
Telephone: (310) 975-1080
Facsimile: (310) 975-1095

Paul R. Kiesel (Bar No. 119854)
kiesel@kiesel.law
Jeffrey A. Koncius (Bar No. 189803)
koncius@kiesel.law
Nicole Ramirez (Bar No. 279017)
ramirez@kiesel.law

KIESEL LAW LLP
8648 Wilshire Boulevard
Beverly Hills, California 90211
Telephone: (310) 854-4444
Facsimile: (310) 854-0812

Raymond P. Boucher (Bar No. 115364)
ray@boucher.la
Shehnaz M. Bhujwala (Bar No. 223484)
bhujwala@boucher.la
Maria L. Weitz (Bar No. 268100)
weitz@boucher.la

BOUCHER, LLP
21600 Oxnard St., Suite 600
Woodland Hills, California 91367
Telephone: (818) 340-5400
Facsimile: (818) 340-5401

Attorneys for Plaintiff and the Class