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

11 COLIN HIGGINS PRODUCTIONS, LTD.,

12 Plaintiff,

13 vs.

14 UNIVERSAL CITY STUDIOS, LLC, and  
15 DOES 1-100,

16 Defendant.

CASE NO. BC499180 (Related to Case Nos.  
BC499179, BC499181, BC499182,  
BC500040, and BC540146)

**CLASS ACTION**

**NOTICE OF MOTION AND MOTION  
FOR PRELIMINARY APPROVAL OF  
UNIVERSAL CITY STUDIOS LLC  
CLASS ACTION SETTLEMENT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

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

[Complaint Filed: January 16, 2013]

Date: July 15, 2015  
Time: 2:00 p.m.  
Dept.: 323

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1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on July 15, 2015 at 2:00 p.m. or as soon thereafter as the  
3 matter may be heard by the Honorable Elihu M. Berle in Department 323 of the Los Angeles  
4 Superior Court, Central Civil West Courthouse, located at 600 South Commonwealth Avenue, Los  
5 Angeles, California 90005, Plaintiffs Colin Higgins Productions, Ltd. ("CHP"), Indigo, Inc.  
6 ("Indigo") and Lynn Unger Children's Trust ("LUCT") (collectively, "Plaintiffs") will and hereby  
7 do apply for an order of preliminary approval of the proposed class settlement between Plaintiff  
8 and Defendant Universal City Studios LLC in this action.

9 This motion is made under the authority of California Code of Civil Procedure § 382 and  
10 California Rule of Court 3.760 *et seq.* This motion is based on this Notice of Motion and Motion  
11 for Preliminary Approval of Class Settlement, the attached Memorandum of Points and  
12 Authorities, the declarations and other documents filed in support thereof, the pleading and papers  
13 on file in this action, and such oral and documentary evidence as may be presented at the hearing  
14 on this motion.

15  
16 DATED: May 1, 2015

By: 

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This class action lawsuit is centered around allegations that Defendant Universal City  
4 Studios LLC (“Universal” or “Defendant”) has improperly underreported the amount of Home  
5 Video Revenues and Electronic Sell-Through (“EST”) Revenue<sup>1</sup> on Universal motion pictures to  
6 Plaintiffs<sup>2</sup> and similarly situated profit participants. Rather than face the uncertainty inherent in  
7 litigating this case through class certification and trial, the parties engaged in settlement  
8 negotiations and reached the significant class Settlement<sup>3</sup> that obtains substantial monetary relief  
9 for the Class Members.

10 The Settlement, memorialized in the Stipulation and Agreement of Settlement dated April  
11 30, 2015 (“Settlement Agreement”), compensates the Class for a total of \$26 million by creating,  
12 (1) a \$13 million Settlement Fund, which will be used to compensate Recouped<sup>4</sup> Class Members,  
13 plus (2) a \$13 million Accounting Relief Fund, which will be used to credit the accounts of  
14 Unrecouped Class Members. All Class Members will be able to receive monetary or accounting  
15 relief under the Settlement *without having to take any affirmative action*, such as filing a claim  
16 form. The Settlement and the Funds thereunder will compensate Class Members for royalties  
17 allegedly owed in the past and for future royalties not yet earned. Participating Class Members  
18 will receive these benefits without having to initiate expensive audits or individual lawsuits  
19 against Universal. Participating Class Members will further maintain their rights to pursue an

20 \_\_\_\_\_  
21 <sup>1</sup> Home Video Revenue is revenue derived from the sale of physical copies of motion pictures  
22 (*e.g.*, Videocassettes, DVDs, Blu-Ray discs). EST Revenue is revenue derived from the sale of  
permanent digital copies of motion pictures (*e.g.*, through purchases on iTunes or Amazon).

23 <sup>2</sup> Plaintiffs refers to named Plaintiffs Colin Higgins Productions, Ltd. (“CHP”), Indigo, Inc.  
24 (“Indigo”) and Lynn Unger Children’s Trust (“LUCT”) (collectively, “Plaintiffs”).

25 <sup>3</sup> All capitalized terms herein shall have the definitions set forth in the Stipulation and Agreement  
26 of Settlement unless otherwise stated. The Settlement Agreement is attached to the Warshaw  
27 Declaration as Ex. “A.”

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

1 audit or lawsuit for all claims unrelated to the allegations alleged in the operative complaint.

2 As shown in this motion, the Settlement is fair, adequate and reasonable, and more than  
3 satisfies all of the criteria for preliminary approval. So too, the Settlement Class meets the  
4 requirements for conditional class certification. The notice plan contemplated by the Settlement  
5 complies with the applicable law and is the best notice practicable. Accordingly, Plaintiffs request  
6 that the Court grant preliminary approval of the proposed Settlement, certify the Settlement Class  
7 for settlement purposes, direct distribution of the Class Notice in the manner agreed to in the  
8 Settlement, and set a schedule for final approval of the Settlement.

9 **II. SUMMARY OF THE LITIGATION**

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

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

21 These core allegations formed the basis for each of Plaintiffs' Class Allegations for: (1)  
22 Breach of Contract; (2) Breach of Implied Covenant of Good Faith and Fair Dealing; (3) Money  
23 Had and Received; (4) Declaratory Judgment; (5) Open Book Account; (6) Unfair Competition in  
24 Violation of California Business Code § 17200 *et seq.*; and (7) Conversion. *See* Second Amended  
25 Complaint.

26 Universal denies Plaintiffs' allegations and asserted defenses to class certification and the  
27 merits. Universal argues, *inter alia*, that its practice of accounting for Home Video and EST  
28 Revenues based on amounts received from its Affiliates or subsidiaries did not violate the Profit



1 Participation Contracts, and Universal is permitted to account to the Class Members by following  
2 Universal's and the motion picture industry's practice of calculating profit participation based on  
3 20% of the Home Video and EST Revenue received for these films. Universal further argues that  
4 payment of Home Video Revenue and EST Revenue based on 20% of the Home Video and EST  
5 Revenue did not damage Plaintiffs because Universal did not charge them for costs relating to the  
6 production, distribution and sale of these media that would be deductible under the 100% gross  
7 receipts calculation. Universal further contends that Class Members' claims are barred by the  
8 applicable statute of limitations or any contractually prescribed temporal incontestability provision  
9 contained in the contracts between the parties. Finally, Universal claims that Plaintiffs could not  
10 certify this case as a class action due the differences in the contracts, rights and damages amongst  
11 the class members.

12 Plaintiffs carefully considered the strength of their claims and Universal's defenses before  
13 entering into the Settlement Agreement.

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

15 Plaintiff CHP originally filed this class action lawsuit on January 16, 2013. On June 14,  
16 2013, the Court denied Universal's demurrer and motion to strike the complaint. On December  
17 17, 2013, Plaintiffs filed their First Amended Complaint adding Indigo and LUCT as class  
18 representatives. Plaintiffs later filed the operative Second Amended Complaint on June 4, 2014,  
19 correcting the applicable contracts for Plaintiffs Indigo and LUCT.

20 Prior to beginning settlement negotiations, the parties conducted discovery relating to the  
21 claims of Plaintiffs and Class Members in this case. Declaration of Daniel L. Warshaw  
22 ("Warshaw Decl."), ¶¶ 5-6. The parties exchanged written discovery, including multiple sets of  
23 Form Interrogatories, Special Interrogatories and Requests for Admissions. *Id.* Universal  
24 produced more than 9,000 pages of documents relating to all contracts, profit participation  
25 statements, correspondence and other documents related to the named Plaintiff's films and a  
26 random sample of other films in the putative class. *Id.*, ¶ 6. Universal also deposed representatives  
27 for each of the named Plaintiffs. *Id.*

28 On June 6, 2014, Universal filed a motion for summary adjudication against Plaintiffs'

1 conversion cause of action. Universal subsequently withdrew its motion for summary  
2 adjudication on August 27, 2014.

3 On October 20, 2014, the parties first participated in a face-to-face meeting at Pearson,  
4 Simon & Warshaw, LLP, during which they engaged in an exchange of information regarding  
5 their respective claims and defenses. Warshaw Decl., ¶ 8. That meeting led the parties to retain  
6 the Hon. Louis M. Meisinger (Ret.) of ADR Services to serve as a mediator. *Id.*, ¶ 9. The parties  
7 attended an all-day mediation with Judge Meisinger on November 21, 2014, and had subsequent  
8 smaller sessions, meetings and correspondence both with and without Judge Meisinger in the  
9 weeks following. *Id.* After several months of extensive negotiations, the parties agreed to the  
10 Settlement now being presented to the Court. *Id.*, ¶¶ 8-9.

11 **III. SUMMARY OF THE SETTLEMENT**

12 **A. The Proposed Settlement Class**

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

14 All persons and entities (and their successors-in-interest, assigns,  
15 and heirs) that are parties to a “Class Profit Participation Contract”  
16 (defined by the Settlement Agreement as a Profit Participation  
17 Contract, entered on or before December 31, 2014, that does not  
18 include express provisions regarding the calculation of the Profit  
19 Participant’s Profit Participation with regard to Home Video  
20 Revenue and/or Electronic Sell-Through Revenue). Where a person  
21 or entity is a party to one or more Profit Participation Contracts that  
22 are not Class Profit Participation Contracts and one or more Profit  
23 Participation Contracts that are Class Profit Participation Contracts,  
24 that person or entity is a member of the Settlement Class only with  
25 regard to the Class Profit Participation Contracts and not a part of  
26 the Settlement Class with regard to any other Profit Participation  
27 Contracts.<sup>5</sup>

21 The Settlement Agreement further defines a “Class Profit Participation Contract” as “a  
22 Profit Participation Contract that does not include express provisions regarding the calculation of  
23 the Profit Participant’s Profit Participation with regard to Home Video Revenue and/or [EST].”  
24 See Settlement Agreement, § 1.6.

26 <sup>5</sup> See Settlement Agreement, § 2. The Settlement Agreement identifies certain parties to Class  
27 Participation Contracts who are excluded from the Settlement Class. See Settlement Agreement,  
28 §§ 3.1-3.4.

1 In other words, the Settlement Class consists of profit participants who entered into  
2 contracts that did not contain express provisions regarding the payment of Home Video Revenue  
3 and/or EST. Further, the Class Members' share of the Settlement is limited to those Profits  
4 Participation Contracts that do not have express provisions regarding the payment of Home Video  
5 Revenue and/or EST. Because newer Profit Participation Contracts include express provisions  
6 relating to Home Video Revenue and/or EST, the Settlement Agreement applies to older titles and  
7 releases.

8 Streaming revenue refers to temporary non-permanent downloads that the consumer does  
9 not own (e.g. Netflix, Hulu, Amazon). Streaming revenue falls into a different accounting  
10 category than Home Video and EST, and was not subject to Plaintiffs' claims in this lawsuit. *See*  
11 Settlement Agreement, § 1.9. However, Universal has agreed to continue accounting for  
12 streaming proceeds based on 100% of the revenue. *See id.*

13 The Settlement Class includes both Recouped and Unrecouped Class Members. A  
14 Recouped Class Member "means a Class Member who, as of December 31, 2014, is a Profit  
15 Participant on one or more motion pictures that have realized sufficient revenue to require  
16 payment of Profit Participation to that Class Member under the terms of that person or entity's  
17 Class Profit Participation Contract" (i.e. they were earning profit participations from their Profit  
18 Participation Contract). *Id.*, §1.22. Conversely, an Unrecouped Class Member means a Class  
19 Members who, as of December 31, 2014, is a Profit Participant on one or more motion pictures  
20 that have not realized sufficient revenue to require payment of Profit Participation to that Class  
21 Member under the terms of that person or entity's Class Profit Participation Contract (i.e., they  
22 were not yet earning profit participations from their Profit Participation Contract). *Id.*, §1.35.

23 It is possible for a profit participant to be considered both a Recouped Class Member and a  
24 Unrecouped Class Member by virtue of being party to one or more Class Participation Contracts  
25 that fall into both of these categories. In such an situation, the Class Member would obtain a  
26 portion of the Settlement Relief Fund as well as the Accounting Relief Fund.

27 **B. Class Relief Provided by the Settlement Agreement**

28 The Settlement is crafted to provide substantial relief to both Recouped and Unrecouped

1 Class Members and fully resolve the claims at issue in this case. The cash portion of the  
2 Settlement creates a Settlement Fund of \$13 million, which will be used to compensate Recouped  
3 Class Members and pay administrative and notice costs, attorneys' fees and costs, and incentive  
4 awards to the named Plaintiffs. The Settlement also creates an Accounting Relief Fund of \$13  
5 million, which will be used to make accounting credits to Home Video Revenue on the accounts  
6 of Unrecouped Class Members. Thus the total value of the Settlement Agreement is \$26 million.  
7 Absent this Settlement, Class Members would not get the benefit of any compensation relating to  
8 Home Video or EST revenue without first undertaking a very long and expensive audit process  
9 without guarantee that they would be paid anything for such efforts. This Settlement provides for  
10 such payment now.

11 **1. Relief to Recouped Class Members**

12 Recouped Class Members will receive payments from the \$13 million Settlement Fund as  
13 follows:

14 a. Retrospective Relief: Each Recouped Class Member will receive a pro rata  
15 payment from the Retrospective Relief Fund (stipulated to be 70% of the Settlement Fund  
16 Payout), calculated as the ratio of the total amount of Profit Participation paid to the Recouped  
17 Class Member through December 31, 2014 (numerator) to the total amount of Profit Participation  
18 paid to *all* Recouped Class Members through December 31, 2014 (denominator). *See* Settlement  
19 Agreement, §§ 1.24, 1.25, 4.1.

20 b. Prospective Relief: Each Recouped Class Member will also receive a pro rata  
21 payment from the Prospective Relief Fund (stipulated to be 30% of the Settlement Fund Payout),  
22 calculated as the ratio of the total amount of Profit Participation paid to the Recouped Class  
23 Member from January 1, 2010, through December 31, 2014 (numerator) to the total amount of  
24 Profit Participation paid to *all* Recouped Class Members during the same period (denominator).  
25 *See* Settlement Agreement, §§ 1.17, 1.18, 4.2. This ratio represents an estimate negotiated by the  
26 parties for future Profit Participation payments owed to the Class Member.

27 Although the exact amount received by each Class Member will depend on the number of  
28 claims and revenue from the films at issue, the formula can be readily tested and applied for

1 approval purposes. For example, every \$50,000 of profit participation paid in total profit  
2 participation (from the beginning of time) will result in approximately \$1,500 in retroactive relief.  
3 For every \$50,000 of profit participation paid in the four year period will result approximately  
4 \$6,400 in prospective relief.

## 5                   2.       **Relief to Unrecouped Class Members**

6           In addition to the \$13 million Settlement Fund used to compensate Recouped Class  
7 Members, the Settlement creates \$13 million Accounting Relief Fund to provide credits on the  
8 accounts of motion pictures associated with Unrecouped Class Members. *See* Settlement  
9 Agreement § 5.1. Such accounts will receive a pro rata share of the Accounting Relief Fund,  
10 calculated as the ratio of the total amount of Home Video and EST Revenue derived by Universal  
11 through December 31, 2014 for that motion picture (numerator) to the total amount of such  
12 revenue for *all* motion pictures receiving an accounting adjustment (denominator). *See id.*

## 13                   3.       **Fair and Efficient Distribution of Class Relief**

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

## 26                   C.       **Narrowly Tailored Release**

27           The Settlement Agreement contains a release that is limited to claims relating to the subject  
28 matter of the litigation—namely, that Profit Participation should be accounted for greater amounts

1 of Home Video and EST Revenue. *See* Settlement Agreement, §§ 1.20, 7. The class release does  
2 not include a general release or a waiver of Cal. Civ. Code. § 1542 on behalf of the Class  
3 Members. *Id.* Class Members who participate in the Settlement (and who are therefore subject to  
4 the release) will still preserve their full rights to challenge any other accounting practice, charge or  
5 any other conduct by Universal in the past or future. *Id.* The scope of the release is justified and  
6 supports granting this motion.

7 **D. Requested Attorneys' Fees and Costs and Enhancement Awards**

8 The Settlement Agreement allows Class Counsel to apply to the Court for an award of  
9 attorneys' fees in an amount not to exceed \$4,333,333.33; and costs in an amount not to exceed  
10 \$125,000.00. Settlement Agreement, § 19. These attorneys' fees and costs will be paid from the  
11 Settlement Fund. *Id.*, § 1.32. Plaintiffs will also be allowed to apply to the Court for an  
12 enhancement award of \$10,000 each, designed to compensate them for their time and service to  
13 the Class. *Id.*, § 23. These fees costs and incentive awards are reasonable and justified based on  
14 the work performed and costs incurred by class counsel and the named Plaintiffs, in order to  
15 obtain a successful result on behalf of the Settlement Class Members. Plaintiffs will file a motion  
16 for Court approval of their attorneys' fees, costs, and incentive awards to be heard at the same  
17 time as the final fairness hearing.

18 **E. Comprehensive Notice Program**

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

28 ///

1 **IV. LEGAL ANALYSIS**

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

3 California Rule of Court 3.769 requires court approval of the settlement of class action  
4 lawsuits. To be approved, a class action settlement must be “fair, adequate, and reasonable” and  
5 fall within the “range of approval.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801-  
6 02. The determinations of whether a settlement should be preliminarily approved requires, “basic  
7 information about the nature and magnitude of the claims in question and the basis for concluding  
8 that the consideration being paid for the release of those claims represents a reasonable  
9 compromise.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133; *Clark v.*  
10 *American Residential Serv. LLC* (2009) 175 Cal.App.4th 785, 790, 802-03.

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

18 **1. The vigorously negotiated settlement is subject to a presumption of**  
19 **fairness**

20 The Settlement Agreement is subject to the presumption of fairness, because it is the  
21 product of protracted mediations and arm’s length negotiations from October of 2014 through  
22 April 29, 2015, with the assistance of the Hon. Louis M. Meisinger (Ret.). *See Dunk*, 48  
23 Cal.App.4th at 1802. Plaintiffs and their counsel advocated vigorously on behalf of the Class  
24 Members during each phase of these negotiations, in order to negotiate a settlement that provides  
25 adequate relief and is in the best interest of the Class Members. *See Warshaw Decl.* at ¶¶ 4-10.  
26 The months-long negotiations between the parties resulted in a compromised settlement that is the  
27 product of genuine give and take and justified by the facts of this case. *See id.*

28 ///

1                                   **2.       The strength of plaintiffs’ case compared to the risk, expense,**  
2                                   **complexity, and likely duration of further litigation**

3                                   While Plaintiffs were able to defeat Universal’s demurrer and motion to strike, there was  
4 no guarantee that Plaintiffs would prevail on the merits of their claims. Indeed, as set forth above  
5 Universal asserted numerous factual and legal defenses, Universal asserted that these defenses  
6 would defeat Plaintiffs’ motion for class certification, defeat Plaintiffs’ claims on the merits, or  
7 severely limit Plaintiffs’ damages in this case. Although Plaintiffs were confident that they could  
8 certify a class and prevail at trial, there was no way to guarantee either of these outcomes. This is  
9 particularly true since this is a novel and difficult class action that involves complex issues without  
10 precedent. Even if Plaintiffs had prevailed at trial, Universal would undoubtedly appeal, leading  
11 to further expense, delay, and uncertainty. Thus, the further adjudication of this case carried  
12 significant risks to Plaintiffs and the Class Members.

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

17                                  **3.       The risk of maintaining class action status through trial**

18                                  As set out more fully below, Plaintiffs submit that this case can be certified as a class  
19 action and maintain class action status through trial. However, Plaintiffs recognize that Universal  
20 intended to zealously oppose class certification. Universal would have further raised numerous  
21 defenses and attempted to defeat or severely limit Plaintiffs’ claims through summary judgment  
22 and trial. Even if Plaintiffs prevailed at trial, Universal would have likely appealed the Court’s  
23 class certification decision and judgment at trial. While Plaintiffs are confident that this action can  
24 be properly maintained as a class action, these risks of maintaining class action status through trial  
25 weighs in favor of preliminary approval.

26                                  **4.       The amount offered in settlement**

27                                  The Settlement Agreement provides substantial relief to all of the Class Members, to  
28 compensate them for Universal alleged policy of accounting for Home Video and EST revenues



1 on a 20% royalty basis. Under the Settlement, Recouped Class Members will receive monetary  
2 payments from the \$13 million Settlement Fund, that will compensate them for past and future  
3 Home Video and EST Revenues earned on their titles. Unrecouped Class Members will receive  
4 the benefit of accounting adjustments from the \$13 million Accounting Relief Fund, which should  
5 serve to move some of them into profits or, at the very least, closer to profits. In exchange for this  
6 relief, Settlement Class Members will release their claims relating to Universal’s accounting of  
7 Home Video and EST Revenues, and agree to accounting on such revenues on a 20% royalty basis  
8 going forward. The amount offered in settlement is a significant recovery for the Class in light of  
9 the risks of further litigation and Universal’s likely defenses.

10 **5. The extent of discovery completed**

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

20 **6. The experience and views of counsel**

21 Plaintiffs and Class Members are represented in this case by counsel who have vast  
22 experience in class action, complex, and entertainment litigation, have negotiated numerous other  
23 substantial settlements, and have the ability to litigate this case on a class-wide basis if a fair  
24 settlement were not offered. *See* Warshaw Decl., ¶¶ 11-15; Declaration of Neville L. Johnson  
25 (“Johnson Decl.”), ¶¶ 3-5; Declaration of Jeffrey A. Koncius (“Koncius Decl.”), ¶ 3; Declaration  
26 of Raymond P. Boucher (“Boucher Decl.”), ¶¶ 4-10. Significantly, they are also Class Counsel in  
27 five related cases pending before this Court against other major movie studios involving identical  
28 factual and legal issues, which helped inform the settlement negotiations in this case. *See*

1 Warsaw Decl., ¶ 15. Class Counsel were satisfied with the Settlement Agreement only after  
2 extensive negotiations and thorough investigation into the factual and legal issues raised in this  
3 case. *See id.*, ¶¶ 4-10. Based upon their experience in class action cases, Class Counsel views the  
4 Settlement Agreement favorably. *See* Warsaw Decl., ¶ 16; Johnson Decl., ¶ 8; Koncius Decl., ¶  
5 3; Boucher Decl., ¶ 12.

6 **B. The Proposed Settlement Class Satisfies The Requirements For Class**  
7 **Certification**

8 Before granting preliminary approval, the Court must determine that the proposed  
9 Settlement Class can be properly certified for settlement purposes. The Supreme Court of  
10 California has identified the following requirements for class certification: the existence of a  
11 sufficiently numerous and ascertainable class; and a well-defined community of interest – which  
12 itself embodies three factors: (1) predominant common questions of law or fact; (2) class  
13 representatives with claims or defenses typical of the class; and (3) class representatives who can  
14 adequately represent the class); and superiority of a class action. *See Fireside Bank v. Super. Ct.*  
15 (2007) 40 Cal.4th 1069, 1078; *Sav-on Drug Stores, Inc. v. Super. Ct.* (2004) 34 Cal.4th 319, 326.  
16 As detailed below, the Settlement Class satisfies all of the requirements for class certification.

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

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

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

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

1 to his or her eligibility for recovery.”).

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

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

### 14 3. Common Questions of Law and Fact Predominate

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

22 Here, Plaintiffs have satisfied the predominance requirement for settlement purposes  
23 because this lawsuit centers on common legal questions relating to whether Universal’s practice of  
24 accounting for Home Video and EST Revenues on a 20% royalty basis violates the rights of the  
25 Class Members. The Settlement resolves the parties’ dispute arising from this core issue by  
26 providing all Settlement Class Members with relief concerning the alleged underpayment of Home  
27 Video and EST Revenues. The fact that each Class Member will be entitled to a different amount  
28 of the recovery based on the revenues of their film(s) does not defeat predominance. *See Vasquez*,

1 4 Cal.3d at 809; *Sav-on*, 34 Cal.4th at 332-33.

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

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

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

17 **5. Plaintiffs and Their Counsel Are Adequate Representatives of the Class**

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

24 Plaintiffs have no antagonism or conflicts of interest with the proposed Class. Plaintiffs'  
25 claims are identical to the claims of the other Class Members and arise from the same conduct by  
26 Universal. Plaintiffs have embraced their responsibilities as class representatives by actively  
27 participating in the case, including responding to written discovery and producing documents,  
28 preparing for and attending depositions, and engaging in the settlement process.

1 Further, Plaintiffs are represented by qualified and competent counsel who have the  
2 experience and resources necessary to vigorously pursue this action. *See* Warshaw Decl., ¶¶ 3-15;  
3 Koncius Decl., ¶¶ 2-4; Johnson Decl., ¶¶ 3-7; Boucher Decl., ¶¶ 2-11. The knowledge and  
4 experience of Class Counsel were essential in ensuring that the Class Members’ interests were  
5 protected in this case.

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

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

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

24 The class action procedure is also the superior method of adjudicating this case because it  
25 alleviates the heavy burden on the Court that would arise from individual adjudication of the  
26 “home video royalty” issue. The Settlement eliminates the substantial risk of multiple duplicative  
27 lawsuits and ensures that the Class Members’ claims are resolved in the most efficient and cost-  
28 effective way possible.

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

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

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

19 **D. The Proposed Cy Pres Recipients Are Appropriate**

20 Pursuant to Section 4.3 of the Settlement Agreement, *cy pres* distribution will only occur  
21 in the event that the amount of stale checks remaining after distribution of the settlement proceeds  
22 to the class members does not justify the administrative cost of a second distribution. *See*  
23 Settlement Agreement, § 4.3. The parties have agreed that the *cy pres* recipient of this limited  
24 fund shall be the Motion Picture & Television Fund. *Id.* When evaluating a *cy pres* distribution  
25 of the remainder of class action proceeds, a court must “consider whether the proposed *cy pres*  
26 distribution is useful in fulfilling the purposes of the underlying cause of action.” *In re Microsoft*  
27 *I-V Cases* (2006) 135 Cal. App. 4th 706, 722. Here, the proposed limited *cy pres* distribution to  
28 the Motion Picture & Television Fund fulfills the purpose of the lawsuit because, it directly

1 benefits the interests of individuals involved in the film industry by providing, for example, health  
2 care services, retirement residences, financial aid to offset care and living expense, social services  
3 and charitable assistance programs. *See* Warshaw Decl., ¶ 17. Moreover, the funds will allow the  
4 cy pres recipients to continue their work in a time of shrinking budgets. Accordingly, this Court  
5 should approve the cy pres distribution recommended herein. *State of California v. Levi Strauss &*  
6 *Co.* (1986) 41 Cal.3d 460, 472; *In re Microsoft I - V Cases* (2006) 135 Cal.App.4th 706, 722;  
7 *Nachshin v. AOL, Inc.* (9th Cir. 2011) 663 F.3d 1034, 1038- 41; *Dennis v. Kellogg Co.* (9th Cir.  
8 2012) 697 F.3d 858, 865; Cal. Code Civ. Proc. §384.

9 **E. The Notice Program Adequately Apprises Class Members of Their Rights and**  
10 **Options Under The Settlement**

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

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

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

28 The notice program in this case is sufficient because it is centered on providing Class

1 Members with direct notice via mail to all Class members whose contact information is available  
2 and maintained in Universal’s records. *See* Settlement Agreement § 10.2. Since Universal has an  
3 ongoing business relationships with the profit participants in this case, the direct notice required  
4 by the Settlement Agreement will reach and cover the vast majority of the Settlement Class  
5 Members.

6 In order to ensure that the notice program is robust and complete, the Settlement  
7 Agreement also calls for a supplemental publication notice that will be distributed in the  
8 entertainment industry print publications *Variety* and *The Hollywood Reporter*. *See* Settlement  
9 Agreement § 10.3. E-Newsletters will be sent to subscribers of *Variety*, *The Hollywood Reporter*  
10 and *The Wrap*. *Id.* Notice will be disseminated via the social media outlets via online advertising  
11 in Facebook, Twitter and LinkedIn. *Id.* Lastly, a press release will be issued via the major media  
12 outlets. *Id.* The publication notice will provide notice to the few Class Members whose contact  
13 information is no longer accurate or maintained in Universal’s records.

14 Thus, the notice program more than satisfies its purpose which “is the protection of the  
15 integrity of the class action process, one of the functions of which is to prevent burdening the  
16 courts with multiple claims where one will do.” *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177  
17 Cal. App. 4th 734, 745-46 ; *see also, Wershba*, 91 Cal. App. 4th at 252 (Stating the purpose of  
18 notice is “to give class members sufficient information to decide whether they should accept the  
19 benefits offered, opt out and pursue their own remedies, or object to the settlement. [Citation.] As  
20 a general rule, class notice must strike a balance between thoroughness and the need to avoid  
21 unduly complicating the content of the notice and confusing class members.”). As the Notice is  
22 content neutral and clearly sets out the terms of the Settlement, it complies with all standards of  
23 fairness, completeness and neutrality and should be approved. *See, Cho*, 177 Cal. App. 4th at 745-  
24 46; *see also, Wershba*, 91 Cal. App. 4th at 252.

25 **2. The Notice Documents Adequately Apprise Class Members of their**  
26 **Rights and Options**

27 The content of the notice must “contain an explanation of the proposed settlement and  
28 procedures for class members to follow in filing written objections to it and in arranging to appear



1 at the settlement hearing and state any objections to the proposed settlement.” Cal. R. Ct. 3.769  
2 (f). Pursuant to, California Rule of Court 3.766 (d) that class notice must contain the following  
3 information:

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

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

### 20 3. Gilardi Should Be Appointed As Claims Administrator

21 The Parties have agreed to task Gilardi & Co., LLC (“Gilardi”) with handling the notice  
22 and claims administration process as outlined in the Settlement Agreement. Gilardi is experienced  
23 and qualified in the area of class action administration and notice and is a neutral third-party  
24 administrator. *See* Declaration of Alan Vasquez (“Vasquez Decl”). All fees and expenses charged  
25 by Gilardi shall be paid from the Settlement Fund. Significantly, the parties sought bids from  
26 reputable claims administrators and chose the lowest bid. Thus, the parties respectfully request  
27 that this Court appoint Gilardi to administer the notice and the claims administration procedures as  
28 set forth in the Settlement Agreement.

26 ///  
27 ///  
28 ///

1 **V. CONCLUSION**

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

5  
6 DATED: May 1, 2015

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