Daniel A. Small (*pro hac vice*)
COHEN MILSTEIN SELLERS & TOLL PLLC
1100 New York Avenue NW, Suite 500
Washington, DC 20005
Telephone: (202) 408-4600
Facsimile: (202) 408-4699
dsmall@cohenmilstein.com

Steve W. Berman (*pro hac vice*)
HAGENS BERMAN SOBOL SHAPIRO LLP
1918 Eighth Avenue, Suite 3300
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594
steve@hbsslaw.com

Marc M. Seltzer (54534)
SUSMAN GODFREY L.L.P
1901 Avenue of the Stars, Suite 950
Los Angeles, CA 90067-6029
Telephone: (310) 789-3100
Facsimile: (310) 789-3150
mseltzer@susmangodfrey.com

[Additional Counsel on Sig. Page]

*Plaintiffs' Interim Co-Lead Class Counsel*

*Attorneys for Plaintiffs Robert A. Nitsch, Jr., Georgia Cano, David Wentworth and the Proposed Class*

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

**SAN JOSE DIVISION**

IN RE ANIMATION WORKERS ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

ALL ACTIONS

Master Docket No. 14-cv-4062-LHK

**SECOND CONSOLIDATED AMENDED CLASS ACTION COMPLAINT**

DEMAND FOR JURY TRIAL

Plaintiffs Robert A. Nitsch, Jr., Georgia Cano, and David Wentworth, on behalf of themselves and all others similarly situated ("Plaintiffs"), allege the following:

## I. INTRODUCTION

1. Visual effects and animation companies have conspired to restrain competition in order to suppress compensation of those whom they claim to prize as their greatest assets—their own workers. In *per se* violations of the antitrust laws, the leaders and most senior executives of Defendants Pixar, Lucasfilm and its division Industrial Light & Magic, DreamWorks Animation, The Walt Disney Company, Sony Pictures Animation, Sony Pictures Imageworks (collectively, the "Sony Defendants"), Blue Sky Studios, ImageMovers Digital LLC (now known as Two Pic MC LLC) and others secretly agreed to work together to deprive thousands of their workers of better compensation and deny them opportunities to advance their careers at other companies. These workers include animators, digital artists, software engineers and other technical and artistic workers who are the creative genius and dedicated people behind such wonders as Wall-E (Pixar), the Shrek series (DreamWorks Animation), the Harry Potter adaptations (Lucasfilm/ILM) and the Spiderman series (Sony), among others. The conspiracy deprived Plaintiffs and other Class members of millions of dollars in compensation while the films they produced generated billions of dollars in revenues for Defendants.

2. To accomplish their anticompetitive goals, Defendants agreed to limit recruiting activities that otherwise would have existed absent Defendants' conspiracy. For example, Defendants entered into a scheme not to actively recruit employees from each other, referred to as an anti-solicitation scheme herein. Among the tactics of this anti-solicitation scheme were that (a) Defendants would not cold call each other's employees; (b) they would notify the other company when making an offer to an employee of the other company, if that employee had applied for a job; and (c) the company making such an offer would not increase the compensation offered to the prospective employee in its offer if the company currently employing the employee made a counteroffer.

3. Pixar and Lucasfilm developed the anti-solicitation scheme in the 1980s, acting through Pixar's Chief Executive Officer Steve Jobs and President Edwin Catmull and Lucasfilm's

founder George Lucas. Over the coming decades, Catmull and his co-conspirators enlisted several additional visual effects and animation studios to join in the conspiracy, including each of the other Defendants.

4. The existence and nature of the anti-solicitation scheme cannot seriously be disputed. Catmull and Lucas themselves, along with other executives and human resources employees of Pixar and Lucasfilm, acknowledged the scheme in sworn testimony, with direct written documentary evidence showing the participation of each of the other Defendants, as well as several other companies, in the scheme. For example, Catmull testified that Steve Jobs and DreamWorks Animation Chief Executive Officer Jeffrey Katzenberg personally agreed not to "go[] after each other," and wrote in 2007 that Pixar "ha[d] an agreement with DreamWorks not to actively pursue each others employees" and that "all of the companies up here [in Northern California] – Pixar, ILM, Dreamworks, and couple of smaller places [sic] – have conscientiously avoided raiding each other."

5. Although the anti-solicitation scheme may have started in Northern California, the scheme metastasized beyond that region. Pixar's Vice President of Human Resources, Lori McAdams, wrote in 2005: "With regard to ILM, Sony, Blue Sky, etc., . . . we have a gentleman's agreement not to directly solicit/poach from their employee pool."

6. At least one of the Defendants was warned that their agreements may well be illegal. In December 2006, Defendant Lucasfilm was warned by outside counsel for a non-defendant studio, Digital Domain, that "any agreements regarding recruiting limitations between our respective clients could be viewed by third parties as an improper attempt to restrain trade." Nevertheless, Lucasfilm and the rest of the Defendants continued to enforce the scheme and bring in new participants—and when a Lucasfilm veteran became the head of Digital Domain's human resources department, even Digital Domain joined the conspiracy.

7. The conspiracy was intended to suppress compensation throughout the market by limiting direct solicitation of visual effects and animation workers. By doing so, Defendants would tamp down bidding wars (i.e., competition) to attract and retain employees. To that end, when any studio engaged in significant competition (in effect, "cheating") in breach of their agreement, conspirators attempted to squelch it. For example, in 2007, when ImageMovers head Robert

Zemeckis began recruiting workers, Catmull intervened to stop them from targeting other conspirators, even though he knew they would not target his company, Pixar.

8. The conspiracy's leaders have been equally clear about their shared goals. Catmull's express purpose in eliminating active recruitment was to keep solicitation efforts from "mess[ing] up the pay structure." As Catmull later explained under oath, his concern about "mess[ing] up the pay structure" was that it would make it (i.e., compensation) "very high." Lucasfilm's then-President Jim Morris explained the goal even more succinctly in a June 2004 email to Catmull: "I know you are adamant about keeping a lid on rising labor costs." Or, as George Lucas stated, Defendants wanted to keep the industry out of a "normal industrial competitive situation" and avoid "a bidding war with other companies." In Catmull's view, the scheme to restrain competition "worked quite well"—to the benefit of Defendants' bottom lines, but at the expense of workers throughout the visual effects and animation industry. The conspiracy was thus intended to and did suppress the amount of compensation that would have been paid to Plaintiffs and their fellow Class members.

9. Defendants' second method to achieve the goals of their conspiracy was to engage in direct collusive communications concerning competitively sensitive compensation information and agree upon compensation ranges, in order to limit the compensation offered to their respective employees and workers. Absent the conspiracy, this competitively sensitive information would have been given confidential treatment.

10. Since the mid-1990s, the most senior personnel from the human resources and recruiting departments of the studios have met yearly to discuss an industry compensation survey. From the beginning, Defendants understood that the survey was used by each to "confirm or adjust our salary ranges." By the early 2000s, Defendants used those meetings and communications connected to them to help fix the compensation of their workers within ranges for the ensuing year. Senior human resources personnel met annually after the survey for "an opportunity for an intimate group of us to get together," which they termed the "Directors meeting." At least at one studio, the meetings were called the annual "salary council."

11. These collusive discussions and information exchanges facilitated Defendants' goals of suppressing compensation, such that Defendants could thereby compensate their employees at a

lower rate. They also allowed Defendants who paid higher compensation early in the conspiracy period to come into alignment with other studios without fearing that lowering compensation would be used against them competitively.

12. Defendants, both through their top executives and their human resources and recruiting departments, also communicated throughout the year to implement and enforce the conspiracy to suppress compensation while keeping those communications secret from their workers and others in the industry. In the words of Pixar's Vice President of Human Resources, they talked with other studios "to ensure that our salary ranges for the positions are correct." As just one example, when Sony laid off a number of employees and then rehired them at lower rates in 2009 to come more into line with its conspirators, it expressly advised at least one coconspirator, Pixar, to "stand firm in [its] offers to exSony candidates and not worry too much about matching their last Sony rate."

13. Senior human resources and recruiting personnel also met for lunches, dinners, drinks and other informal meetings at various times during the year, both as a group and on a one-on-one basis. Human resources personnel regularly called counterparts at other studios for salary information. Indeed, communications among Defendants' senior human resources personnel were so pervasive that Pixar's Head of Human Resources wrote to her counterparts at Sony Pictures Imageworks, ILM, DreamWorks, Disney, and Blue Sky in early 2007 that "[c]hatting with all of you each day is really becoming a fun habit" and joked that they should "all just have a short conference call each morning to start our days off right." Walt Disney Animation Studios' Vice President of Human Resources echoed this sentiment, noting that she "hear[s] from you all on a daily basis."

14. As part of these direct communications, Defendants repeatedly collusively discussed and provided to each other specific pay ranges for individual positions, facilitating their common goal to suppress their employees' compensation. In one example, Disney's Vice President of Human Resources and DreamWorks' Head of Human Resources had lunch on May 10, 2006; shortly thereafter, Disney's Vice President of Human Resources provided Disney's pay ranges for two positions that DreamWorks was evaluating. As illustrated below, many more examples of collusive conduct exist.

15. The cooperation among Defendants was so systematic and deeply ingrained that in some instances, many conspirators were included on the same emails concerning compensation for their workers. For instance, in late 2006, the head of human resources at Pixar sent an email to the heads of human resources at DreamWorks, Sony Pictures Imageworks, Lucasfilm/ILM, Walt Disney Animation Studios, Blue Sky Studios, and others to provide Pixar's budget for future salary increases in the following year, 2007, and to ask for the other studios' salary increase budgets in return.

16. Defendants took actions to conceal the agreements from their employees. Top executives and human resources and recruiting personnel involved in the conspiracy communicated about the agreements orally or in emails among themselves, often insisting on discussing the agreements by phone.

17. The Antitrust Division of the United States Department of Justice (the "DOJ") investigated Defendants Pixar and Lucasfilm's anti-solicitation scheme. The DOJ found that their agreement was "facially anticompetitive" and was illegal *per se* under Section 1 of the Sherman Act, 15 U.S.C § 1. As the DOJ explained, the scheme "eliminated significant forms of competition to attract digital animators and, overall, substantially diminished competition to the detriment of the affected employees who were likely deprived of competitively important information and access to better job opportunities." The DOJ concluded that the scheme "disrupted the normal price-setting mechanisms that apply in the labor setting." Defendants Pixar and Lucasfilm signed settlements enjoining them from entering into such anti-solicitation agreements again.

18. Defendants' conspiracy unreasonably restrained trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and the Cartwright Act, Cal. Bus. & Prof. Code §§ 16720 *et seq.*, and constituted unfair competition and unfair practices in violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.* Plaintiffs, on their own behalf and on behalf of the Class defined herein, seek to recover the difference between the compensation that Class members were paid and what Class members would have been paid absent Defendants' illegal conduct, and to enjoin Defendants from continuing or engaging in their unlawful conduct.

## II. PARTIES

19. Plaintiff Robert A. Nitsch, Jr. was a Senior Character Effects Artist at DreamWorks Animation from 2007 to 2011 in Los Angeles, California and a Cloth/Hair Technical Director at Sony Pictures Imageworks during 2004 in Los Angeles, California. He resides in Massachusetts.

20. Plaintiff Georgia Cano was a Digital Artist at Rhythm & Hues from 1992 to 2004; a Lighting Technical Director at Walt Disney Feature Animation from 2004 to 2005; a Lighting Artist at Rhythm & Hues again from 2006 to 2009; a Lighting Artist at ImageMovers Digital in 2010; and has worked in similar positions for several other visual effects or animation studios from 1992 through the present. During her most recent job search, in 2014, she applied to Defendant Disney, as well as other visual effects and animation studios. She currently works as a coordinator in animated features at Warner Brothers. She resides in California.

21. Plaintiff David Wentworth worked at ImageMovers Digital as a Production Engineer, Lead Production Engineer, and Associate Computer Graphics Supervisor from 2007 to 2010. He resides in California.

22. Defendant Blue Sky Studios, Inc. ("Blue Sky") is a Delaware corporation with its principal place of business located at One American Lane, Greenwich, Connecticut. It is owned by Twentieth Century Fox Film Corporation, which has its principal place of business in Los Angeles, California.

23. Defendant DreamWorks Animation SKG, Inc. ("DreamWorks") is a Delaware corporation with its principal place of business located at 1000 Flower Street, Glendale, California. It has a studio in Redwood City, California, located in Santa Clara County.

24. Defendant Two Pic MC LLC f/k/a ImageMovers Digital LLC ("ImageMovers" or "IMD") is a Delaware corporation with its principal place of business at 500 S. Buena Vista Street, Burbank, California. ImageMovers is a joint venture of ImageMovers LLC and ABC Inc., a subsidiary of The Walt Disney Company.

25. Defendant Lucasfilm Ltd., LLC ("Lucasfilm") is a California corporation with its principal place of business located at 1110 Gorgas Ave., San Francisco, California. Industrial Light

& Magic ("ILM") is a division of Lucasfilm. Since 2012, Lucasfilm and ILM have been owned by Defendant The Walt Disney Company.

26. Defendant Pixar is a California corporation with its principal place of business located at 1200 Park Avenue, Emeryville, California. Since 2006, it has been owned by Defendant The Walt Disney Company.

27. Defendant Sony Pictures Animation, Inc. is a California corporation with its principal place of business located at 9050 W. Washington Blvd., Culver City, California.

28. Defendant Sony Pictures Imageworks, Inc. (together with Sony Pictures Animation, Inc., the "Sony Defendants") is a California corporation with its principal place of business located at 9050 W. Washington Blvd., Culver City, California.

29. Defendant The Walt Disney Company ("Disney") is a Delaware corporation with its principal place of business located at 500 South Buena Vista Street, Burbank, California. Walt Disney Studios is a division of Disney with its principal place of business located at 500 South Buena Vista Street, Burbank, California. Walt Disney Studios oversees the operations of both Walt Disney Animation Studios and, since 2006, Pixar. Walt Disney Animation Studios is a division of Disney with its principal place of business located at 2100 W. Riverside Drive, Burbank, California. Walt Disney Animation Studios was formerly known as Walt Disney Feature Animation.

30. Various persons, partnerships, sole proprietors, firms, corporations and individuals not named as defendants in this lawsuit, including other animation and visual effects studios, have participated as co-conspirators with the Defendants in the offenses alleged in this Complaint, and have performed acts and made statements in furtherance of the conspiracy or in furtherance of the anticompetitive conduct.

31. Whenever in this Complaint reference is made to any act, deed or transaction of any corporation or limited liability entity, the allegation means that the corporation or limited liability entity engaged in the act, deed or transaction by or through its officers, directors or employees while they were actively engaged in the management, direction, control or transaction of the corporation's or limited liability entity's business or affairs.

## III. JURISDICTION AND VENUE

32. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. §§ 4 and 16 and 28 U.S.C. §§ 1331 and 1337.

33. This Court has personal jurisdiction over Defendants because each resides in or has its principal place of business in the State of California, employed individuals in this state during the Class Period, and/or has had substantial contacts within the state of California in furtherance of the conspiracy.

34. Venue is proper in this judicial district under 15 U.S.C. § 22 and 28 U.S.C. § 1391(b)(1)-(2) because a substantial part of the acts or omissions giving rise to the claims set forth herein occurred in this judicial district, a substantial portion of the affected interstate trade and commerce was carried out in this district, and multiple defendants reside in this district.

## IV. INTRADISTRICT ASSIGNMENT

35. Pursuant to Civil Local Rule 3.2(c) and (e), assignment of this case to the San Jose Division of the United States District Court for the Northern District of California is proper because a substantial part of the events and omissions giving rise to Plaintiffs' antitrust claims occurred within the San Jose Division.

## V. NATURE OF WORK IN THE VISUAL EFFECTS AND ANIMATION INDUSTRY

36. Defendants are each in the business of creating visual effects and animation for motion pictures. That business depends on the labor of thousands of skilled animators, graphic artists, software engineers and other technical and artistic workers. Major animated films and films with significant visual effects require hundreds of workers with special training and millions, if not tens of millions, of dollars of investment in the visual effects and animation. Defendants create those effects and animation for their own movies or movies produced by major motion picture studios such as Warner Bros. Pictures, 20th Century Fox, Universal Pictures, Paramount Pictures or Walt Disney Studios.

37. A limited number of studios have the know-how, technological resources and industry experience to handle the visual effects and animation work required by modern motion pictures.

38. Visual effects and animation workers frequently obtain formal specialized schooling and training for their craft and then gain invaluable experience and skills specific to the industry throughout their careers. They develop and use specialized software and other tools unique to the industry. Although positions requiring Class members' specialized skills sometimes arise in other businesses, they are not common enough to impose any constraint on Defendants' ability to suppress wages.

39. Visual effects and animation workers work for studios as employees or independent contractors,[1] paid sometimes on an hourly basis and sometimes as permanent salaried employees. Studios frequently ask their employees to agree to work for them for the length of a particular project, often corresponding to the length of the studio's work on a particular feature or movie. Those periods frequently last between three to nine months, but can be as short as a few weeks. Studios also sometimes ask workers to commit to the studio to work for one to three years with the caveat that the studio has the option to terminate their employment either at any time or after particular periods of time. During their tenures at the studios, many workers did not receive health care benefits from the studio.

40. Working in the industry requires great commitment. Studios frequently ask their employees to work feverishly for months or even years, including days or weeks straight without a day off and into the early hours of morning. Visual effects and animation workers also bear great risk in that the studios regularly terminate them after their project or a particular feature film production ends. They then have to find new employment with another studio or again with the current studio. Most are not paid during periods of unemployment in between projects. Studios sometimes also delay projects or terminate them early and do not pay their workers during those delays or after the early termination. Studios sometimes ask workers to move to other states to work on projects there.

[1] For convenience, this complaint refers to class members as "employees" even though some of them may have worked for Defendants as independent contractors.

41. Although jobs in the visual effects and animation industry exist in other countries, there are barriers to working abroad for many Class members. They must relocate to a foreign country, undergoing a wide range of burdens, from obtaining work visas to leaving behind family and friends. Thus compensation rates in other countries do not place a significant constraint on compensation rates in the United States.

## VI. THE CONSPIRACY

42. Defendants conspired to suppress the compensation paid to their workers and other Class members. To accomplish their conspiratorial goals, Defendants entered into a scheme not to actively solicit each other's employees; and Defendants also engaged in collusive discussions in which they exchanged competitively sensitive compensation information and agreed upon compensation ranges, in order to limit the compensation offered to current and prospective workers.

### A. Defendants Agreed Not to Solicit Each Others' Employees

43. As part of the conspiracy alleged herein, Defendants competed for Class members' services, but agreed to severely limit their competition by abandoning one of the most effective ways of recruiting employees. Specifically, each Defendant agreed not to actively solicit employees of other Defendants. Defendants agreed not to contact their coconspirators' employees to inform them of available positions unless that individual employee had applied for a job opening on his or her own initiative.

44. Such solicitation, often called "cold calling," is a key competitive tool in a properly functioning labor market, especially for skilled labor. Competing studios' employees represent one of the main pools of potential hires with the appropriate skills for an open position, and who may be unresponsive to other forms of recruiting. And compared to unemployed workers or employees actively seeking new employment, employees who are not actively seeking to change employers are more likely to be among the most sought after employees. Because they are not looking for other jobs, they are difficult to reach without active solicitation. As Lucasfilm recognized internally, "[p]assive talent [is] difficult to find." A company searching for a new hire can save costs and avoid risks by poaching that employee from a rival company. Thus, if each Defendant was truly acting in its own independent self-interest, it would actively solicit the others' employees.

45. Defendants' scheme to restrain competition included notifying each other when an employee of one Defendant applied for a position with another Defendant, and agreeing to limit counteroffers in such situations. In these circumstances, when an employee at one Defendant contacted a second Defendant and the second Defendant decided to make an offer, it would typically (a) notify the first Defendant, and (b) decline to increase its offer if the current employer outbid it. Pixar confirmed that it "can provide you lots of examples of our following this procedure," and Pixar's Ed Catmull testified that this procedure "represent[s] my general feeling about the way we were behaving . . .towards everybody." Again, if Defendants were acting in their independent self-interest, they would not preemptively tell their competitors that they were offering jobs to the competitor's employees or refuse to bid against their competitors.

46. Indeed, Defendants often refrained from hiring other Defendants' employees at all without the permission of the current employer. As an internal Lucasfilm document explained, "[w]e have actually canceled offers to people that Pixar said were essential." Similarly, Defendants sometimes declined to extend offers to applicants if they had an outstanding offer from another Defendant, even if they were not currently employed.

**(1) Pixar and Lucasfilm Begin the Anti-Solicitation Scheme**

47. As alleged above, the roots of the conspiracy reach back to the mid-1980s. George Lucas, the former Lucasfilm Chairman of the Board and CEO, sold Lucasfilm's "computer division," then a "tech, research and development company," to Steve Jobs, who had recently left the employ of Apple as CEO. Jobs named his new company Pixar. Lucas and Jobs's deputy, Pixar's President Ed Catmull, along with other senior executives, subsequently reached an agreement to restrain their competition for the skilled labor that worked for the two companies. Pixar drafted the terms of the agreement and communicated those terms to Lucasfilm; both Defendants then communicated the agreement to senior executives and select human resources and recruiting employees. Lucas has stated in email that Pixar and Lucasfilm "have agreed that we want to avoid bidding wars." He has also stated that the agreement was that "we wouldn't actively try to raid each other's companies" and that "we agreed not to raid each other" and "I think the part of the agreement is not to solicit each other's employees, is the crux of it."

48. Catmull agreed with George Lucas that the newly independent Pixar would reciprocate this non-compete "rule" with Lucasfilm. The companies thus agreed: (1) not to cold call each other's employees; (2) to notify each other when making an offer to an employee of the other company if that employee applied for a job on his or her own initiative; and (3) that any offer by the potential new employer would be "final" and would not be improved in response to a counteroffer by the employee's current employer (whether Pixar or Lucasfilm).

49. Pixar and Lucasfilm were similarly explicit about their agreement not to make counteroffers. An internal Pixar email sent on January 16, 2006 explained that "we agreed not to counter . . . . It's a very small industry and neither Lucas or Pixar wants to get into an issue of countering offers back and forth." Their policy was to "never counter if the candidate comes back to us with a better offer."

50. As one recruiter from Lucasfilm explained it in December 2007, if a person interested in joining Lucasfilm "come[s] from Pixar, they need to inform their manager that they are applying for a job at Lucasfilm and then we can start the dance although this usually stops things dead in their tracks."

51. As the DOJ found and Lucasfilm President Micheline Chau confirmed, the agreement was not limited by geography, job function, product group, or time period.

**(2) Other Defendants Enter into the Anti-Solicitation Scheme**

52. Although the conspiracy began with Pixar and Lucasfilm, other companies joined the conspiracy under Catmull's leadership. Companies later joining the conspiracy include, at least, Disney and its studio Walt Disney Animation Studios, DreamWorks, ImageMovers, the Sony Defendants and Blue Sky.

53. As Pixar's Vice President of Human Resources, Lori McAdams, wrote in 2005: "With regard to ILM, Sony, Blue Sky, etc., we have no contractual obligations, but we have a gentleman's agreement not to directly solicit/poach from their employee pool." An internal "Competitors List" created by Pixar listed anti-solicitation rules for each of the Defendants, among other visual effects and animation studios. Blue Sky, DreamWorks, ImageMovers, Sony Pictures

Imageworks, and Walt Disney Animation Studios were all listed with directions not to "recruit directly" or "solicit or poach employees."

54. Similarly, Catmull explained that the conspiracy was more comprehensive and included a "couple of smaller places" as well as Pixar, Lucasfilm/ILM and DreamWorks: "[w]e have avoided wars up here in Norther[n] California because all of the companies up here – Pixar, ILM, Dreamworks, and couple of smaller places [sic] – have conscientiously avoided raiding each other." And although the conspiracy began in Northern California, it came to extend well beyond that region, as shown by the involvement of Blue Sky and the Sony Defendants.

*a) DreamWorks Joins the Conspiracy*

55. Steve Jobs and the CEO of DreamWorks, Jeffrey Katzenberg, personally discussed DreamWorks joining into the conspiracy. Catmull told Jobs in a February 18, 2004 email, that the companies' mutual understanding "worked quite well." Catmull reiterated this in a January 14, 2007 email to Disney Chairman Cook: "we have an agreement with Dreamworks not to actively pursue each others employees."

56. Similarly, when a new contract recruiter at DreamWorks contacted a Pixar employee in March 2007, Catmull wrote him to explain their understanding: "While we do not act to prevent people from moving between studios, we have had an agreement with Dreamworks not to actively pursue each others employees [sic]. I have certainly told our recruiters not to approach any Dreamwork [sic] employees." Pixar's Vice President of Human Resources, Lori McAdams, wrote to Catmull that she "know[s] [Dreamworks'] head of HR Kathy Mandato well, and she's in agreement with our non-poaching practices, so there shouldn't be any problem." McAdams checked with Mandato to make sure there was "no problem with our past practices of not poaching from each other," to which Mandato replied "Absolutely! You are right . . . (my bad)."

57. Discussions between McAdams and Mandato regarding the agreement had begun as early as 2004, at which time Mandato "thought that we already had this kind of arrangement in place, based on a conversation between Steven Spielberg and Steve Jobs."

58. DreamWorks was similarly committed to enforcing the anti-solicitation scheme against other studios. For example, Mandato asked Pixar not to solicit DreamWorks employees

when a recruiting email was sent to a DreamWorks employee by mistake. McAdams' response: "Argh, it shouldn't have gone to anyone at work or our competitors people [sic]. I'll put a stop to it!"

59. As Catmull explained, the scope of the conspiracy was not merely an agreement between DreamWorks and Pixar; rather, it was an agreement among "all of the companies up here – Pixar, ILM, DreamWorks, and couple of smaller places [sic]."

*b) The Walt Disney Company Joins the Conspiracy*

60. The Walt Disney Company also joined the conspiracy. For example, an internal Pixar email in 2005 confirmed that Pixar would not recruit workers out of Disney or other studios. Disney's participation deepened in 2006, when it purchased Pixar and appointed Catmull to run Walt Disney Animation Studios. Indeed, Disney Chairman Dick Cook explicitly approved Pixar's and Disney's participation in the anti-solicitation scheme when informed of the scheme. Catmull explained to Cook that "all of the companies up here – Pixar, ILM, Dreamworks, and couple of smaller places [sic] – have conscientiously avoided raiding each other" and explained that the concern was that companies offering employees "a substantial salary increase" will "seriously mess[] up the pay structure." Cook responded succinctly: "I agree." He promised to "reaffirm our position again" with ImageMovers, a joint venture in which Disney participated.

61. Similarly, Walt Disney Animation Studios' Director of Animation Resources asked ILM to observe "the Gentlewomen's agreement" concerning the recruiting of digital artists at Disney in 2006.

62. Other co-conspirators understood that Disney had joined the conspiracy and acted accordingly. In October 2009, Karen Toliver, VP of Animation at Twentieth Century Fox, emailed Brian Keane, Chief Operating Officer of Blue Sky, regarding a Disney employee who "would really like to explore opportunities with Blue Sky." Given the agreement between Blue Sky and Disney, however, Keane could not directly recruit the employee: "Of course because he is currently at Disney we need to be sensitive and not reach out in a way that could get back to Disney."

*c) Sony Pictures Imageworks and Sony Pictures Animation Join the Conspiracy*

63. Prior to 2002, Sony Pictures Imageworks primarily created visual effects for live-action films produced by Sony and other production companies. In 2002, Sony Pictures Animation was created to develop proprietary animated feature films, and Sony Pictures Imageworks significantly expanded to handle the production of those films. This expansion was fueled in part by offering higher salaries to lure workers away from other studios.

64. Sony's competition on compensation and recruitment efforts early in the 2000s were met with displeasure by other studios. As Catmull later wrote, when a studio offers "a substantial salary increase" in an effort "to grow rapidly, whether it is Dreamworks in 2D animation or Sony in 3D, it seriously messes up the pay structure."

65. To stop this competition, Catmull decided to "go down and meet [Sony Pictures Animation executives] to reach some agreement . . . to nip this in the bud." With that objective, Catmull flew to Los Angeles to meet with Sony executives in person in 2004 or 2005 "and asked them to quit calling our employees."

66. As early as January 2004, Catmull had met personally with Sony executives, and suggested that he should "take them up on" an offer of a further meeting, at which Catmull planned to "reach an agreement where neither of us let recruiters approach the other."

67. Catmull reached a "gentleman's agreement not to directly solicit/poach from their employee pool" with Sony at that time. Even so, because a Pixar employee left to work at Sony Pictures Imageworks on his own initiative in 2005, and a Sony recruiter asked if another employee was "still employed and if she can contact," McAdams spoke to them in person and over the phone to "make sure they're still honoring it as they may have had turnover in their Recruiting team." Similarly, when one recruiter at Sony contacted a Pixar employee in October 2006, a Pixar recruiter suggested that Pixar "slap her on the wrist," leading McAdams to call her counterpart at Sony and "tell them to knock it off."

68. By July 2009, Sony was insistent that the non-solicitation agreement be observed and threatened studios that poached from it with retaliation not just by Sony but by its coconspirators as well. When a recruiter at ReelFX, a smaller studio, contacted Sony employees, Sony Pictures Digital President Bob Osher emailed ReelFX from a vacation in Europe to say that not only would

Sony retaliate against ReelFX if it continued, but that "Dreamworks and others will avoid hiring Reel Effects as well if this happened to us and they hear (which of course they would). . . . I hope we don't have to deal with a actual [sic] issue because this will not be good."

*d) Blue Sky Studios Joins the Conspiracy*

69. Blue Sky similarly entered the conspiracy, as George Lucas himself testified at his deposition in the *High-Tech* litigation. Blue Sky both requested that other studios not recruit from it and refrained from recruiting from others. For example, in 2005, Blue Sky declined to pursue a DreamWorks candidate who would "be an amazing addition" because they didn't "want to be starting anything with [Katzenberg] over one story guy."

70. Around the same time, Pixar confirmed that Blue Sky was a co-conspirator. On September 29, 2005, Lori McAdams explained that "[w]ith regard to ILM, Sony, Blue Sky, etc., we have no contractual obligations, but we have a gentleman's agreement not to directly solicit/poach from their employee pool. . . . This agreement is mutual, so if you ever hear that the studios are calling our people, let me know right away and I'll take care of it (as was the case with Sony a few months ago)."

71. Similarly, Blue Sky contacted Pixar to discuss "our sensitive issue of employee retention," in response to which McAdams "spoke[] to Linda Zazza, [Blue Sky's] Director of HR to assure her that we are not making calls to their people or trying to poach them in any way."

72. When Zazza noticed a trend of departing employees in 2008, she quickly "probed to find out if they've been approached by Pixar, etc." to see if a violation of the no-poach agreement caused the employees to leave Blue Sky. None of the departing employees reported that they had been contacted by another studio.

73. Managers at Twentieth Century Fox Animation, the parent of Blue Sky, were careful to honor the agreement, including with co-conspirator Sony. When President Vanessa Morrison heard in June 2008 that "Sony is about to lay off a gang of people," she directed Karen Toliver to investigate. In recognition of the agreement, however, Morrison cautioned that "[w]e have to be careful not to poach people."

74. As explained above, Blue Sky also recognized that it would have to be sensitive as to how to contact a Disney employee interested in joining Blue Sky "and not reach out in a way that could get back to Disney."

*e) ImageMovers Joins the Conspiracy*

75. ImageMovers joined the conspiracy as well. In January 2007, Catmull wrote to Dick Cook, Walt Disney Studios' then-chairman, that he knew "Zemeckis' company [ImageMovers] will not target Pixar."

76. However, ImageMovers was still recruiting employees from other conspiring studios such as DreamWorks and The Orphanage,[2] "offering higher salaries," in Catmull's words. Pixar recognized that the industry would benefit (by less competition) if they could avoid ImageMovers "raiding other studios." And so Catmull advised Cook that he would meet with Steve Starkey, one of the founders of ImageMovers. Cook responded: "I agree."

77. Catmull met with Starkey later that month, who told Catmull that he had "told George [Lucas] that he would not raid ILM." Catmull impressed upon Starkey "how important it is that we not have a hiring war." The resulting agreement applied "to any type of position," as an October 10, 2008 Lucasfilm email confirmed. ILM Recruiter Lori Beck further confirmed that potential recruits were simply "not available" when "working at IMdigital [sic]."

78. Catmull also advised Walt Disney Studios' President Alan Bergman and Senior Vice President of Human Resources Marjorie Randolph to require ImageMovers to abide by the terms of the anti-solicitation scheme. Catmull specifically asked for ImageMovers to stop recruiting from conspiring studios like The Orphanage. Randolph responded that Disney had in fact gotten ImageMovers to agree to the "rules" of the anti-solicitation scheme.

79. In 2009, Lori Beck said of an ImageMovers Digital employee, "I don't think I should go after him since we have the gentlemen's agreement with IMD." Later that year, Beck repeated that "we have a gentlemen's agreement with IMD that we cannot recruit people from their studio."

[2] The Orphanage was a visual effects studio with offices in San Francisco and Los Angeles. It went out of business in 2009.

Beck later testified that Lucasfilm had an agreement with IMD, the terms of which were the same as the Lucasfilm-Pixar agreement as far as she was aware. Pixar also repeated that ImageMovers was a party to the agreement. In an email on May 22, 2008, Lori McAdams summarized that "[w]e can't call our friends or leads who work at IMD, or Disney Animation (or Lucasfilm) and try to entice them to apply."

*f) Digital Domain Joins the Conspiracy*[3]

80. Digital Domain subsequently joined the conspiracy as well, evidenced by its anti-solicitation agreement with at least DreamWorks, Lucasfilm/ILM and the Sony Defendants.

81. As late as December 2006, Digital Domain may have remained outside the conspiracy due to its illegality. Digital Domain's outside counsel warned ILM in December 2006 that "any agreements regarding recruiting limitations between our respective clients could be viewed by third parties as an improper attempt to restrain trade."

82. However, in 2007, Digital Domain hired an ILM veteran to lead its human resources department. Its new Head of Human Resources, Lala Gavgavian, had previously spent nine years at Lucasfilm's ILM division in senior roles in talent acquisition for visual effects films and animation—during which time Pixar President Jim Morris explicitly informed her that Pixar and Lucasfilm had agreed not to "actively recruit from one another." Indeed, although Digital Domain's studio and all of its technical and artistic employees were located in the Los Angeles area, Gavgavian worked out of San Rafael in the Bay Area—in the same office building she previously worked at for ILM.

83. Gavgavian and other senior personnel at Digital Domain specifically instructed employees not to cold call or otherwise solicit other Defendants' employees. If an employee of Lucasfilm/ILM, DreamWorks or the Sony Defendants even contacted Digital Domain independently about applying for a job, the contact had to be reported to Gavgavian.

[3] From 2006 to 2012, Digital Domain was owned by Digital Domain Media Group, which went bankrupt in 2012 and sold its assets that year to Digital Domain 3.0 pursuant to a "free and clear" order of the bankruptcy court of the United States Bankruptcy Court for the District of Delaware. Plaintiffs have dismissed Digital Domain 3.0 without prejudice pursuant to a tolling agreement.

**(3) Further Expansion and Enforcement of the Conspiracy**

84. Defendants repeatedly sought to recruit new animation and visual effects studios into the anti-solicitation scheme. For example, when a small 20-person studio named Lightstream Animation opened in Petaluma, California in 2008, Lucasfilm's President and Executive in Charge of Production both immediately concluded that they should seek an anti-solicitation agreement—even though Lucasfilm's Chief Administrative Officer believed the startup was not "going to be a significant impact on our ability to recruit."

85. And, as discussed above, Defendants repeatedly implemented and enforced their anti-solicitation scheme through direct communications. In 2007, for example, Pixar contacted Lucasfilm twice regarding suspected breaches of the terms of the conspiracy, leading Lucasfilm to abandon the recruiting activity Pixar had complained about. Similarly, in 2007, Disney made it clear to ImageMovers that it needed to abide by the conspiracy's rules and ImageMovers obliged.

**B. Defendants Engaged in Direct, Collusive Information Exchanges and Agreed Upon Compensation Ranges to Achieve the Conspiracy's Goal of Suppressing Compensation**

86. Defendants' methods to successfully achieve the objects of their conspiracy went beyond their illicit anti-solicitation scheme. Defendants directly communicated and met regularly to discuss and agree upon compensation ranges and communicated directly on an industrywide basis about their respective internal compensation plans. As McAdams explained in a March 28, 2007 email, Defendants each talked with "other studios & post houses to ensure that our salary ranges for the positions are correct."

87. At least once per year, some or all Defendants meet in either Northern or Southern California to discuss job positions in common among their studios, in order to set the parameters of a compensation survey. The survey provides wage and salary ranges for the studios' technical or artistic positions, broken down by position and experience level. For most of the Class period, the meeting and survey were conducted by Wayne Dunlap or the Croner Company. As McAdams explained, the meeting and survey was instituted "so we can each confirm or adjust our salary ranges."

88. This meeting was attended by senior human resources and recruiting personnel and other studio executives from DreamWorks, Pixar, Lucasfilm/ILM, Disney, ImageMovers, the Sony Defendants, Twentieth Century Fox Filmed Entertainment (which includes within it Blue Sky Studios), and Digital Domain, among others.

89. Defendants used the opportunity presented by the Croner meeting to go further than their matching of job positions across companies; they discussed, agreed upon and set wage and salary ranges during meals, drinks and other social gatherings that they held outside of the official Croner meetings. As DreamWorks Head of Human Resources Mandato said in an email to her counterparts at Disney, Pixar, Blue Sky and Sony Pictures Imageworks, the survey meeting "presents an opportunity for an intimate group of us to get together." ILM's Senior Director of Human Resources Sharon Coker (soon to become Director of Human Resources at The Walt Disney Company and ImageMovers) termed this annual side meeting the "Director's meeting." These meetings provided the officials an opportunity to discuss compensation ranges in a private setting.

90. Defendants were successful at using these meetings and other communications to depress compensation throughout the industry. Defendants used the Director's meeting to discuss salary changes at other studios and the rates that were being offered. For example, it was at a January 2007 meeting that Pixar learned that ImageMovers was recruiting employees from other studios at a higher salary, leading Catmull to ask Disney's chairman to step in. As Catmull put it: "The HR folks from the CG studios had their annual get together in the bay area last week. At that time, we learned that the company that Zemeckis is setting up in San Rafael has hired several people away from Dreamworks at a substantial salary increase." As alleged above, this disclosure prompted Catmull and Disney to take action to rein in ImageMovers' hiring, telling its founder Starkey "how important it is that we not have a hiring war," as well as a meeting directly between Starkey and George Lucas.

91. Defendants' top human resources and recruiting personnel met aside from the opportunities presented by the Croner meetings as well. For example, Defendants held a similar "annual HR Directors dinner" in connection with the Siggraph conference, a major visual effects industry conference, which was attended by senior human resources personnel of Blue Sky, Pixar,

DreamWorks, Lucasfilm and Sony Pictures Imageworks. The heads of human resources also met with each other one-on-one on many occasions, as shown throughout this complaint.

92. Similarly, the senior members of Defendants' human resources departments frequently sought to create new relationships when one of their counterparts was replaced at a co-conspirator to ensure the efficacy of communications about the conspiracy. As one example, when ILM hired a new head of human resources in 2005, McAdams promptly set up a dinner meeting with her.

93. Defendants also requested "custom cuts" of Croner Survey data limited to a special subset of Croner Survey participants, namely Blue Sky, DreamWorks, Lucasfilm, Sony, and Pixar. Defendants used these custom cuts to further ensure their collusion was effective.

94. In addition to their in-person meetings, Defendants also communicated through various other means throughout the year about compensation for their workers to implement and enforce the conspiracy. Defendants regularly emailed each other with specific salary ranges for individual positions, allowing each Defendant to ensure that it did not pay workers more than it absolutely needed to. For example, on May 13, 2005, DreamWorks requested that Disney provide "[a]ny salary information you have" on three positions. Disney responded the same day with pay ranges for the positions.

95. DreamWorks made a similar request of Pixar the following spring, requesting Pixar's "range of pay" for various positions and making clear that DreamWorks "will be happy to share ours too." At the same time, it contacted Disney and made clear it was surveying multiple studios; Disney responded by providing an exact salary range and offered to "get further into the details" over the phone.

96. Similarly, on September 2, 2009, Blue Sky's Director of Human Resources emailed Pixar with the following request for four positions:

> I was wondering if I could get some salary info from you. We're trying to find out if we're paying a competitive rate and I have a feeling we're coming in a little low. Please see the titles below and if possible, could you give me a range of what you pay them?

97. Defendants' information exchanges and collusive compensation setting was not limited to wages and salaries, but extended to other benefits and terms of employment. For example, DreamWorks provided Pixar with information regarding "what they offer and what they charge employees" in exchange for information about Pixar's insurance offerings.

98. Likewise, DreamWorks Head of HR Kathy Mandato emailed Lori McAdams, Sharon Coker, and Disney HR Vice President Ann Le Cam on April 11, 2007, asking whether they would "be so kind as to tell me your match on your 401K. Ours is 50% of 4%. And we are hoping to increase it but need to know what others are doing." McAdams responded within half an hour, explaining that Pixar's 401K match "is 50% on 5%, with no vesting attached, contributed weekly. . . . We're looking at modifying our program to to [sic] improve the company contribution, but probably not before 2009." Disney responded with similarly detailed information the following day, expressing that it "[h]ope[s] this info helps with your decision."

99. Lori McAdams made a similar request of industry colleagues in January 2008, including Dan Satterthwaite, the new Head of HR at DreamWorks, as well as Ann Le Cam, Sharon Corker, and Lucasfilm VP of HR Jan van der Voort. Pixar was "looking to develop a consistent practice with regard to memberships we might cover for our employees. I'm wondering how other studios handle it. . . . [D]o you have a policy or practice on whether you reimburse for memberships and if so, is it determined by position, or seniority or cost or ???"

100. As DreamWorks' Head of Compensation explained in a 2007 email specifically noting collusive discussions with Sony, "We do sometimes share general comp information (ranges, practices) in order to maintain the relationships with other studios and to be able to ask for that kind of information ourselves when we need it."

101. This collusive exchange of compensation information is also reflected in internal Lucasfilm documents, including its 2006 Merit Budget Recommendations from January 2005. The document includes a chart of fiscal year 2004 and fiscal year 2005 salary for various competitor studios including Twentieth Century Fox, Disney, and Sony. The chart specifically notes that "updates" of these figures were "ongoing." Such ongoing updates would only be available from the

competitors themselves, demonstrating that the conspirators continued to collude on wages throughout the period.

102. These collusive efforts to coordinate compensation were not limited to one-off, bilateral discussions; rather, Defendants openly emailed each other in large groups with competitively sensitive confidential current and future compensation information.

103. For example, on November 17, 2006, Pixar's Vice President of Human Resources, Lori McAdams, emailed the following message to senior human resources personnel at DreamWorks, Sony Pictures Imageworks, Lucasfilm, Walt Disney Animation Studios and others:

> Quick question from me, for those of you who can share the info.
>
> What is your salary increase budget for FY '07? Ours is [REDACTED] but we may manage it to closer to [REDACTED] on average. Are you doing anything close, more, or less?"

104. In other words, Pixar's top human resources executive emailed six direct competitors with the *future* amount that Pixar would be raising salaries and then requested the same information from the other studios.

105. As another example, on February 14, 2007, McAdams emailed human resources personnel at DreamWorks, Sony, Disney, ILM, and another studio to find out the "base salary range" for a "manager of archives position." McAdams explained that Pixar intended to put the position "in the $60K-80K base" range, but wanted to "do a reality check as we head into salary discussions."

106. McAdams explained this strategy to Pixar's compensation department, asking staff in March 2007 to "work with you on getting the MCC position descriptions updated, and from there we can talk with Disney or other studios & post houses to ensure that our salary ranges for the positions are correct."

107. McAdams sent a similar email on May 1, 2007, regarding salary ranges for a Supervising Animator position. McAdams asked Disney and others to "share with me your base salary range, perhaps how many of these folks you have (we have 7) and a general idea of actual median base pay? Also knowing any other comp they are eligible for (e.g. bonuses or stock) would be helpful."

108. McAdams sent yet another email requesting "updated survey data" for the position of Director of Public Relations on November 4, 2009. ILM's Lori Beck conceded in sworn testimony that she received this type of salary information from competitors.

109. McAdams's emails made it clear that the purpose of the conspirators' collusion on compensation was to keep compensation low. As McAdams wrote to Sharon Coker in June 2008, "[s]ince money can always be a factor, that's the other thing we should consider (e.g., we wouldn't want to offer a lateral move more money than you, and vice versa)."

110. Notably, McAdams knew that such conversations were inappropriate, later testifying that she "knew it was important not to discuss what Pixar employees earned with someone outside of Pixar."

111. Similarly, despite his concern that it was "taboo" to do so, DreamWorks' Head of Production Technology emailed the heads of human resources at Pixar, ILM, Sony Pictures Animation, and Disney in January 2009 to learn how they handled overtime—an issue that was competitively sensitive in an industry where workers are regularly asked to work dozens of hours of overtime a week. He sought to see if the other companies were "as generous"—an answer that could allow him to reduce compensation without fear of losing a competitive advantage. A Sony executive called him after emailing him the subject was not "taboo" for her.

112. No studio acting in its own independent self-interest in the absence of a conspiracy to suppress compensation would share this kind of compensation information, let alone with such a large group of competitors. Absent an agreement not to compete on compensation, any studio sharing such information would be handing its competitors specific information about how to best compete with them for employees and candidates. Such behavior only makes sense in the context of a conspiracy to suppress compensation. The only possible benefit to Defendants from such actions was the facilitation of an agreement to suppress compensation.

113. Human resources and recruiting executives and personnel of the Defendants also communicated regularly by telephone and other means. Defendants' communications were so consistent that Pixar's McAdams wrote to her counterparts at Sony Pictures Imageworks, ILM, DreamWorks, Disney, and Blue Sky in early 2007 that "[c]hatting with all of you each day is really

becoming a fun habit. I'm thinking it'd be a great resolution for 2007 that we all just have a short conference call each morning to start our days off right." Walt Disney Animation Studios' Vice President of Human Resources responded with a similar comment, saying that "[i]t is fun to hear from you all on a daily basis."

114. Those communications as well as the meetings and events provided the means and opportunities for Defendants to collude and to implement and enforce the conspiracy to suppress workers' compensation.

115. In 2008 and 2009, Sony laid off hundreds of employees and hired many of them back at lower rates, more squarely in the middle of the ranges the conspirators had discussed in the many meetings and communications described above. When Sony implemented these cuts, it made sure that its coconspirators knew not to match its previous rates, telling other studios "that they are rehiring folks back at a lower rate than when they left," and encouraging them to "stand firm in [their] offers to exSony candidates and not worry too much about matching their last Sony rate."

### C. The Department of Justice Investigated Pixar and Lucasfilm and Enjoined Them from Entering Into Anti-Solicitation Agreements

116. The Antitrust Division of the United States Department of Justice (the "DOJ") investigated Defendants Pixar and Lucasfilm's misconduct. The DOJ found that their agreement was "facially anticompetitive" and was *per se* illegal under the Sherman Act. As the DOJ explained, the agreement "eliminated significant forms of competition to attract digital animators and, overall, substantially diminished competition to the detriment of the affected employees who were likely deprived of competitively important information and access to better job opportunities." The DOJ concluded that the agreement "disrupted the normal price-setting mechanisms that apply in the labor setting." The DOJ also concluded that Defendants' agreements "were not ancillary to any legitimate collaboration."

117. The DOJ noted that the agreement "covered all digital animators and other employees and was not limited by geography, job function, product group, or time period," and that "employees did not agree to this restriction."

118. Following its investigation, the DOJ filed complaints in federal court against Defendants Pixar on September 24, 2010 and Lucasfilm on December 21, 2010. The DOJ also filed stipulated proposed final judgments in each case. In these stipulated proposed final judgments, Pixar and Lucasfilm agreed to be "enjoined from attempting to enter into, entering into, maintaining or enforcing any agreement with any other person to in any way refrain from, requesting that any person in any way refrain from, or pressuring any person in any way to refrain from soliciting, cold calling, recruiting, or otherwise competing for employees of the other person." The United States District Court for the District of Columbia entered the stipulated proposed final judgments on March 17, 2011 and June 3, 2011, respectively.

119. Press reports in 2009 noted that the DOJ was investigating anti-solicitation agreements among high-tech companies. They did not indicate at that time that their investigation included Pixar, Lucasfilm, or any other visual effects or animation company. No visual effects or animation company was mentioned publicly as part of that investigation, nor were there any press reports about anticompetitive agreements in the visual effects and animation industry, until September 17, 2010, when a news story for the first time named Pixar as one of the companies under investigation. There was no public disclosure that Pixar had conspired with any other visual effects or animation companies, nor that any of the other Defendants in this case were suspected of any wrongdoing. The first public reports that Pixar had reached anti-solicitation agreements with any entity other than Apple were not published until December 2010, and then implicated only Lucasfilm. As discussed below, until certain filings in the *High-Tech* docket were unsealed in 2013, there was no public information that any of the other Defendants here had engaged in similar conduct or that a conspiracy existed among the Defendants.

## VII. HARM TO COMPETITION AND ANTITRUST INJURY

120. Defendants' conspiracy suppressed Plaintiffs' and the Class's compensation and restricted competition in the labor market in which Plaintiffs and the other Class members sold their services. It did so through a scheme to limit soliciting each other's employees, to collusively discuss compensation information and to agree on compensation ranges for their workers.

121. Defendants' conduct intended to and did suppress compensation. Concerning the anti-solicitation scheme, cold calling and other forms of active solicitation have a significant beneficial impact for individual employees' compensation. Cold calls from rival employers may include offers that exceed an employee's salary, allowing her to receive a higher salary by either changing employers or negotiating increased compensation from her current employer. Employees receiving cold calls may often inform other employees of the offer they received, spreading information about higher wage and salary levels that can similarly lead to movement or negotiation by those other employees with their current employer or others.

122. Active solicitation similarly affects compensation practices by employers. A firm that actively solicits competitors' employees will learn whether their offered compensation is enough to attract their competitors' employees, and may increase the offer to make themselves more competitive. Similarly, companies losing or at risk of losing employees to cold-calling competitors may preemptively increase their employees' compensation in order to reduce their competitors' appeal.

123. Information about higher salaries and benefits provided by recruiters for one firm to employees of another naturally would increase employee compensation. Restraining active recruitment made higher pay opportunities less transparent to workers and thus allowed employers to keep wages and salaries down.

124. The compensation effects of cold calling are not limited to the particular individuals who receive cold calls, or to the particular individuals who would have received cold calls but for the anticompetitive conduct alleged herein. Instead, the effects of cold calling (and the effects of eliminating cold calling, pursuant to agreement) commonly impacted all workers and Class members employed by the Defendants.

125. The Defendants themselves have explained the purpose of the conspiracy and articulated the harm and injury caused by it to their workers. George Lucas explained under oath that the purpose of the anti-solicitation scheme was to suppress compensation and keep the visual effects industry out of "a normal industrial competitive situation." As he explained, having employees "wooed away by another company who is going to pay triple what they are getting, or . . .

even 30 percent is a lot, and, you know, you want to try to keep that in check." The conspiracy was explicitly intended to avoid "a bidding war with other companies because we don't have the margins for that sort of thing." Internal Lucasfilm emails similarly explained that the two companies had "agreed that we want to avoid bidding wars" and that the agreement was designed "to prevent bidding wars between us."

126. Ed Catmull, the longtime Pixar President who now also oversees Walt Disney Animation Studios, was equally clear about the purpose of the conspiracy and the common injury it caused to visual effects and animation workers as well as to competition in the labor market for their services. In a 2007 email, Catmull explained this goal concisely: hiring people away from competitors with "a substantial salary increase . . . seriously messes up the pay structure." Or, as Lucasfilm's then-President Jim Morris said in a June 2004 email to Catmull, "I know you are adamant about keeping a lid on rising labor costs." During his deposition several years later, Catmull made clear that the problem was high salaries: "[I]t messes up the pay structure. It does. *It makes it very high*." (Emphasis added.) Other companies "would bring in people, they would pay higher salaries, it would be disruptive. . . . [Catmull] was trying to prevent that from happening." Separately, Catmull described Jobs as "very adamant about protecting his employee force," meaning depriving them of opportunities to earn higher wages at other companies.

127. When the collusive discussions concerning compensation was coupled with Defendants' scheme to prohibit counteroffers from the potential new employer, Defendants deprived their workers of the opportunity to have Defendants bid to pay higher compensation for that employee's services. The illicit conduct suppressed not only the compensation of the workers seeking a new job, but also that of other workers by suppressing the compensation on which Defendants based all workers' pay.

128. The effects and injuries caused by all of Defendants' agreements commonly impacted all visual effects and animation workers because Defendants valued internal equity, the idea that similarly situated employees should be compensated similarly and that fair pay distinctions should be made across employees at different levels in the organization. Each Defendant established a compensation structure to accomplish internal equity. Defendants fixed narrow compensation

ranges for employees with similar job titles or classifications and similar levels of experience. And Defendants maintained certain compensation differentials between different positions within the hierarchy of the organization.

129. At Lucasfilm, for example, internal equity was "always one of the considerations" in setting pay, according to its Director of Talent Acquisitions. Lucasfilm regularly reviewed employee salaries to "align the employee more appropriately in their salary range" and their "internal peer group." At Lucasfilm, all new positions and out-of-cycle compensation adjustments presented to its compensation committee for approval were to be accompanied by "Peer Relationship" information regarding how the subject employee's (or candidate's) colleagues inside the company were compensated, and this factored heavily into committee decisions.

130. Similarly, Pixar recruiters would compare salaries of similar employees to ensure they were not "out of whack." Pixar maintained "a consistent framework for evaluating the expected contribution of software engineers" and to justify adjusting salaries. A Pixar official has stated: "[I]f someone feels like they're being paid more than someone I know who has more value, it raises a bit of a flag."

131. On information and belief, all other Defendants similarly employed a similar pay structure.

132. Defendants' efforts to maintain internal equity ensured that their conspiracy caused the compensation of all their employees to be suppressed.

## VIII. STATUTE OF LIMITATIONS

133. During the relevant statute of limitations period, Plaintiffs had neither actual nor constructive knowledge of the pertinent facts constituting their claims for relief asserted herein. Plaintiffs and members of the Class did not discover, and could not have discovered through the exercise of reasonable diligence, the existence of the conspiracy.

### (1) Defendants Took Affirmative Steps to Mislead Class Members and Conceal the Conspiracy

134. Defendants took many steps to conceal the conspiracy from Class members. They not only guarded their conspiratorial communications to keep them from coming to light, they

affirmatively misled Plaintiffs and the Class as to how compensation was determined and what they did to retain or find employees. They made these misstatements in a variety of forms, including direct communications with Class members, recruiting materials and "codes of business conduct" issued to Class members, sworn statements in the *High-Tech* litigation, and even public filings with regulatory bodies such as the Securities and Exchange Commission.

*a) Defendants Took Affirmative Steps to Keep Their Conspiratorial Communications and Agreements Secret*

135. Defendants engaged in a secret conspiracy that did not give rise to facts that would put Plaintiffs or the Class on inquiry notice that there was a conspiracy among visual effects and animation companies to restrict competition for Class members' services through anti-solicitation agreements, and to fix the compensation ranges of Class members. As discussed above, Defendants' discussions often occurred at small meetings just among the human resources directors, to which Class members were not privy. Defendants intentionally kept the meetings "to principals" only, keeping the most sensitive details of the conspiracy from spreading beyond senior management.

136. Defendants' conspiracy was concealed and carried out in a manner specifically designed to avoid detection. Outside top executives and certain human resources and recruiting personnel, Defendants concealed and kept secret the illicit anti-solicitation and wage-fixing agreements from Class members. Defendants largely avoided discussing the agreements in written documents that might be disseminated beyond the individuals involved in the conspiracy, to avoid unnecessarily creating evidence that might alert Plaintiffs or other Class members to the conspiracy's existence.

137. Similarly, although Defendants occasionally put incriminating exchanges in emails, they often tried to limit the details of their illicit communications to phone calls. For example, when discussing the restrictions on recruiting artists from Sony, Blue Sky employees stated that the issue "needs to be a phone conversation" due to the "sensitivity" of the subject.

138. Lucasfilm made affirmative efforts to eliminate a paper trail regarding its code-named "DNR" agreements. In an October 2009 "Recruiting Staff Meeting Summary," Lucasfilm staff emphasized in bolded, all-caps lettering that all discussions of "DNR" needed to be conducted over

the phone: "DNR questions CALL Steve. If you see an email forward to Steve and one of our lawyers."

139. Sharon Coker confirmed at her deposition in the *High-Tech* litigation that the reason the agreement was termed a "gentleman's agreement" was because it was not written down.

140. Defendants also communicated about the conspiracy using their personal email accounts instead of their official employer accounts, which is a sharp deviation from standard business practices. For example, Sharon Coker, Head of HR at Lucasfilm, testified that she contacted Lori McAdams using her personal account. The most logical inference of such atypical business contacts is to avoid detection.

141. As a further example, a DreamWorks human resources employee recalled that DreamWorks' heads of recruitment explained the no-poaching agreement to him orally, and that he never saw anything in writing to document it. One of DreamWorks's head recruiters told him it was unsaid and certainly not in writing. Nor did DreamWorks make any changes to its practices in the wake of the entrance of the Lucasfilm consent decree in 2011 that might have alerted its workers to the company's prior misconduct.

142. At her deposition, Pixar's McAdams stated that she could not recall any specific email wherein she requested specific employee compensation information from a co-conspirator.

143. In lieu of emails, McAdams opted for in-person meetings, including a dinner she held with Lucasfilm's Jan Van der Voort on June 24, 2008, wherein she planned "to ask her about their merit increase budget for 2009."

*b) Defendants Affirmatively Misled Class Members by Claiming That Compensation Was Determined By a Freely Competitive Market—Masking Defendants' Conspiracy to Suppress Market Competition*

144. As shown above, Defendants' conspiracy sought to reduce competition between firms in order to suppress compensation paid to employees in the market. Thus, fundamentally, Defendants' undisclosed, unlawful conspiracy restrained natural, competitive market forces. And the result of Defendants' concerted behavior was a market with diminished competition—and compensation levels—compared to the market free from Defendants' illegal restraint. Said

succinctly, compensation was not set competitively, but ant-competitively. Defendants represented the exact opposite to Class members.

145. To cover up their conspiracy and prevent Plaintiffs and Class members from learning that their compensation was suppressed through collusion, Defendants routinely provided pretextual, incomplete or materially false and misleading explanations for compensation decisions and recruiting and retention practices affected by the conspiracy.

146. Defendants consistently represented to Class members that their compensation was "fair" and "competitive" despite knowing that compensation levels were in part the product of a collusive market for labor rather than a fair and competitive one. The recruiting websites and brochures for Pixar, Lucasfilm and Disney stated throughout the Class period that their respective companies paid "competitive salar[ies]" or "competitive compensation" while hiding from employees the fact that the competition that normally exists among rival employers had been restrained by collusion.

147. Similarly, Pixar's HR department drafted annual "talking points" for its managers "in an effort to help prepare you for your conversations with your employees" about their salaries for the year. In these documents, Pixar described its salaries as on "target" and ascribed that to the use of outside surveys—without mentioning the effects of the non-solicitation agreement and agreement upon salary ranges among the Defendants.

148. In response to questions from employees about salary determinations, Pixar instructed managers to tell employees that its "goal" was to keep salaries "competitive" and that Pixar did not "want to price ourselves out of the market" and that salary increases were based on "your performance, your skill level relative to the job and your peers, proficiency with basic tools, as well as interpersonal skills and communication." Pixar's conduct and statements provided untrue assurances to employees that they were receiving compensation based on what the competitive market would bear—in direct contrast to Pixar's covert conspiracy to suppress the compensation that employees could command in an unrestrained labor market.

149. Defendants not only falsely described employee salaries as competitive, but went so far as to misrepresent to Plaintiffs that the reason Plaintiffs were receiving artificially depressed

salaries was because Defendants sought to expand Plaintiffs' benefits. In particular, at the same time that Pixar's VP of HR Lori McAdams was colluding with co-conspirators regarding the adoption of a 3.5% salary increase for fiscal year 2007, Pixar was including in its 2007 salary "talking points" that "one of the main reasons" for the modest 3.5% raise was that "we are purposely keeping a rein on our budget in an effort to make room to fund additional benefit programs (e.g., daycare)." In a contemporaneous email to Pixar employees defending the year's modest salaries, Ed Catmull similarly touted the company's pursuit of "establishing a Pixar Childcare Center."

150. Moreover, Defendants consistently told applicants that their salary offers were "competitive" or based on purely company-specific factors. These were false representations, because they implied that salaries were set in a normal competitive marketplace. To cite just a few examples, on October 24, 2006, McAdams emailed Class member Eben Ostby that she was "confident that our actual total comp is quite competitive on the average." Similarly, on August 24, 2009, ILM recruiter Lori Beck emailed Class member Frankie Rodriguez that the ILM offer was "based upon a comparable rate to . . . ILM individuals," without disclosing that it was based in large part on comparisons exchanged with competing studios. And again, a year later, on August 23, 2010, Beck emailed Class member Matthew Bouchard that ILM "consider[s] employee equity and the skillset and experience of the entire [Technical Director] group at ILM when determining [ILM's] rate," suggesting that ILM did not consider its agreements with Defendants in setting its salaries.

151. Defendants' own codes of conduct also misrepresented the truth about the conspiracy.

152. Pixar's 2004 Code of Business Conduct, by its own terms, "sets forth some of the basic ethical and legal parameters under which Pixar operates." The code "applies to each of our employees, officers, members of the Board of Directors, and, as appropriate, certain consultants and agents," and directs them that they "must comply with all applicable governmental laws, rules and regulations." This represented to Plaintiffs and Class members that Pixar itself was complying with all laws and regulations, when in fact it was violating the antitrust laws through its unlawful conspiracy.

153. In its code, Pixar also emphasized the importance of "preserving and protecting its proprietary information." In this way, the code, approved by the highest level officers at Pixar, represented to Plaintiffs and Class members that the company itself was preserving and protecting proprietary information. This was false, because Pixar HR officers were exchanging proprietary information with competitors about wages, benefits, and employees—all outside the knowledge of Plaintiffs and Class members.

154. Pixar's Code of Business Conduct also admonished that Pixar employees "should not take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other intentional unfair-dealing practice." Similar to the above, this statement represented to Plaintiffs and Class members that Pixar itself was complying with its own code of conduct. Unbeknownst to Plaintiffs and Class members, Pixar's HR department took the exact opposite steps: they took advantage of Plaintiffs and Class members through manipulation of the recruiting process, concealment of their anti-competitive agreements, abuse of privileged information by freely sharing it with competitors to the detriment of Plaintiffs and Class members, repeated misrepresentations of employee compensation as "competitive," and the intentional unfair-dealing practices of anti-solicitation and wage-fixing.

155. Disney's Standards of Business Conduct provided similar misrepresentations. In the Disney code's introduction, Disney President Robert A. Iger stated to employees that "[i]ntegrity, honesty, trust, respect, playing by the rules, and teamwork—these define not only the operating principles of our Company, but also the spirit of our diverse global workforce and how we function." This statement was false, as Disney was then engaging in the conspiracy in violation of the antitrust laws.

156. The Disney code expressly provided for "Teamwork: Our Commitment to Each Other." This document misled Plaintiffs and Class members into believing that "[a]ny decisions related to hiring, evaluating performance, promoting, disciplining or terminating Cast Members and employees are made fairly, with discretion and respect for privacy." As explained above, Disney's hiring decisions were not made fairly: they were made based on unlawful agreements with competitors that depressed compensation for Plaintiffs and Class members.

157. Disney's code also directed employees to "Play by the Rules," reminding them that "[a]ntitrust laws (sometimes called 'competition laws' or 'unfair trade laws') prohibit agreements that unreasonably restrict competition. Don't enter into any agreement or understanding, whether formal or informal, with a competitor, customer or supplier to: set prices or price-related terms, also known as 'fixing prices.'" This impliedly represented to Plaintiffs and Class members that Disney was not violating the antitrust laws. Although Disney represented that it was "playing by the rules" by complying with the antitrust laws, its highest officers—those who approved the Standards of Business Conduct document itself—were entering into the exact type of wage-fixing agreements with competitors that the code and the antitrust laws prohibit.

158. It was reasonable for Plaintiffs and Class members to believe that the Defendants were enforcing and abiding by these codes and conduct and the policies recited therein.

159. Defendants also misled their employees in public filings with the Securities and Exchange Commission (SEC), wherein Defendants claimed to be in compliance with all applicable competition laws, including those involving the hiring of Plaintiffs and Class members. These actions were intended to deceive the public as well as Plaintiffs and Class members.

160. For instance, in Pixar's publicly filed merger agreement with Disney, Pixar stated that "[t]o the Company's Knowledge, the Company and its Subsidiaries are in compliance in all material respects with all Laws and Orders . . . relating to the employment of labor." At the same time, Pixar was engaging in its unlawful conspiracy.

161. Pixar's 2005 10-K, filed publicly with the SEC, also contained affirmative misrepresentations to Plaintiffs and Class members. Pixar stated that "[w]e believe that the primary competitive factors in the market for animated feature films include creative content and talent … ." Pixar further stated that "we believe that we presently compete favorably with respect to each of these factors." In fact, Pixar had entered agreements with its competitors to restrain competition for employees like Plaintiffs and Class members.

162. Pixar's 2005 10-K further stated that "[c]ompetition for the caliber of talent required to make our films, particularly our film directors, producers, animators, creative personnel and technical directors, will continue to intensify as more studios build their in-house CGI-animation or

special effects capabilities." At the time, Pixar knew that competition for "the caliber of talent" would not intensify for Pixar or its co-conspirators, all of whom had agreed to suppress competition for employees like Plaintiffs and Class members.

163. DreamWorks likewise publicly assured employees and prospective employees in its SEC filings that it "compete[d] with other animated film and visual effect studios for artists, animators, directors and producers" and "attract[ed] and retain[ed] our animators with competitive compensation packages and an artist friendly environment," when in fact it was colluding with those companies to pay workers compensation at levels lower than a truly competitive labor market would have provided.

164. These representations lulled Plaintiffs and Class members into believing that their compensation and employment opportunities were determined in a competitive market. When determining whether to seek a new employer, negotiate for a higher salary, or—crucial to the statute of limitations—seek out more information on how employment decisions were made, Plaintiffs and Class members considered such representations and relied on their employers' assurances.

165. Similarly, Defendants misled Class members as to their reason for not improving offers in negotiation. For example, between February 3 and February 5, 2007, Pixar Senior Recruiter Dawn Haagstad told applicant and Class member Philip Metschan that his offer was "a fair and respectable salary" and that Pixar "always tr[ies] to put [its] best offer out initially because it's important to recognize one's talent from the start—so that artists don't feel the need to go back and forth regarding money." Of course, the real reason Pixar opened with its best offer was because it had agreed with its coconspirators to avoid bidding wars, not because they were trying to recognize talent or protect applicants from unpleasant negotiations.

*c) Defendants Affirmatively Misled Class Members About Their Recruiting Efforts and Their Ability to Retain Employees*

166. Defendants also misrepresented the steps they took to retain employees or attract talent. For example, throughout the Class period, Lucasfilm informed Class members on its recruiting website that it was "continually on the lookout for talent" despite having agreed not to contact their conspiring competitors' employees.

167. In a May 2007 town hall with employees, Lucasfilm's President and CEO Micheline Chau purported to describe the "key reasons why people stay" without revealing that one of the true reasons was that Lucasfilm's competitors had agreed not to solicit its employees. Similarly, ILM's Lori Beck told a recruit that "[o]nce we find strong people, we do our absolute best to keep them with us at ILM." Beck concealed the fact that part of the strategy to keep people at ILM was guaranteeing they would not be recruited by competitors.

168. McAdams publicly ascribed Pixar's ability to retain employees to its "culture" in an April 1, 2011 interview while withholding the role of the industry-wide non-solicitation agreements.

169. Similarly, in a February 2006 interview with San Francisco Business Times, DreamWorks's Kathy Mandato falsely described the market for talent as "stiff competition," saying that her company "has stepped up recruiting." At the time, DreamWorks was actively ensuring that it did not face "stiff competition" by colluding with its coconspirators to not recruit any of their employees.

170. Similarly, Pixar's annual talking points for explaining personnel decisions (described above) justified its salaries to employees based on the intrinsic value of "how we treat employees," notwithstanding the fact that its treatment of employees involved an undisclosed no-poach agreement that formed a core foundation of their retention efforts.

*d) Defendants Took Affirmative Steps to Mislead Class Members about the Conspiracy during the* High-Tech *Litigation*

171. At the outset of the *High-Tech* litigation, Defendants Pixar and Lucasfilm made affirmative misrepresentations to Plaintiffs and Class members.

172. In their publicly filed Answers in the litigation, Pixar and Lucasfilm denied that their anti-solicitation agreement "was created with the intent and effect of eliminating 'bidding wars,' whereby an employee could use multiple rounds of bidding between Pixar and Lucasfilm to increase her total compensation." As explained above, however, both Pixar and Lucas repeatedly emphasized in non-public documents that the agreement was explicitly designed "to prevent bidding wars between us." By affirmatively deceiving Plaintiffs and class members as to the purpose of the agreement, Defendants deterred Plaintiffs and Class members from investigating their claims.

173. Defendants' Answers also denied that Pixar and Lucasfilm's agreement "covered all employees of the two companies, were not limited by geography, job function, product group, or time period." As Lucasfilm President Micheline Chau later confirmed in her sealed deposition transcript, however, the agreement was not limited by geography, job function, product group, or time period.

174. During discovery in *High-Tech*, Defendants Pixar and Lucasfilm denied under oath that they had conspired with any entities beyond those named by the DOJ.

175. For example, McAdams testified at her deposition that Pixar did not "have gentleman's agreements or understandings of that kind with any other companies besides Lucasfilm." Similarly, McAdams said that the only agreement it made with Disney was part of a "co-production agreement," when in fact their non-solicitation agreement went beyond any co-production to cover all employees.

176. Ed Catmull made similar denials, describing the allegations in the *High-Tech* litigation as "look[ing] like somebody is manufacturing something, making accusations against us to try to get some money."

177. Similarly, in a sworn declaration filed with this Court in support of Lucasfilm's opposition to the *High-Tech* plaintiffs' first motion for Class certification, Lucasfilm's Senior Manager of Compensation, Michelle Maupin, described Lucasfilm's process for setting salary ranges, identifying several sources of information that Lucasfilm uses to determine "market compensation levels"—without once mentioning the frequent communications among Defendants about compensation at other studios. Specifically, Maupin claimed:

> When setting salary ranges for requisitions, the Compensation Committee first tries to match the requisition to a position in the relevant market surveys. If there is no match, the Compensation Committee attempts to obtain information regarding the relevant market pay through other sources, including from recruiters. Recruiters may receive information about market compensation levels from candidates if candidates share their expectations about compensation or the market in general. The Compensation Committee also may receive information about other employers' pay practices from exit interviews, if departing employees choose to share with Lucasfilm information about the compensation at their new positions. Although the Compensation Committee may be aware of this information, the primary consideration when setting a salary range for a

> requisition is relation to compensation indicated in relevant peer group market surveys.

178. Thus Maupin falsely suggested that compensation was measured against market surveys and self-reporting from candidates. In other words, Maupin described means of gathering information that did not involve communicating with competitors, much less conspiring with competitors, and thus impliedly excluded those kinds of illicit inter-company communications when in fact communications with competitors were a crucial step in Lucasfilm's collusive salary determinations.

179. Moreover, Defendants took steps to conceal documents revealing the true scope of their conspiracy by designating all depositions, declarations and most documents in *High-Tech* "attorneys' eyes only." Class members therefore could not have learned the true scope of the conspiracy until some documents were unsealed and filed publicly in 2013.

180. Defendants made the affirmative decision to designate documents "attorneys' eyes only" even when such designations were not warranted. Likewise, Defendants sought to maintain documents under seal when such requests were unjustified. The true purpose behind these designations and efforts to maintain documents under seal was to conceal the documents from Plaintiffs and Class members.

181. In Defendants' public filings with the Court in support of maintaining these documents under seal, Defendants argued that the documents contained internal decision-making regarding their own business strategies and internal assessments of their and other employers' competitive position in the labor market. Those descriptions themselves were misleading, as many of the documents were not internal at all: they covered inter-company communications regarding the conspiracy or deposition testimony, such as the testimony of Ed Catmull, describing inter-company communications. The documents should never have been designated "attorneys' eyes only" in the first place, a designation that deliberately served Defendants' strategy of concealing the conspiracy from Plaintiffs and Class members.

182. Conversely, while Defendants were actively moving to seal documents and deposition transcripts in the *High-Tech* litigation to conceal the conspiracy's existence, Defendants

publicly denied the conspiracy. In a publicly available news article describing the *High-Tech* litigation in May 2011, a Lucasfilm representative provided a direct public denial of any wrongdoing, flatly stating that the claims in the *High-Tech* litigation were "meritless." Even the publicly available Lucasfilm-Pixar consent decree failed to concede any wrongdoing on the part of either Defendant. But at the same time, and despite conveying to the public that the allegations were "meritless," in sealed attorneys' eyes only testimony Lucasfilm CEO George Lucas admitted that "[i]t was generally expressed not to raid other companies."

**(2) Plaintiffs and Class Members Lacked Actual or Constructive Knowledge of the Conspiracy during the Class Period and Acted Diligently in Trying to Uncover the Facts**

183. Many times during the Class period, Plaintiffs and other Class members attempted to learn the truth about Defendants' compensation and retention practices. Class members repeatedly asked Defendants about how compensation was determined and what steps Defendants were taking to retain and attract talented employees, but Defendants' misleading responses that compensation was "competitive" thwarted these efforts, as illustrated above.

184. Because of Defendants' successful deceptions and other concealment efforts described above, Class members had no reason to know Defendants had conspired to suppress compensation in the visual effects and animation industry until 2013, when incriminating documents were unsealed and filed publicly in the *High-Tech* docket. Because the documents were sealed before that time, Plaintiffs and Class members could not have determined if the conspiracy alleged in the *High-Tech* litigation involved the Defendants in this case.

185. Even on September 17, 2010, when a news story first reported that Pixar was being investigated for non-solicitation agreements, there was no indication that Pixar had conspired with any other visual effects or animation companies, nor that any of the other Defendants in this case were suspected of any wrongdoing. The first public reports that Pixar had reached anti-solicitation agreements with any entity other than Apple were not published until December 2010, and then implicated only Lucasfilm.

186. Journalists and bloggers tracking the *High-Tech* litigation, including the website Pando Daily, observed in July 2014 that "most of the previous attention in the case was focused on

the behavior of executives at Apple and Google. What hasn't been fully explored is the involvement of major and minor Hollywood studios that are alleged to have been party to the same illegal cartel." The fact that industry journalists were unable to discover and explore the conspiracy—when part of their job is to investigate and report on such issues—only further demonstrates that Plaintiffs and Class members had no way of discovering the conspiracy. It also demonstrates the success of Defendants' affirmative strategy to conceal the conspiracy from Plaintiffs and Class members.

187. The Pando Daily publication recognized that the involvement of studios in the animation and visual effects industry had not been publicly disclosed, explaining that "there remain plenty of revelations as yet unreported from the depositions and court documents."

188. Similarly, the Pando Daily publication described the unsealed documents and deposition transcripts from the *High-Tech* litigation as "alarming and revealing testimonies" that had not previously been available to Plaintiffs and Class members. The article recognized that "[a] secret no-poach agreement between Pixar and Dreamworks Animation would be particularly remarkable given the company's famed fierce rivalry in almost all other areas." That industry journalists were shocked at the content of the previously sealed documents and deposition transcripts further underscores that Plaintiffs and Class members had no reason to suspect Defendants' involvement in the conspiracy before the limitations period.

189. Once Plaintiffs had information sufficient to suspect the conspiracy's existence, they acted diligently to investigate and prosecute their claims. Plaintiffs filed suit about 18 months after documents disclosing the conspiracy were first unsealed, and just two months after the first news article suggesting that the conspiracy might go beyond the one in the high-tech industry.

190. As a result of Defendants' fraudulent concealment of their conspiracy, the running of any statute of limitations has been tolled with respect to the claims that Plaintiffs and the Class members have as a result of the anticompetitive and unlawful conduct alleged herein.

## IX. INTERSTATE COMMERCE

191. During the Class Period, Defendants employed Plaintiffs and other Class members in California, Connecticut and New Mexico.

192. States compete to attract visual effects and animation studios, leading employment in the industry to cross state lines.

193. Both Defendants and Plaintiffs and other Class members view labor competition in the industry to be nationwide. Defendants considered each others' wages to be competitively relevant regardless of location, and many Class members moved between states to pursue opportunities at studios.

194. Defendants' conduct substantially affected interstate commerce throughout the United States and caused antitrust injury throughout the United States.

## X. CLASS ALLEGATIONS

195. Plaintiffs sues on their own behalf and, pursuant to Federal Rule of Civil Procedure 23(b)(3) and (b)(2), on behalf of the following Class:

> All persons who worked at any time from 2004 to the present for Pixar, Lucasfilm, DreamWorks Animation, Walt Disney Animation Studios, Walt Disney Feature Animation, Blue Sky Studios, Digital Domain, ImageMovers Digital, Sony Pictures Animation or Sony Pictures Imageworks in the United States. Excluded from the Class are officers, directors, senior executives and personnel in the human resources and recruiting departments of the Defendants.

196. The relevant Class members do not bring in this complaint any claims against Pixar, Lucasfilm and Disney that were released in *In re High-Tech Employees Antitrust Litigation*, No. 11-cv-2509 (N.D. Cal.).

197. The Class contains thousands of members, as each Defendant employed hundreds or thousands of Class members each year. The Class is so numerous that individual joinder of all members is impracticable.

198. The Class is ascertainable either from Defendants' records or through self-identification in a claims process.

199. Plaintiffs' claims are typical of the claims of other Class members as they arise out of the same course of conduct and the same legal theories, and they challenge Defendants' conduct with respect to the Class as a whole.

200. Plaintiffs' have retained able and experienced antitrust and Class action litigators as its counsel. They have no conflicts with other Class members and will fairly and adequately protect the interests of the Class.

201. The case raises common questions of law and fact that are capable of Class-wide resolution, including:

a. whether Defendants agreed not to actively solicit each other's employees;

b. whether Defendants exchanged competitively sensitive wage information and agreed upon compensation ranges for positions held by Class members;

c. whether such agreements were *per se* violations of the Sherman Act and/or Cartwright Act;

d. whether Defendants' agreements constituted unlawful or unfair business acts or practices in violation of California Business and Professions Code § 17200;

e. whether Defendants fraudulently concealed their conduct;

f. whether and the extent to which Defendants' conduct suppressed compensation below competitive levels;

g. whether Plaintiffs and the other Class members suffered injury as a result of Defendants' agreements;

h. whether any such injury constitutes antitrust injury;

i. the nature and scope of injunctive relief necessary to restore a competitive market; and

j. the measure of damages suffered by Plaintiffs and the Class.

202. These common questions predominate over any questions affecting only individual Class members.

203. A class action is superior to any other form of resolving this litigation. Separate actions by individual Class members would be enormously inefficient and would create a risk of inconsistent or varying judgments, which could establish incompatible standards of conduct for Defendants and substantially impede or impair the ability of Class members to pursue their claims. There will be no material difficulty in the management of this action as a class action.

204. Injunctive relief is appropriate with respect to the Class as a whole, because Defendants have acted on grounds generally applicable to the Class.

## CLAIMS FOR RELIEF

### XI. FIRST CLAIM FOR RELIEF—*PER SE* VIOLATION OF SECTION ONE OF THE SHERMAN ACT

205. Plaintiffs incorporate by reference the allegations in the above paragraphs as if fully set forth herein.

206. Defendants, by and through their officers, directors, employees, or other representatives, have entered into an unlawful agreement, combination and conspiracy in restraint of trade, in violation of 15 U.S.C. § 1. Specifically, Defendants agreed to restrict competition for Class members' services through refraining from solicitation of each other's employees, exchanging competitively sensitive current and future compensation information, and fixing the compensation ranges of Class members, all with the purpose and effect of suppressing Class members' compensation and restraining competition in the market for Class members' services.

207. Defendants' conspiracy injured Plaintiffs and other Class members by lowering their compensation and depriving them of free and fair competition in the market for their services.

208. Defendants' conspiracy is a *per se* violation of Section 1 of the Sherman Act.

### XII. SECOND CLAIM FOR RELIEF—VIOLATION OF THE CARTWRIGHT ACT

209. Plaintiffs incorporate by reference the allegations in the above paragraphs as if fully set forth herein.

210. Defendants, by and through their officers, directors, employees, or other representatives, have entered into an unlawful agreement, combination and conspiracy in restraint of trade, in violation of California Business and Professions Code § 16720. Specifically, Defendants agreed to restrict competition for Class members' services through anti-solicitation agreements, exchanges of competitively sensitive current and future compensation information, and agreements to set and fix the compensation ranges of Class members, all with the purpose and effect of suppressing Class members' compensation and restraining competition in the market for Class members' services.

211. Defendants' conspiracy injured Plaintiffs and other Class members by lowering their compensation and depriving them of free and fair competition in the market for their services.

212. Plaintiffs and other Class members are "persons" within the meaning of the Cartwright Act as defined in California Business and Professions Code § 16702.

213. Defendants' conspiracy is a *per se* violation of the Cartwright Act.

## XIII. THIRD CLAIM FOR RELIEF—UNFAIR COMPETITION

214. Plaintiffs incorporate by reference the allegations in the above paragraphs as if fully set forth herein.

215. Defendants' efforts to limit competition for and suppress compensation of their employees constituted unfair competition and unlawful and unfair business practices in violation of California Business and Professions Code §§ 17200 *et seq.* Specifically, Defendants agreed to restrict competition for Class members' services through anti-solicitation agreements and agreements to set and fix the compensation ranges of Class members, all with the purpose and effect of suppressing Class members' compensation and restraining competition in the market for Class members' services.

216. Defendants' acts were unfair, unlawful and/or unconscionable, both in their own right and because they violated the Sherman Act and the Cartwright Act.

217. Defendants' conduct injured Plaintiffs and other Class members by lowering their compensation and depriving them of free and fair competition in the market for their services, allowing Defendants to unlawfully retain money that otherwise would have been paid to Plaintiffs and other Class members. Plaintiffs and other Class members are therefore persons who have suffered injury in fact and lost money or property as a result of the unfair competition under California Business and Professions Code § 17204.

218. Pursuant to California Business and Professions Code § 17203, injunctive relief is appropriate to enjoin Defendants from engaging in their unfair acts and practices.

## XIV. PRAYER FOR RELIEF

219. WHEREFORE, Plaintiffs Robert A. Nitsch, Jr., Georgia Cano, and David Wentworth, on behalf of themselves and a Class of all others similarly situated, requests that the Court enter an order or judgment against Defendants including the following:

a. Certification of the Class described herein pursuant to Rule 23 of the Federal Rules of Civil Procedure;

b. Appointment of Plaintiffs Robert A. Nitsch, Jr., Georgia Cano, and David Wentworth as Class Representatives and Plaintiffs' Interim Co-Lead Class Counsel as Class Counsel;

c. Threefold the amount of damages to be proven at trial;

d. Pre-judgment and post-judgment interest as provided for by law or allowed in equity;

e. A permanent injunction prohibiting Defendants from hereafter agreeing not to solicit other companies' employees, to notify each other of offers extended to potential hires, or not to make counteroffers, or engaging in unlawful communications regarding compensation and agreeing with other companies about compensation ranges or any other terms of employment;

f. The costs of bringing this suit, including reasonable attorneys' fees and expenses;

g. All other relief to which Plaintiffs and the Class may be entitled at law or in equity.

## XV. JURY DEMAND AND DESIGNATION OF PLACE OF TRIAL

220. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury on all issues so triable.

Dated: May 4, 2015

Respectfully submitted,

*/s/ Daniel A. Small*

Daniel A. Small (*pro hac vice*)
Brent W. Johnson (*pro hac vice*)
Jeffrey B. Dubner (*pro hac vice*)
COHEN MILSTEIN SELLERS & TOLL PLLC
1100 New York Avenue NW, Suite 500
Washington, DC 20005
Tel.: (202) 408-4600
dsmall@cohenmilstein.com
bjohnson@cohenmilstein.com
jdubner@cohenmilstein.com

Jeff D. Friedman (173886)
Shana E. Scarlett
HAGENS BERMAN SOBOL SHAPIRO LLP
715 Hearst Avenue, Suite 202
Berkeley, CA 94710
Telephone: (510) 725-3000
jefff@hbsslaw.com
shanas@hbsslaw.com

Steve W. Berman (*pro hac vice*)
HAGENS BERMAN SOBOL SHAPIRO LLP
1918 Eighth Avenue, Suite 3300
Seattle, WA 98101
Telephone: (206) 623-7292
steve@hbsslaw.com

Marc M. Seltzer (54534)
Steven G. Sklaver (237612)
SUSMAN GODFREY L.L.P
1901 Avenue of the Stars, Suite 950
Los Angeles, CA 90067-6029
Telephone: (310) 789-3100
mseltzer@susmangodfrey.com
ssklaver@susmangodfrey.com

Matthew R. Berry
SUSMAN GODFREY L.L.P.
1201 Third Avenue, Suite 3800
Seattle, WA 98101
Phone: (206) 516-3880
mberry@susmangodfrey.com

*Interim Co-Lead Class Counsel*

Richard L. Grossman (112841)
PILLSBURY & COLEMAN LLP
600 Montgomery Street, Suite 3100
San Francisco, CA 94111
Tel.: (415) 433-8000
rgrossman@pillsburycoleman.com

Julian Ari Hammond (268489)
HAMMONDLAW, PC
1180 S Beverly Drive, Suite 610
Los Angeles, CA 90035
Phone: (310) 601-6766
Fax: (310) 295-2385
hammond.julian@gmail.com

Craig Ackermann (229832)
ACKERMANN & TILAJEF PC
1180 S Beverly Drive, Suite 610
Los Angeles, CA 90035
Phone: (310) 277-0614
Fax: (310) 277-0635
cja@ackermanntilajef.com

*Counsel for the Proposed Class*