

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ANIPLEX, INCORPORATED,)
a Japanese corporation,)
)
 Plaintiff and)
 Counter-Defendant,)
)
 vs.)
)
 THE UPPER DECK COMPANY,)
 a Nevada corporation,)
)
 Defendant and)
 Counterclaimant.)
 _____)

2:08-cv-00442-HDM-PAL

**SETTLEMENT AGREEMENT
DATED SEPTEMBER 29, 2011**

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is entered into by and between ANIPLEX, INCORPORATED, a Japanese corporation ("Aniplex"), on the one hand; and THE UPPER DECK COMPANY, a Nevada Corporation ("Upper Deck"), and Richard McWilliam, on the other hand. Aniplex, Upper Deck and Richard McWilliam are hereinafter referred to collectively as the "Parties," and any of the Parties may be referred to individually as a "Party."

WHEREAS, a lawsuit is currently pending in the United States District Court for the District of Nevada captioned, *Aniplex, Incorporated v. The Upper Deck Company*, Case No. 2:08-cv-00442 HDM-PAL (the "Action");

WHEREAS, the Parties wish to resolve their disputes in the Action fully and completely, without any admission of wrongdoing or liability such that nothing contained herein shall be construed as an admission of wrongdoing or liability.

NOW, THEREFORE, in consideration of the following covenants, conditions, promises, and representations, including the mutual releases herein by the Parties, the Parties agree as follows:

1. Upper Deck shall pay to Aniplex the sum of three-million, nine-hundred fifty thousand dollars (\$3,950,000) (the "Settlement Sum") on or before November 28, 2011. At the election of Aniplex, the Settlement Sum shall be payable by wire transfer upon Aniplex's provision of wiring instructions to Upper Deck.
2. Upper Deck's obligation to pay the Settlement Sum is personally guaranteed by Richard McWilliam.
3. If the Settlement Sum is not paid in full on or before November 28, 2011, Judgment shall be entered in favor of Aniplex and against Upper Deck forthwith for the Settlement Sum, less any amounts paid as of that date, and in favor of Aniplex and against Upper Deck on the counterclaims asserted in the Action. Richard McWilliam personally guarantees Upper Deck's obligation to pay the Settlement Sum, as confirmed in Attachment "A" hereto.
4. Except for the obligations arising from this Agreement, Aniplex, for such good and valuable consideration as described in this Agreement, receipt of which is hereby acknowledged, forever releases, covenants not to sue, relieves, holds harmless and discharges Upper Deck and Richard McWilliam, their heirs, executors, administrators, successors, assigns, predecessors, parent corporations, subsidiary corporations, officers, directors, representatives, agents, attorneys, and employees, from any and all actions, causes of action, charges, allegations, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, attorneys' fees, expenses, agreements, promises, variances, trespasses, damages, losses, injuries, judgments, extents, executions, demands or claims, of any kind or nature

whatsoever, including, but not limited to, those that were, or which could have been, asserted in this Action for which Upper Deck or Richard McWilliam may be liable to Aniplex.

5. Except for the obligations arising from this Agreement, Upper Deck and Richard McWilliam, for such good and valuable consideration as described in this Agreement, receipt of which is hereby acknowledged, forever releases, covenants not to sue, relieves, holds harmless and discharges Aniplex, its heirs, executors, administrators, successors, assigns, predecessors, parent corporations, subsidiary corporations, officers, directors, representatives, agents, attorneys, and employees from any and all actions, causes of action, charges, allegations, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, attorneys' fees, expenses, agreements, promises, variances, trespasses, damages, losses, injuries, judgments, extents, executions, demands or claims, of any kind or nature whatsoever, including, but not limited to, those that were, or which could have been, asserted in this Action for which Aniplex may be liable to Upper Deck and Richard McWilliam, including any claims arising out of or related in any way to the Action.

6. The Parties, having the specific intent to release all claims and potential claims described herein, hereby acknowledge and expressly waive the provisions of §1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Notwithstanding the provisions of §1542 of the California Civil Code, the Parties intend to release all claims described in this Agreement, known or unknown, and asserted or not asserted as of the date hereof.

7. Each Party shall bear its own costs and attorneys' fees in connection with the Action and the preparation and execution of this Agreement.

8. If Judgment is entered pursuant to paragraph 3 above, Judgment shall bear interest at the legal rate commencing as of the date of entry of Judgment.

9. Upon payment in full of the Settlement Sum, Aniplex and Upper Deck shall dismiss their respective claims pending in the Action with prejudice.

10. This Agreement constitutes the entire agreement among the Parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, communications, negotiations and discussions of the Parties in connection herewith, whether oral or written.

11. This Agreement may not be modified, altered or changed in any manner whatsoever, and no agreements or undertakings varying or extending the agreements herein shall be binding, except by a written instrument duly executed by authorized representatives of each of the Parties.

12. This Agreement is deemed to have been drafted jointly by the Parties hereto. Any uncertainty or ambiguity shall not be construed for or against any Party based on attribution of drafting to said Party.

13. This Agreement shall be considered to have been made in the State of California and is to be construed and governed in accordance with the laws of the State of California and of the United States of America without regard to conflicts of law.

14. Each Party agrees to cooperate fully and to execute and deliver any and all supplementary documents and take any and all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement and which are not inconsistent with the terms of this Agreement.

15. This Agreement may be executed in counterparts each of which shall be deemed an original and all of which counterparts shall constitute one and the same document. No meaning shall be accorded to the headings that separate certain paragraphs herein. This Agreement may be executed by signatures provided by facsimile transmission or by pdf, which facsimile or pdf signatures shall be as binding and effective as original signatures.

16. This Agreement and the respective rights and obligations it establishes shall be binding upon and inure to the benefit of the parties hereto and their respective principals, affiliates, assignees, successors, and heirs.

17. Each Party represents and agrees that it is represented by counsel with respect to the execution of this Agreement; that the Party has thoroughly discussed all aspects of this Agreement with its counsel; that it has carefully read and fully understands each provision of this Agreement; that it has been given a reasonable period of time to consider this Agreement; and that it is voluntarily entering into this Agreement without any threat, duress, coercion, or undue influence.

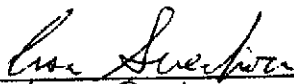
18. Each individual whose signature appears below represents and warrants that he or she has full authority to compromise and release the claims at issue in the Action and to bind the individuals and entities bound by this Agreement, for each individual and entity on whose behalf said individual executes this Agreement.

[Remainder of Page Deliberately Left Blank.]

19. The effective date of this Agreement shall be the first date of signature below.

IN WITNESS WHEREOF, the duly authorized individuals have executed this Agreement on behalf of the respective Parties on the dates set opposite their signatures.

Dated: September 29, 2011 ANIPLEX, INCORPORATED, a Japanese corporation

By: 
Name: Asa Suehira
Title: Vice President

Dated: September 29, 2011 THE UPPER DECK COMPANY, a Nevada Corporation

By: _____
Name: Richard McWilliam
Title: President

Dated: September 29, 2011

By: _____
Richard McWilliam

Attachment A

I, Richard McWilliam, for valuable consideration, receipt of which is hereby acknowledged, personally guarantee the three-million, nine-hundred fifty thousand dollar (\$3,950,000) monetary obligation (the "Settlement Sum") of THE UPPER DECK COMPANY, a Nevada Corporation, set forth in the above Agreement between THE UPPER DECK COMPANY, a Nevada Corporation, Richard McWilliam, and ANIPLEX, INCORPORATED, a Japanese corporation, to resolve the lawsuit currently pending in the United States District Court for the District of Nevada captioned *Aniplex, Incorporated v. The Upper Deck Company*, Case No. 2:08-cv-00442 HDM-PAL. To the extent that Upper Deck fails to pay the Settlement Sum, or any of it as provided in the Agreement, I agree to pay personally any amount that remains unpaid, or owed on the Judgment, if entered. I hereby waive any defenses I may have for this guaranty obligation other than for those concerning amounts paid by Upper Deck pursuant to the Agreement.

Dated: September 29, 2011

By: _____
Richard McWilliam

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is entered into by and between ANIPLEX, INCORPORATED, a Japanese corporation ("Aniplex"), on the one hand; and THE UPPER DECK COMPANY, a Nevada Corporation ("Upper Deck"), and Richard McWilliam, on the other hand. Aniplex, Upper Deck and Richard McWilliam are hereinafter referred to collectively as the "Parties," and any of the Parties may be referred to individually as a "Party."

WHEREAS, a lawsuit is currently pending in the United States District Court for the District of Nevada captioned, *Aniplex, Incorporated v. The Upper Deck Company*, Case No. 2:08-cv-00442 HDM-PAL (the "Action");

WHEREAS, the Parties wish to resolve their disputes in the Action fully and completely, without any admission of wrongdoing or liability such that nothing contained herein shall be construed as an admission of wrongdoing or liability.

NOW, THEREFORE, in consideration of the following covenants, conditions, promises, and representations, including the mutual releases herein by the Parties, the Parties agree as follows:

1. Upper Deck shall pay to Aniplex the sum of three-million, nine-hundred fifty thousand dollars (\$3,950,000) (the "Settlement Sum") on or before November 28, 2011. At the election of Aniplex, the Settlement Sum shall be payable by wire transfer upon Aniplex's provision of wiring instructions to Upper Deck.

2. Upper Deck's obligation to pay the Settlement Sum is personally guaranteed by Richard McWilliam.

3. If the Settlement Sum is not paid in full on or before November 28, 2011, Judgment shall be entered in favor of Aniplex and against Upper Deck forthwith for the Settlement Sum, less any amounts paid as of that date, and in favor of Aniplex and against Upper Deck on the counterclaims asserted in the Action. Richard McWilliam personally guarantees Upper Deck's obligation to pay the Settlement Sum, as confirmed in Attachment "A" hereto.

4. Except for the obligations arising from this Agreement, Aniplex, for such good and valuable consideration as described in this Agreement, receipt of which is hereby acknowledged, forever releases, covenants not to sue, relieves, holds harmless and discharges Upper Deck and Richard McWilliam, their heirs, executors, administrators, successors, assigns, predecessors, parent corporations, subsidiary corporations, officers, directors, representatives, agents, attorneys, and employees, from any and all actions, causes of action, charges, allegations, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, attorneys' fees, expenses, agreements, promises, variances, trespasses, damages, losses, injuries, judgments, extents, executions, demands or claims, of any kind or nature

whatsoever, including, but not limited to, those that were, or which could have been, asserted in this Action for which Upper Deck or Richard McWilliam may be liable to Aniplex.

5. Except for the obligations arising from this Agreement, Upper Deck and Richard McWilliam, for such good and valuable consideration as described in this Agreement, receipt of which is hereby acknowledged, forever releases, covenants not to sue, relieves, holds harmless and discharges Aniplex, its heirs, executors, administrators, successors, assigns, predecessors, parent corporations, subsidiary corporations, officers, directors, representatives, agents, attorneys, and employees from any and all actions, causes of action, charges, allegations, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, attorneys' fees, expenses, agreements, promises, variances, trespasses, damages, losses, injuries, judgments, extents, executions, demands or claims, of any kind or nature whatsoever, including, but not limited to, those that were, or which could have been, asserted in this Action for which Aniplex may be liable to Upper Deck and Richard McWilliam, including any claims arising out of or related in any way to the Action.

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11. This Agreement may not be modified, altered or changed in any manner whatsoever, and no agreements or undertakings varying or extending the agreements herein shall be binding, except by a written instrument duly executed by authorized representatives of each of the Parties.

12. This Agreement is deemed to have been drafted jointly by the Parties hereto. Any uncertainty or ambiguity shall not be construed for or against any Party based on attribution of drafting to said Party.

13. This Agreement shall be considered to have been made in the State of California and is to be construed and governed in accordance with the laws of the State of California and of the United States of America without regard to conflicts of law.

14. Each Party agrees to cooperate fully and to execute and deliver any and all supplementary documents and take any and all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement and which are not inconsistent with the terms of this Agreement.

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16. This Agreement and the respective rights and obligations it establishes shall be binding upon and inure to the benefit of the parties hereto and their respective principals, affiliates, assignees, successors, and heirs.

17. Each Party represents and agrees that it is represented by counsel with respect to the execution of this Agreement; that the Party has thoroughly discussed all aspects of this Agreement with its counsel; that it has carefully read and fully understands each provision of this Agreement; that it has been given a reasonable period of time to consider this Agreement; and that it is voluntarily entering into this Agreement without any threat, duress, coercion, or undue influence.

18. Each individual whose signature appears below represents and warrants that he or she has full authority to compromise and release the claims at issue in the Action and to bind the individuals and entities bound by this Agreement, for each individual and entity on whose behalf said individual executes this Agreement.

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IN WITNESS WHEREOF, the duly authorized individuals have executed this Agreement on behalf of the respective Parties on the dates set opposite their signatures.


Dated: September 29, 2011

ANIPLEX, INCORPORATED, a Japanese corporation

By: _____
Name:
Title:

Dated: September 29, 2011

THE UPPER DECK COMPANY, a Nevada Corporation

By:  _____
Name: Richard McWilliam
Title: President

Dated: September 29, 2011

By:  _____
Richard McWilliam

Attachment A

I, Richard McWilliam, for valuable consideration, receipt of which is hereby acknowledged, personally guarantee the three-million, nine-hundred fifty thousand dollar (\$3,950,000) monetary obligation (the "Settlement Sum") of THE UPPER DECK COMPANY, a Nevada Corporation, set forth in the above Agreement between THE UPPER DECK COMPANY, a Nevada Corporation, Richard McWilliam, and ANIPLEX, INCORPORATED, a Japanese corporation, to resolve the lawsuit currently pending in the United States District Court for the District of Nevada captioned *Aniplex, Incorporated v. The Upper Deck Company*, Case No. 2:08-cv-00442 HDM-PAL. To the extent that Upper Deck fails to pay the Settlement Sum, or any of it as provided in the Agreement, I agree to pay personally any amount that remains unpaid, or owed on the Judgment, if entered. I hereby waive any defenses I may have for this guaranty obligation other than for those concerning amounts paid by Upper Deck pursuant to the Agreement.

Dated: September 29, 2011

By: _____


Richard McWilliam