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Class Counsel for Indirect Purchaser Plaintiffs

[Additional Counsel Listed on Signature Page]

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

IN RE LITHIUM ION BATTERIES ANTITRUST LITIGATION,	Case No. 13-MD-02420 YGR (DMR) MDL No. 2420
This Documents Relates to: ALL INDIRECT PURCHASER ACTIONS	INDIRECT PURCHASER PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS Date: July 16, 2019 Time: 2:00pm Judge: Hon. Yvonne Gonzalez Rogers Court: Courtroom 1, 4th Floor DATE ACTION FILED: Oct. 3, 2012

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GLOSSARY OF DEFINED TERMS

Term	Definition
Berman Decl.	Declaration of Steve W. Berman in Support of Indirect Purchaser Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards
Class Counsel	Co-Lead Counsel and Supporting Counsel
Class Representative Compendium	Compendium of Supporting Counsel Declarations in Support of Indirect Purchaser Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards
Class Representatives	Jason Ames, Caleb Batey, Christopher Bessette, Cindy Booze, Matt Bryant, Steven Bugge, William Cabral, Matthew Ence, Drew Fennelly, Sheri Harmon, Christopher Hunt, John Kopp, Linda Lincoln, Patrick McGuiness, Joseph O'Daniel, Tom Pham, Piya Robert Rojanasathit, Bradley Seldin, Donna Shawn, David Tolchin, Bradley Van Patten, the City of Palo Alto, and the City of Richmond
Co-Lead Counsel	Hagens Berman Sobol Shapiro LLP, Lieff Cabraser Heimann & Bernstein, LLP, and Cotchett, Pitre & McCarthy, LLP
DPPs	Direct Purchaser Plaintiffs
ECF No.	Unless otherwise noted, all "ECF No." references are to the docket in *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-md-02420 YGR (DMR) (N.D. Cal. May 17, 2013)
Glackin Decl.	Declaration of Brendan P. Glackin in Support of Indirect Purchaser Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards
Hitachi Maxell	Hitachi Maxell, Ltd., Maxell Corporation of America
IPPs/Plaintiffs	Indirect Purchaser Plaintiffs
Joint Decl.	Joint Declaration of Steve W. Berman, Brendan P. Glackin, and Adam J. Zapala in Support of Indirect Purchaser Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards
LG Chem	LG Chem, Ltd., LG Chem America, Inc.
LIB	Lithium Ion Batteries
NEC	NEC Corporation
Panasonic/Sanyo	Panasonic Corporation, Panasonic Corporation of North America, Sanyo Electric Co., Ltd., Sanyo North America Corporation
SDI	Samsung SDI Co., Ltd., Samsung SDI America, Inc.
Sony	Sony Corporation, Sony Energy Devices Corporation, Sony Electronics, Inc.
Supporting Counsel	Class Counsel that assisted Co-Lead Counsel in litigating this case on behalf of Plaintiffs, apart from Co-Lead Counsel
Supporting Counsel Compendium	Compendium of Supporting Counsel Declarations in Support of Indirect Purchaser Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards
TOKIN	TOKIN Corporation
Toshiba	Toshiba Corporation
Zapala Decl.	Declaration of Adam J. Zapala in Support of Indirect Purchaser Plaintiffs' Motion for Attorneys' Fees and

	Reimbursement of Expenses on Behalf of Cotchett, Pitre & McCarthy, LLP

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on July 16, 2019, at 2:00 p.m. or as soon thereafter as the matter may be heard by the Honorable Yvonne Gonzalez Rogers of the United States District Court for the Northern District of California, Oakland Division, located at Courtroom 1, 4th Floor, 1301 Clay Street, Oakland, California, Indirect Purchaser Plaintiffs ("Plaintiffs") will and hereby do move the Court for an award of attorneys' fees, expenses, and service awards. This motion is based on this notice of motion and motion, the accompanying memorandum of points and authorities, the declarations in support of the motion, argument by counsel at the hearing before this Court, any papers filed in reply, such oral and documentary evidence as may be presented at the hearing of this motion, and all papers and records on file in this matter.

I. INTRODUCTION

After more than six-and-a-half years of hard fought litigation, Court-appointed Interim Co-Lead Counsel ("Class Counsel") for the Indirect Purchaser Plaintiffs ("Plaintiffs") have secured settlements totaling $113.45 million for the Settlement Class. In light of the substantial risks and complex issues in this litigation, as well as the $113.45-million settlement fund created, Plaintiffs respectfully request (1) an award of $29.54 million in attorneys' fees—equal to 30 percent of the common fund, or $34.035 million, minus the $4.495 million this Court already awarded; (2) reimbursement of expenses incurred in connection with this litigation totaling $5.89 million, which does not include the $860,188.50 reimbursed previously; and (3) service awards for each of the class representatives—$10,000 for each of the twenty-one individual class representatives and $25,000 for each of two governmental entity class representatives.

The $113.45 million settlement fund from which fees, reimbursements, and service awards have been requested represents an excellent result for the class. Opposing some of world's largest corporations and the country's most sophisticated defense counsel, Plaintiffs faced the challenge of proving a broad conspiracy that elevated LIB prices for more than a decade. Moreover, Plaintiffs had to demonstrate not only that the manufacturers of lithium-ion batteries overcharged for their products (as the direct purchaser plaintiffs did), but also that such an overcharge was passed down through a multistep distribution chain to consumers (i.e., the indirect purchaser class). Despite these challenges, Plaintiffs survived at least four rounds of dispositive motions, conducted wide-ranging, highly contested fact discovery, and with the help of expert analyses, synthesized copious amounts of evidence to show the conspiracy's substantial and universal impact on consumers. As a result of their work, Plaintiffs obtained substantial recoveries for the Settlement Class from all but one of the defendant families prior to the Court's final denial of class certification. Even then, Plaintiffs persisted in litigating the case to maximize recovery for the Class and eventually recovered $5.5 million from the final Defendant, Panasonic/Sanyo, on the eve of trial.

The resulting $113.45 million common fund represents 11.7 percent of the total single damages estimated for the Class *nationwide* during an *eleven-and-a-half year* class period that Defendants ferociously opposed. Given the enormous challenges, this is a strong result. Moreover,

this amounts to 20 percent of the lower estimated damages for the thirty jurisdictions that provide indirect purchaser standing—consistent with this Court's initial class certification order.

The requested 30-percent fee award is reasonable compared to awards in similar antitrust class actions. For example, last year this Court approved a 30-percent fee award to counsel for direct purchaser plaintiffs in this action. In other large antitrust class actions litigated in this District, courts have awarded similar percentages in attorneys' fees. A recent empirical study of attorneys' fees in class action settlements also supports the 30-percent fee request.

The reasonableness of the requested award is further confirmed by a "lodestar cross-check." Based on Class Counsel's total lodestar for the case of $41,458,223.50, the requested award would lead to a ***negative*** multiplier of 0.82. This Court explained in granting counsel for the direct purchasers a 30-percent fee award that their negative multiplier "obviate[d] concern about any windfall given the size of the settlement recovery," even if considered a "megafund." Because the cross-check "results in an effective hourly rate far below the market rate for the hours devoted to the case by class counsel," the Court found that the "requested fee award is reasonable and justified by the circumstances of this case."[1] The same is true here.

Beyond fees, the requested expenses were all critical to the representation of the Class. And the amount of the expenses, including the three largest categories of expenses (expert costs, online document databases, and translations and interpreters), are consistent with the amount of expenses reimbursed in comparable cases. The service awards are reasonable given the substantial commitment to the Class and investment of time provided to this case by the class representatives. Plaintiffs respectfully requests that their motion be granted.

II. THE WORK UNDERTAKEN BY THE INDIRECT PURCHASERS

A. Class Counsel undertook substantial pre-litigation investigation.

Though they do not seek to recover for work prior to their appointment of lead counsel, Class Counsel undertook substantial efforts to investigate their claims before filing. This work included the retention of economists with extensive experience in technology markets to obtain and

[1] ECF No. 2322, at 2

analyze historical pricing data showing abnormal price changes during the conspiracy period. Counsel also collected data on lithium-ion battery raw material costs and translated and reviewed numerous Asian language documents discussing the lithium-ion batteries' market. This investigation resulted in the ***first*** civil litigation filed that is part of this multidistrict litigation.[2]

B. Class Counsel successfully litigated three rounds of motions to dismiss and one early summary judgment motion.

At the outset of this litigation, the Court instituted a three-phased approach to addressing the sufficiency of the pleadings.[3] On July 2, 2013, Plaintiffs filed a 162-page, factually detailed Consolidated Class Action Complaint.[4] In response to this complaint, Defendants filed five individual motions to dismiss and one joint motion. Defendants argued, among other things: (1) that Plaintiffs failed to sufficiently allege facts stating a plausible "overarching" conspiracy involving each Defendant; (2) that Plaintiffs' claims were barred by the statute of limitations; (3) that Defendants' U.S.-based subsidiaries were not properly named as Defendants; and (4) that various state law claims should be dismissed.[5] In total, the first round of motions to dismiss generated 278 pages of briefing.[6] On July 21, 2014, this Court held that Plaintiffs had adequately alleged a conspiracy, but dismissed the complaint on other grounds with leave to amend.[7]

On April 11, 2014, Plaintiffs filed their Corrected Second Amended Consolidated Class Action Complaint. The complaint expanded to 196 pages and added significant detail regarding Defendants' domestic subsidiaries.[8] On April 25, 2015, Defendants filed a joint motion to dismiss the operative complaint, representing a second phase of challenges.[9] Principally, Defendants' motion addressed whether Plaintiffs had antitrust standing to proceed in this suit. This round of

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[2] Berman Decl., ¶ 4.

[3] *See* ECF Nos. 276, 395.

[4] ECF No. 221.

[5] *See* Joint Decl., ¶ 20.

[6] *Id.*

[7] ECF No. 361.

[8] ECF No. 419.

[9] ECF No. 428.

briefing totaled 284 pages.[10] With the exception of the Court's dismissal of two state law claims (Montana and New Hampshire), and the dismissal of the State Governmental Damages Subclass (except California), the Court denied Defendants' motion.[11] Around the same time, several Defendants filed individual motions to dismiss relating to the corporate structures of those Defendants and whether they or their subsidiaries could properly be sued. This round of motions generated 227 pages of briefing.[12] The Court denied each such motion.[13]

On October 22, 2014, Plaintiffs filed their Third Consolidated Amended Complaint.[14] Over a year later, in connection with their class certification motion, Plaintiffs filed motions to amend the complaint to substitute certain proposed class representatives and to narrow the proposed class to seek damages only for products containing cylindrical LIBs.[15] On March 14, 2016, the Court granted Plaintiffs leave to file an amended complaint,[16] and on March 18, 2016, Plaintiffs filed the operative Fourth Amended Class Action Complaint ("Operative Complaint" or "Complaint").[17]

On June 30, 2015, Toshiba filed a motion for summary judgment arguing that it had withdrawn from the conspiracy by 2004, and that the statute of limitations therefore barred all of Plaintiffs' claims.[18] Plaintiffs worked with the direct purchaser plaintiffs to tailor discovery to address this argument.[19] On November 13, 2015, Plaintiffs and direct purchasers jointly opposed the motion, and this Court denied Toshiba's motion following oral argument.[20]

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[10] Joint Decl., ¶ 21.

[11] *See* ECF No. 512 at 36 and 44.

[12] Joint Decl., ¶ 22.

[13] *See* ECF No. 512 at 55-56.

[14] ECF No. 519.

[15] ECF No. 1033; *see also* ECF Nos. 982, 984. The case initially included products containing three different lithium-ion battery types.

[16] ECF No. 1154.

[17] ECF No. 1168.

[18] ECF No. 735.

[19] Joint Decl., ¶ 24.

[20] *Id.*

C. Class Counsel engaged in substantial discovery efforts on behalf of the Settlement Class.

1. Class Counsel coordinated with counsel for direct purchasers to obtain critical discovery.

From the beginning of the case, Class Counsel sought to maximize efficiency and avoid duplication by coordinating discovery efforts with the direct purchaser class. For example, direct and indirect purchasers jointly drafted proposed orders and protocols for coordinated discovery, depositions, translations, and discovery of electronically stored information. Counsel also worked together to negotiate search terms, to ensure the completeness of discovery responses, and to schedule depositions.[21] Defendants often resisted discovery, resulting in several early disputes and victories for Plaintiffs.[22] Plaintiffs successfully compelled significant early discovery.

2. Class Counsel conducted substantial written and document discovery.

Plaintiffs propounded substantial written discovery, including 78 document requests, 24 interrogatories (some of which were jointly served on all Defendants), and 1,534 requests for admissions.[23] Because of the need to prove pass-through of the overcharge through a multistep distribution chain (an evidentiary burden not faced by direct purchasers), Class Counsel also served over 140 subpoenas to third parties for data and documents.[24]

Class Counsel spent tens of thousands of hours reviewing and analyzing Defendants' written discovery responses and the documents produced by Defendants and third parties. In total, Plaintiffs obtained documents from 273 custodians, spanning over 2.7 million documents and eight million pages, as well as voluminous electronic transactional data. Because most documents were produced in Japanese, Korean, or Chinese, Plaintiffs retained foreign-language reviewers or utilized staff attorneys fluent in those languages and specialists in antitrust cartels to conduct a thorough analysis. Plaintiffs contracted with Catalyst and Omega Discovery Solutions to retrieve,

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[21] Joint Decl., ¶ 26.

[22] *See, e.g.*, ECF Nos. 375, 673.

[23] Joint Decl., ¶ 28. Many of these requests for admissions addressed document authentication.

[24] Joint Decl., ¶ 29.

host, review, and synthesize these documents. In addition, Plaintiffs spent over $200,000 to obtain certified translations of more than 1,500 documents.[25]

To obtain this discovery, Plaintiffs brought and prevailed on, at least in part, fourteen fiercely contested motions to compel, the results of which are summarized below.

Order on Motion to Compel	Date	Outcome
Order on Joint Disc. Letter Br, re Worldwide Transactional Data, ECF No. 624	Dec. 23, 2014	Granted
Order on Joint Disc. Letter Br., ECF No. 690	Mar. 17, 2015	Granted
Order on Joint Disc. Letter Br., ECF No. 710	Apr. 1, 2015	Granted
Order on Joint Disc. Letter Br. re LG Chem's Interrog. Resp., ECF No. 805	Aug. 21, 2015	Granted
Order on Pls.' Mot. to Continue Dep. Hiroshi Kubo, ECF No. 822	Aug. 31, 2015	Granted
Order re Pls.' Mot. to Compel Dep. Seok Hwan Kwak, ECF No. 836	Sept. 15, 2015	Granted
Minute Entry re Joint Disc. Letter Br. re LG Chem's Data Preservation and Docs. Used to Refresh Deponent's Memory, ECF No. 1066	Feb. 4, 2016	Granted
Order re Pls.' Mot. to Compel Dep. Jae Jeong Joe, ECF No. 1177	Mar. 24, 2016	Granted
Minute Entry re Disc. Letter Br. re Compel'g Produc. of Walmart Data, ECF No. 1411	Aug. 25, 2016	Granted
Minute Entry re Disc. Letter Br. re Mots. to Compel, ECF No. 1530	Oct. 13, 2016	Granted in part
Minute Entry re Disc. Letter Br. re Compel'g Sanyo to Produce Docs. of Hiroshi Shimokomaki, ECF No. 1547	Oct. 27, 2016	Granted in part
Minute Order re Disc. Letter Br. Re Compel'g Simplo USA to Produce Docs., ECF No. 1905	Aug. 10, 2017	Granted in part
Minute Order re Disc. Letter Br. Re Compel'g Simplo USA to Produce Docs., ECF No. 1968	Oct. 3, 2017	Granted
Minute Order re Joint Disc. Letter Br., ECF No. 2269 (*see also* ECF No. 2338)	Apr. 19, 2018	Granted in part

These motions necessitated large amounts of time for meet-and-confers, briefing, and hearing preparation. Often, Plaintiffs coordinated briefing and argument with direct purchasers.[26]

Plaintiffs prioritized their discovery disputes based on issues critical to the case. For instance, in its initial motion denying class certification, the Court held that Plaintiffs had failed to provide "analysis for packers in the IPP class since plaintiffs had not obtained data from any of the

[25] Joint Decl., ¶ 30.

[26] Joint Decl., ¶ 31.

packers for the cylindrical batteries covered by the class definition."[27] Plaintiffs subsequently subpoenaed packer Simplo USA to produce data from its overseas parent Simplo Taiwan, the world's largest third-party packer. Simplo USA resisted the subpoena, requiring Plaintiffs to (i) oppose a motion to quash a deposition subpoena in Wyoming, (ii) win a contested motion to transfer the Simplo discovery to this MDL Court, (iii) file multiple motions to compel in this Court, (iv) take a Rule 30(b)(6) deposition of Simplo USA to support those motions, (v) oppose Simplo USA's motion for a stay of proceedings pending appeal to the Ninth Circuit, and (vi) bring a motion for discovery sanctions.[28] Plaintiffs succeeded in obtaining the Simplo data.

Plaintiffs also successfully obtained discovery critical to the case, through: orders compelling Defendants to produce worldwide transactional sales and cost data for battery cells and packs (ECF Nos. 624, 710); orders compelling Defendants to produce detailed interrogatory responses (ECF Nos. 690, 805); and an order after hotly disputed briefing compelling recalcitrant witness Seok Hwan Kwak to appear for deposition (ECF No. 836).

3. Class Counsel undertook a large amount of expert discovery.

Over the course of the litigation, in support of multiple motions for class certification and in opposition to Panasonic's motion for summary judgment, Plaintiffs undertook large amounts of expert work. Plaintiffs submitted four expert reports totaling 435 pages in support of their motions to certify a class.[29] Professor Edward E. Leamer and the economists supporting him analyzed impact and damages using statistical modeling and conducted nearly 2,000 regressions. Dr. Rosa Abrantes-Metz, a specialist in cartel theory, analyzed whether the available economic evidence supported the existence and impact of the conspiracy on a class-wide basis. Drs. Leamer and Abrantes-Metz performed additional analyses with respect to the merits phase of the work.[30]

The experts' work included an analysis of common impact involving close to 700 separate complex regressions for individual LIB cell numbers and close to 500 separate regressions for

[27] ECF No. 1735 at 19:5-7.

[28] Joint Decl., ¶ 32.

[29] Joint Decl., ¶ 34.

[30] *Id.*

individual purchasers. Dr. Leamer also performed over 1,000 regression analyses of pass-through for various manufacturer, distributor, and retailer companies—reflecting a million observations and over 400,000 products. The pass-through analyses involved extensive work processing and analyzing large transactional databases involving roughly 4,000 datasets and approximately 400 gigabytes of third-party data. For example, transactional data from Best Buy alone contained over 200 million records, and data from CompUSA contained close to 7 million records. Additionally, experts undertook a detailed review of both subpoenaed and public information to ascertain the types of batteries in the class members' products.[31]

4. Class Counsel took and defended over eighty depositions.

To adequately prosecute a case involving multiple defendants, with witnesses spread all over the world who could not be compelled to testify live at trial, Plaintiffs gathered key evidence via deposition. Plaintiffs took nearly 40 fact depositions (lasting more than 80 total days) and seven expert depositions, using approximately 769 exhibits. Many of these depositions were conducted through Japanese and Korean interpreters, adding to their length, complexity, and cost. To increase efficiency, Plaintiffs and the direct purchasers coordinated taking these depositions, alternating on who took the lead. Plaintiffs also defended five expert and 32 class representative depositions.[32]

D. This case required extensive work on behalf of the class representatives.

Defendants took 32 class representative depositions, lasting over 144 hours (approximately 4.5 hours per deposition on average). Defendants propounded 22 interrogatories, 37 document requests, and four requests for admission to each of the class representatives.[33]

E. Class Counsel engaged in substantial motion practice, prepared for trial, and settled strategically with Defendants to maximize recovery for the Settlement Class.

In November 2015, Plaintiffs reached their first settlement in the case, with the Sony Defendants for $19.5 million. On January 22, 2016, Plaintiffs filed their initial motion for class certification along with the expert reports of economists Dr. Edward Leamer and Dr. Rosa

[31] Joint Decl., ¶ 36 (citing expert reports).

[32] Joint Decl., ¶¶ 39, 41.

[33] Joint Decl., ¶ 41.

Abrantes-Metz.[34] Defendants opposed and filed *Daubert* motions.[35] In total, these motions generated 475 pages of briefing.[36]

Between November 2016 and January 2017, Plaintiffs obtained $44.95 million in settlements with Hitachi ($3.45 million), NEC ($2.5 million), and LG Chem ($39 million). Plaintiffs reached these settlements while the class certification motion was pending, finalizing the LG Chem settlement on the eve of the class certification hearing.[37]

After additional briefing, 16.5 hours of deposition testimony by Plaintiffs' experts, and a hearing, this Court on April 12, 2017 issued an order denying Plaintiffs' class certification motion without prejudice, denying Defendants' *Daubert* motion as to Dr. Abrantes-Metz, and granting the motion in part as to Dr. Leamer.[38]

Plaintiffs filed a renewed motion for class certification on September 26, 2017, which was opposed.[39] In total, this generated 259 pages of briefing.[40] In early 2018, while Plaintiffs' renewed motion was pending, they reached settlement agreements with three additional defendants. The settlements included a $39.5 million settlement with SDI shortly before this Court issued its decision on the renewed motion. TOKIN and Toshiba each agreed to pay $2 million.[41]

On March 5, 2018, the Court denied Plaintiffs' renewed motion for class certification.[42] Following additional discovery, Plaintiffs filed a second renewed motion for class certification on

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[34] ECF Nos. 1036, 1036-1, 1036-2.

[35] ECF No. 1551, 1553. 1554.

[36] Joint Decl., ¶ 43.

[37] Joint Decl., ¶ 44; *see* ECF No. 1652 at 2; ECF No. 1672 at 3.

[38] Joint Decl., ¶ 45 (citing ECF No. 1735). On May 29, 2017, Plaintiffs filed a motion for attorneys' fees, reimbursement of expenses, and service awards. ECF No. 1814. The Court on October 27, 2017 granted in part, and denied in part, without prejudice, Plaintiffs' motion, awarding $4.495 million in fees, $860,188.50 in litigation expenses, and service awards totaling $34,500. ECF No. 2005. Joint Decl., ¶ 46.

[39] ECF No. 1960-2.

[40] Joint Decl., ¶ 47.

[41] Joint Decl., ¶ 47.

[42] ECF No. 2197 at 8.

August 15, 2018,[43] which the Court struck on September 4, 2018.[44] Plaintiffs and the last defendant, Panasonic/Sanyo, then engaged in extensive briefing related to summary judgment and *Daubert* motions.[45] In total, these motions, including Plaintiffs' second renewed motion for class certification, spanned 506 pages.[46] The parties also began preparing for trial, which was scheduled to commence January 28, 2019.[47] On November 7, 2019, Plaintiffs and Panasonic/Sanyo reached a settlement of $5.5 million.[48] Subject to Court approval, the settlements with SDI, TOKIN, Toshiba, and Panasonic/Sanyo will conclude the case.

III. ARGUMENT

Plaintiffs respectfully request an award of $29.54 million in attorney's fees—equal to 30 percent of the common fund, or $34.035 million, minus the $4.495 million this Court already awarded. Applying a lodestar crosscheck, this would result in a ***negative*** 0.82 multiplier of Class Counsel's total lodestar of $41,458,223.50, which will increase through final approval and appeals. Plaintiffs also request additional reimbursement of expenses incurred in connection with this litigation of $5.89 million, which does not include the $860,188.50 reimbursed previously. Finally, Plaintiffs request that this Court grant service awards of $10,000 to the twenty-one individual class representatives and service awards of $25,000 to the two governmental class representatives.

A. Class Counsel's fee request is reasonable.

Class Counsel have produced a shared benefit for the settlement class in the form of the $113.45 million common fund. The Supreme Court has explained that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole."[49] Here, an award of reasonable attorneys' fees

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[43] ECF No. 2383.

[44] ECF No. 2407.

[45] Joint Decl., ¶ 48 (citing extensive briefing).

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th Cir. 2003) (same).

from the common fund compensates Class Counsel for vigorously litigating this action on behalf of millions of consumers across the country victimized by Defendants' illegal conduct. The Supreme Court has explained that such work is critical to the effective enforcement of the antitrust laws.[50]

Courts in the Ninth Circuit award attorney's fees in common fund cases under either the "percentage-of-recovery" method or the "lodestar" method.[51] Some courts have expressed a preference for the percentage-of-recovery method because it "directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation[.]"[52] "In contrast, the lodestar [method] create[s] an unanticipated disincentive to early settlements, tempt[s] lawyers to run up their hours, and compel[s] district courts to engage in a gimlet-eyed review of line-item fee audits."[53] Regardless of which method is chosen as the primary one, the Ninth Circuit encourages "a cross-check using the other method."[54] In this case, both methods support Class Counsel's fee request.

Federal district courts across the country routinely award class counsel fees equivalent to, and often exceeding, 30 percent of the common fund, including in so-called "megafund" cases, even where the common fund exceeds 100 million dollars.[55] In this case, the Court awarded 30

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[50] *See, e.g. Pillsbury Co. v. Conboy*, 459 U.S. 248, 262-63 (1983); *Reiter v. Sonotone Corp.*, 442 U.S. 330, 331 (1979); *Hawaii v. Stand. Oil Co.*, 405 U.S. 251, 266 (1972).

[51] *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir. 2015).

[52] *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (internal quotation marks and citations omitted).

[53] *Id.* (internal quotation marks omitted).

[54] *Online DVD*, 779 F.3d at 949.

[55] *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1210 (S.D. Fla. 2006) (awarding 31.33% fee on $1.075 billion settlement fund); *accord In re Urethane Antitrust Litig.*, 2016 WL 4060156 (D. Kan. July 29, 2016) (awarding 33.33% fee on $835 million settlement; "Counsel's expert has identified 34 megafund cases with settlements of at least $100 million in which the court awarded fees of 30 percent or higher."); *see also, e.g., In re Polyurethane Foam Antitrust Litig.*, 2015 WL 1639269, at *7 (N.D. Ohio Feb. 26, 2015) (awarding 30% fee on $147.8 million settlement fund); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1366 (S.D. Fla. 2011) (awarding 33.3% fee on $510 million settlement fund); *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *1 (E.D. Pa. June 2, 2004) (awarding 30% fee on $202.5 million settlement fund); *In re Cardizem CD Antitrust Litig.*, No. 99-md-1278 (E.D. Mich. Nov. 26, 2002), at 18-20 (awarding 30% of a $110 million dollar fund, which produced a multiplier of 3.7); *In re Vitamins Antitrust Litig.*, 2001 WL 34312839, at *9 (D.D.C. July 16, 2001) (awarding 34.6% fee on $365 million settlement fund); *In re Ikon Office Sols., Inc., Secs. Litig.*, 194 F.R.D. 166, 170 (E.D. Pa. 2000) (awarding 30 percent fee on $111 million settlement fund).

percent of the common fund to counsel for the direct purchaser class.[56] In comparable large antitrust class actions involving cartels of electronics manufacturers litigated in this District, with many of the same defendants here, courts have awarded similar percentages in attorneys' fees.[57]

A recent empirical study of fees in class action settlements also supports a fee of 30 percent. The authors found that, of the 19 antitrust settlements between 2009 and 2013 with a mean recovery of $501.09 million and a median recovery of $37.3 million, the mean and median percentages awarded were 27 percent and 30 percent, respectively.[58]

Should the Court grant this fee request, Class Counsel will have a ***negative*** lodestar multiplier of 0.82. Plaintiffs explain in Section III.A.2, *infra*, that this further supports the reasonableness of the fee request.

1. A 30-percent award is reasonable under a percentage-of-the-fund analysis.

When applying the percentage-of-the fund method, the Ninth Circuit has established a benchmark percentage of 25 percent to be used as the "starting point" for analysis.[59] "That percentage amount can then be adjusted upward or downward depending on the circumstances of the case."[60] Courts in this district have recognized that "'in most common fund cases, the award *exceeds* the benchmark.'"[61] At bottom, the Ninth Circuit asks district courts to "consider[] all of the circumstances of the case" and "reach[] a reasonable percentage."[62]

The Ninth Circuit instructs that courts may consider the following factors: (1) whether

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[56] ECF No. 2322, at 1, 3 (also explaining that the "range of awards made in similar cases justifies an award of 30% here").

[57] *See, e.g.*, *In re Cathode Ray Tube (CRT) Antitrust Litig.*, 2016 WL 4126533 (N.D. Cal. Aug. 3, 2016) (30 percent for IPP settlement); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 2013 WL 1365900 (N.D. Cal. Apr. 3, 2013) (28.6 percent for IPP settlement); Order Granting Award of Attorneys' Fees, Reimbursement of Expenses & Incentive Payments, *In re Static Random Access Memory (SRAM) Antitrust Litig.*, No. 07-md-1819-CW (N.D. Cal. Oct. 14, 2011), ECF No. 1407 (33 percent for IPP settlement).

[58] Eisenberg, Miller & Germano, *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. Rev. 937, 952 (2017) ("EMG Study").

[59] *Online DVD*, 779 F.3d at 949, 955.

[60] *de Mira v. Heartland Emp't Serv., LLC*, 2014 WL 1026282, at *1 (N.D. Cal. Mar. 13, 2014).

[61] *Id.* (quoting *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008)).

[62] *Online DVD*, 779 F.3d at 949.

counsel achieved exceptional results for the class; (2) whether the case was risky for class counsel; (3) whether the case was handled on a contingency basis; (4) the market rate for the particular field of law; and (5) the burdens class counsel experienced while litigating the case.[63] Each of these factors supports Class Counsel's request for a total fee award of 30 percent of the common fund.

a. Class Counsel achieved exceptional results for the Class.

Recovery of $113.45 million in total settlements is an exceptional result for the Settlement Class given the tremendous risks and challenges faced. The following table summarizes the gross recovery from all settlements in this action:

Defendant Family	Contribution to Settlement Fund	Nationwide Damages Attributed to Defendant by Plaintiffs	Percent Recovery
First Round of Settlements Presented			
Sony	$19,500,000	$252,143,962.33	7.7%
Second Round of Settlements Presented			
LG Chem	$39,000,000	$116,894,327.36	33.4%
Hitachi Maxell	$3,450,000	$2,898,206.46	119.0%
NEC	$2,500,000	$966,068.82	258.8%
Third Round of Settlements Presented			
SDI	$39,500,000	$209,636,934.20	18.8%
TOKIN	$2,000,000	$966,068.82[64]	207.0%
Toshiba	$2,000,000	$5,796,412.93	34.5%
Panasonic/Sanyo	$5,500,000	$378,698,977.90	1.5%
TOTAL	**$113,450,000**	**$967,034,890.00[65]**	**11.7%**

The $113.45 million total common fund represents 11.7 percent of the total single damages estimated for a *nationwide* class during an *eleven-and-a-half year* class period that Defendants ferociously opposed. Given the case's risks and challenges, this is a strong result. The quality of the merits and expert evidence presented enabled Plaintiffs to obtain substantial settlements for the

[63] *Id.* at 954-55.

[64] The "attributable damages" for TOKIN and NEC are the same because they operated as one entity during the class period. Accordingly, the percentage recoveries are likely to be higher.

[65] At their initial motion for class certification, Plaintiffs' damages expert estimated that, nationwide, indirect purchaser damages totaled $967,034,890 for the period of January 2000 through May 31, 2011. *See* [Corrected] Expert Report of Edward E. Leamer (Feb. 2, 2016), ECF No. 1599-4 at 78.

Class, despite not ultimately prevailing on their class certification motions. Indeed, Plaintiffs achieved settlements with SDI, TOKIN, and Toshiba totaling $43.5 million, approximately 20.11% of the $216 million in estimated nationwide damages attributed to those Defendants, after the Court denied Plaintiffs' original motion for class certification and while Plaintiffs' renewed motion was pending—"a time of extraordinary risk for the class receiving no recovery at all."[66] Plaintiffs took a calculated risk, leaving only Panasonic/Sanyo potentially liable for damages. The risk of no further recovery increased when the renewed motion was denied. But Class Counsel persevered to maximize recovery for the Class, settling with Panasonic/Sanyo for $5.5 million on the eve of trial.

Comparing Plaintiffs' recovery against the likely total estimated damages to the Class also indicates the excellence of the results. Plaintiffs' expert, Dr. Leamer, estimated damages of $573 million for the thirty jurisdictions which allow claims by indirect purchasers.[67] Plaintiffs' $113.45 million in total settlements is approximately 20 percent of that amount, which, given this Court's rulings, more accurately represents the range of likely single damages in this case for a certified class,[68] and further underscores the quality of the recovery.[69]

b. This case posed enormous risks and challenges.

That this recovery was obtained despite enormous risks also support the reasonableness of the 30-percent fee request. Courts have recognized that the "antitrust class action is arguably the most complex action to prosecute."[70] Even where liability is proven, there is the very real risk that

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[66] *See In re Optical Disk Drive Prod. Antitrust Litig.*, 2016 WL 7364803, at *14 (N.D. Cal. Dec. 19, 2016) (explaining the great risk associated with this time in a case).

[67] Joint Decl., ¶ 59.

[68] In its Order denying without prejudice Plaintiffs' motion for class certification, this Court found that a nationwide class would not be appropriate, but that, potentially, an IPP class could encompass the *Illinois Brick* repealer states. ECF No. 1735 at 24. IPPs obtained the third and fourth round of settlements after this decision.

[69] *See In re Cathode Ray Tube (CRT) Antitrust Litig.*, 2016 WL 3648478, at *7 n.19 (N.D. Cal. July 7, 2016) (citing survey of 71 settled cartel cases which showed that the weighted mean—weighting settlements according to their sales—was 19% of possible single damages recovery).

[70] *Linerboard*, 2004 WL 1221350, at *10 (quoting *In re Motorsports Merch. Antitrust Litig.*, 112 F. Supp. 2d 1329, 1337 (N.D. Ga. 2000)); *see also In re Auto. Refinishing Paint Antitrust Litig.*, 617 F. Supp. 2d 336, 341 (E.D. Pa. 2007) (the "antitrust class action is arguably the most complex action to prosecute[;] [t]he legal and factual issues involved are always numerous and uncertain in outcome").

plaintiffs will "recover[] no damages, or only negligible damages, at trial, or on appeal."[71] And this litigation was especially challenging.

First, the sheer scale of this litigation required extensive coordination among Class Counsel and the supporting firms in developing pleadings, engaging in motion practice, and conducting discovery. At every turn, Defendants had the opportunity to significantly narrow the scope of or altogether end the litigation. Some of the efforts included:

- Preparing four comprehensive consolidated amended complaints detailing Defendants' alleged violations of the antitrust laws;
- Conducting exhaustive legal research regarding the claims and the defenses, particularly with respect to multiple rounds of motions to dismiss, three motions for class certification, at least fourteen motions to compel discovery, and two motions for summary judgment;
- Retaining expert economists and consultants to analyze and review Defendant and non-party data to assist counsel in their investigation and analysis and to prepare expert reports;
- Maintaining close communication with class representatives throughout the litigation and responding to multiple sets of discovery requests propounded by Defendants, including document requests, interrogatories, and requests for admission;
- Securing settlements with every Defendant group; and
- Building a notice program to inform Class Members of the pending settlements.

Second, this is an intrinsically difficult case due to the scope and length of the conspiracy alleged and the complexity associated with proving the existence of overcharges. Class Counsel reviewed more than 2.7 million predominantly foreign-language documents, which required attorneys with specialized knowledge of antitrust law, of organizing and running a foreign language review, and of managing hundreds of certified translations—including some who had these skills and who could also speak Japanese or Korean. Class Counsel brought to bear hard-learned lessons from *TFT-LCD*, *ODD*, *CRT*, *SRAM*, and other antitrust cases, and the class

[71] *See Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 118 (2d Cir. 2005) ("'Indeed, the history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at trial, or on appeal.'" (quoting *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 475 (S.D.N.Y. 1998)); *see also In re Superior Beverage/Glass Container Consol. Pretrial*, 133 F.R.D. 119, 127 (N.D. Ill. 1990) ("The 'best' case can be lost and the 'worst' case can be won, and juries may find liability but no damages. None of these risks should be underestimated.").

benefited enormously. After reviewing the documents and having dozens translated in the weeks before each deposition, Class Counsel in many instances assigned lawyers with dozens of prior foreign-language depositions in cartel cases to take them. These lawyers brought a degree of skill and experience to the depositions that could be matched by very few other firms.

Moreover, in addition to the substantial challenge of measuring the overcharge as to battery cells, Plaintiffs had to measure the pass-through of the overcharge to the end-consumer of a finished product where the value of the component was of much smaller value relative to the finished good than, for example, CRT tubes or LCD screens in televisions. This Court ultimately denied the class certification motions, but had this work not been done and these costs not incurred, *none* of the settlements (possibly other than the Sony settlement) would have been possible.

Third, Plaintiffs did not have the benefit of a more extensive concurrent criminal investigation, the outcome of which could have been more closely aligned with the conspiracy pleaded in the Complaint.[72] For example, while the plaintiffs in *LCDs* proved a broader and longer conspiracy than the criminal enforcement authorities, nearly all of the civil defendants pleaded guilty to something, and some pleaded guilty to a lengthy and continuous criminal enterprise.[73] By contrast, here, only two Defendants, Sanyo and LG Chem, pleaded guilty to criminal price-fixing. Each of these Defendants admitted to participating in a lithium-ion battery price-fixing conspiracy, but their plea agreements covered a much narrower time period and class of products—April 2007 to September 2008 and only cylindrical batteries used in laptops—than those alleged here.

In light of these significant risks and complex issues, the large common settlement fund achieved in this case demonstrates the high level of skill and of work required by Class Counsel to face down these challenges. This supports finding that the requested fee award is reasonable.[74]

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[72] *See In re TFT-LCD Antitrust Litig.*, 2013 WL 1365900, at *7 (N.D. Cal. Apr. 3, 2013) (recognizing that class counsel's risk is minimized when civil litigation has the benefit of parallel criminal price-fixing charges and guilty pleas).

[73] *Id.*

[74] *See* ECF No. 2322, at 1 (this Court cited the results obtains for direct purchasers in the face of the high risks and complexity of this case, to justify, in part, the 30 percent fee award).

c. Counsel's litigation on a contingency basis supports the fee request.

The Ninth Circuit has held that a fair fee award must include consideration of the contingent nature of the fee.[75] And it is well-established that attorneys who take on the risk of a contingency case should be compensated for the risk they assume.[76]

Here, the contingent nature of Class Counsel's engagement incentivized counsel to both achieve excellent results for the Class and to do so as efficiently as possible. A 30-percent fee award reasonably compensates Class Counsel for the six-and-a-half year financial burden of this risky case, in which Class Counsel has been carrying a total lodestar of $41.46 million, and paying millions of dollars in out-of-pocket expenses for over six years with no guarantee of recovery.[77]

d. The market rate for antitrust class action lawyers with the experience of Class Counsel supports the 30 percent fee request.

The market rate for antitrust class action lawyers with Class Counsel's experience also supports the 30-percent fee request. As Plaintiffs explain in Section III.A, *supra*, courts in antitrust class actions have routinely awarded class counsel fees of 30 percent or more of the common fund, including this Court's 30-percent fee award to counsel for the direct purchasers in this case. A 30-percent award is also below the 33 percent market rate for contingent representation.[78] The

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[75] *See, e.g.*, *Online DVD*, 779 F.3d at 954-55 & n. 14; *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050.

[76] *See In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994).

[77] *See, e.g.*, ECF No. 2322, at 1-2 (this Court awarded DPP Counsel their requested fees based in part on the fact that their fees were "entirely contingent upon success"); *Hopkins v. Stryker Sales Corp.*, 2013 WL 496358, at *3 (N. D. Cal. Feb. 6, 2013) (awarding 30% fee because the "case was conducted on an entirely contingent fee basis against a well-represented Defendant").

[78] *Vizcaino*, 290 F.3d at 1049 (explaining that fees requested were at or below "the standard contingency fee for similar cases," supporting the reasonableness of the request); *see, e.g.*, Lester Brickman, *ABA Regulation of Contingency Fees: Money Talks, Ethics Walks*, 65 Fordham L. Rev. 247, 248 (1996) (noting that "standard contingency fees" are "usually thirty three percent to forty percent of gross recoveries" (emphasis omitted)); F. Patrick Hubbard, *Substantive Due Process Limits on Punitive Damages Awards: "Morals Without Technique"?*, 60 Fla. L. Rev. 349, 383 (2008) (discussing "'the usual 33-40 percent contingent fee'" (quoting *Mathias v. Accor Econ. Lodging, Inc.*, 347 F.3d 672, 677 (7th Cir. 2003))); Herbert M. Kritzer, *The Wages of Risk: The Returns of Contingency Fee Legal Practice*, 47 DePaul L. Rev. 267, 286 (1998) (reporting the results of a survey of Wisconsin lawyers, which found that "[o]f the cases with a [fee calculated as a] fixed percentage [of the recovery], a contingency fee of 33% was by far the most common, accounting for 92% of those cases").

blended billing rate for Class Counsel in this case of $336.82 per hour[79]—which Harvard Law Professor William B. Rubenstein recently showed was below the average blended billing rate of $528.11 per hour for forty approved class action settlements in the Northern District of California in 2016 and 2017—further confirms that the fee request is at, or perhaps below, the market rate.[80]

e. The burdens faced by Class Counsel support the fee request.

The Ninth Circuit instructs district courts to consider the burdens class counsel experienced while litigating the case (e.g., cost, duration, and foregoing other work). This litigation has been pending for 6.5 years. As explained in Section III.E, *infra*, Class Counsel has advanced substantial sums out-of-pocket with only minimal reimbursement to date. Class Counsel, particularly Co-Lead Counsel, also has devoted substantial time to this litigation—more than 101,000 hours, for a lodestar of $41.46 million—and foregone other work while litigating this case.[81]

2. A lodestar cross-check confirms the reasonableness of the requested fees.

As this Court has held, "the lodestar cross-check is meant to 'confirm that a percentage of [the] recovery amount does not award counsel an exorbitant hourly rate.'"[82] Over the course of this hard-fought case, Class Counsel incurred a total lodestar of $41,458,223.50, based on 101,048.2 hours of work.[83] The requested fee award of 30 percent of the common fund, or $34,035,000,[84] therefore represents approximately 82 percent of the total lodestar, or a negative 0.82 multiplier.

A 30-percent fee award is particularly appropriate in this case, where the lodestar cross-

[79] *See* Joint Decl., ¶ 74. "A blended billing rate is captured by simply dividing the total fee sought by the number of hours worked, thus providing the average hourly billing rate for the case across timekeepers ranging from high-end partners to paralegals." Joint Decl., Ex. 2 at 16 n.23.

[80] *See* Joint Decl., Ex. 2 at 16-18 (Professor Rubinstein explaining why the blended hourly rate is a good indicator of the reasonableness of a fee request).

[81] Joint Decl., ¶ 10; *see also Torrisi v. Tuscon Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993) ("This [25 percent] benchmark percentage should be adjusted, or replaced by a lodestar calculation, when special circumstances indicate that the percentage recovery would be either too small or too large in light of the hours devoted to the case or other relevant factors." (internal quotation marks omitted)).

[82] ECF No. 2322, at 2 (quoting *Online DVD*, 779 F.3d at 949 (citation and internal quotation marks omitted)); *see also Vizcaino*, 290 F.3d at 1050 ("the lodestar calculation can be helpful in suggesting a higher percentage when litigation has been protracted").

[83] Joint Decl., ¶ 61.

[84] In connection with this fee motion, Plaintiffs request $29,540,000, which is $34,035,000 minus $4,495,000 the Court awarded in connection with earlier settlements.

check results in a ***negative*** multiplier.[85] A negative multiplier is below the usual range of multipliers surveyed by the Ninth Circuit in *Vizcaino*, which looked at common fund settlements between $50 and $200 million. *Vizcaino* found that 20 of the 24 cases it surveyed had a multiplier between 1.0 and 4.0.[86] Significantly, the settlement recoveries in this case total $113.45 million; nonetheless, Class Counsel requests a fee award that would result in a negative multiplier, even though the EMG Study shows that *multipliers increase as the size of the recovery increases*. The EMG Study also found that the mean lodestar multiplier for recoveries above $75 million was 2.72.[87] This Court noted in its order approving a 30-percent fee award for direct purchasers' counsel that a negative multiplier "obviates concern about any windfall" in the context of a large recovery (or "megafund") because counsel earned an effective hourly rate below the market rate.[88] Other courts have held that a negative multiplier supports the reasonableness of a fee request.[89]

Moreover, the lodestar in this case reflects exceptional efficiency on the part of Class Counsel given the scale of this case. Throughout the litigation, Co-Lead Counsel took meaningful steps to ensure that Class Counsel's work was efficient and limited to reasonable and necessary work.[90] Class Counsel have been mindful of the efficiency guidelines set forth in Exhibit A of this

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[85] The "lodestar" is calculated "by multiplying the number of hours the prevailing party reasonably expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate for the region and for the experience of the lawyer." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011).

[86] *See Vizcaino*, 290 F.3d at 1051 n.6 (9th Cir. 2002).

[87] EMG Study, 92 N.Y.U. L. Rev. at 966.

[88] ECF No. 2322, at 2; *see Bluetooth*, 654 F.3d at 942.

[89] *See, e.g.*, *TFT-LCD (Flat-Panel) Antitrust Litig.*, 2013 WL 149692, at *1 (N.D. Cal. Apr. 3, 2013) (negative multiplier of 0.86 confirmed amount of attorneys' fees requested was fair and reasonable); *Gong-Chun v. Aetna Inc.*, 2012 WL 2872788, at *23 (E.D. Cal. July 12, 2012) (negative multiplier of .79 suggested that fee award was reasonable); *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 853–54 (N.D. Cal. 2010) (negative multiplier of .59 indicated fee award was "reasonable and a fair valuation of the services rendered to the class by class counsel"); *In re Portal Software, Inc. Sec. Litig.*, 2007 WL 4171201, at *16 (N.D. Cal. Nov. 26, 2007) (negative lodestar multiplier of 0.83 or 0.74 "suggests that the requested percentage based fee is fair and reasonable").

[90] Berman Decl. ¶ 17; Zapala Decl., ¶ 15; Glackin Decl., ¶ 2; *see* Joint Decl. ¶ 62 (citing declarations of Supporting Counsel). Class Counsel also audited the time records prior to their submission here and eliminated time entries that did not comply with this Court's order or were otherwise inefficient or duplicative. Class Counsel also did not include in the lodestar fees for any

Court's Modified Pretrial Order No. 1 (May 24, 2013), ECF No. 202. Counsel applied their experience litigating other electronic component cases to this case, resulting in additional efficiencies.[91] As a result, Class Counsel's lodestar is substantially lower than the lodestar reported in *Capacitors* ($82.6 million; DPPs), *CRTs* ($83.8 million; IPPs), and *LCDs* ($148 million; IPPs); or by counsel for the direct purchaser plaintiffs in this case ($72.5 million).[92]

Class Counsel also delegated work to other law firms where appropriate. Of the hours spent on this case, 71.7 percent represent hours by the three co-lead firms.[93] The law firms of Straus & Boies, Kirby McInerney, Cohen Milstein, and Susman Godfrey represent a further 17.1 percent of the total hours. They addressed translations and translation objections, handled high-level foreign-language document analysis and deposition check-interpreting, responded to written discovery of class representatives, defended class representative depositions, and advocated before a neutral with respect to allocation of settlement funds.[94] The bulk of the time spent by other firms involved document review and issues related to their respective client class representatives.[95] Class Counsel also capped document reviewer rates at $450 per hour for foreign-language reviewers and $350 per hour for English-language reviewers.[96] Moreover, as explained in Section III.A.1.d, *supra*, the blended hourly rate for Class Counsel, if they are awarded 30 percent of the common fund, is $336.82 per hour, below the market rate, further confirming the reasonableness of the fee request.

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time expended prior to the appointment of lead counsel, or fees for any time spent in connection with this or the prior fee motion. Joint Decl., ¶ 66.

[91] Joint Decl. ¶ 14.

[92] DPPs' Mot. for Att'ys' Fees & Reimbursement of Expenses at 12, *In re Capacitors Antitrust Litig.*, No. 3:14-cv-03264-JD (Mar. 1, 2019), ECF No. 1458 (DPPs); IPPs' Notice of Mot. & Mot. for Award of Att'ys' Fees, Reimbursement of Litig. Expenses, & Incentive Awards to Class Representatives at 26, *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. C-07-5944 JST (N.D. Cal. Sep. 23, 2015), ECF No. 4071 (IPPs); IPP's Notice of Mot. & Mot. for Att'ys' Fees & Incentive Awards at 5, *In re TFT-LCD Antitrust Litig.*, No. M 07-1827 SI at 5 (N.D. Cal. Sep. 7, 2012), ECF No. 6662; *see* ECF 2322 at 3 (this Court, citing DPPs' "reasonable lodestar").

[93] Joint Decl., ¶ 71.

[94] *Id.*

[95] *Id.*

[96] Joint Decl., ¶ 68.

Lastly, this fee request is supported by detailed time records.[97] In sum, Class Counsel's total fee request for the entire litigation of $34,035,000 ($29,540,000 of which is requested by this motion) amounts to 82 percent of their lodestar and confirms the fee request's reasonableness.

B. Co-Lead Counsel requests authorization to distribute fees among Class Counsel.

Consistent with customary practice, Co-Lead Counsel requests the Court's authorization to distribute the awarded attorneys' fees in a manner that, in the judgment of Co-Lead Counsel, fairly compensates each supporting law firm for its contribution to the prosecution of Plaintiffs' claims. "Federal courts routinely affirm the appropriateness of a single fee award to be allocated among counsel and have recognized that lead counsel are better suited than a trial court to decide the relative contributions of each firm and attorney."[98]

C. Class Counsel requests reimbursement of reasonable out-of-pocket expenses incidental and necessary to the effective representation of the Class.

Plaintiffs request reimbursement of out-of-pocket expenses of $5,891,547.34, which when added to the $860,188.50 already reimbursed by this Court, would bring total expenses reimbursed to $6,751,735.84.[99] Courts reimburse attorneys prosecuting class claims on a contingent basis for "reasonable expenses that would typically be billed to paying clients in non-contingency matters," *i.e.*, costs "incidental and necessary to the effective representation of the Class."[100] Reimbursable litigation expenses include those for document production, experts and consultants, depositions,

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[97] Berman Decl., ¶¶ 11-12; Zapala Decl., ¶¶ 20, 22; Glackin Decl., ¶¶ 26-27; *See* Joint Decl. ¶¶ 63-64 (referencing declarations of Supporting Counsel and exhibits attached thereto).

[98] *Hartless v. Clorox Co.*, 273 F.R.D. 630, 646 (S.D. Cal. 2011), *aff'd in part*, 473 F. App'x 716 (9th Cir. 2012); *see also Morganstein v. Esber*, 768 F. Supp. 725, 728 (C.D. Cal. 1991) (explaining that "inasmuch as class counsel have indicated that they are able amicably to allocate this award amongst themselves, this order does not do so"); *In re Polyurethane Foam Antitrust Litig.*, 168 F. Supp. 3d 985, 1007 (N.D. Ohio 2016); *see, e.g.*, *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 533 n.15 (3d Cir. 2004) (affirming the district court's decision, and declining to "deviate from the accepted practice of allowing counsel to apportion fees amongst themselves"); *Bowling v. Pfizer, Inc.*, 102 F.3d 777 (6th Cir. 1996) (suggesting the Sixth Circuit would adopt this approach to fee distribution, the critical inquiry is whether the fee fairly reflects the work done by all plaintiffs' counsel).

[99] Joint Decl., ¶ 77.

[100] *In re Omnivision Techs.*, 559 F. Supp. 2d at 1048; *see also Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759 (9th Cir. 1977) (Under the common fund doctrine, plaintiffs' counsel should receive reimbursement of all reasonable out-of-pocket expenses and costs in prosecution of the claims and in obtaining a settlement).

translation services, travel, mail, and postage costs.[101]

The total expenses for which Plaintiffs seek reimbursement are broken down by category in the supporting declarations and exhibits.[102] For the bulk of expenses in this litigation, Class Counsel created a litigation fund, funded by them. Plaintiffs submit invoices that support all payments from the litigation fund—accounting for $6,236,203.90, or 92.3 percent of the $6,751,735.84 in total costs incurred to date in this action.[103] Plaintiffs provide further detail below regarding the three largest cost categories, which account for approximately 76.9 percent of their total costs—experts, online document databases, and translations and interpreters.[104]

Experts and Consultants. Plaintiffs invested $4,857,677.85 in economic experts.[105] They supported Plaintiffs' class certification motions and opposition to summary judgment with lengthy reports and analyses. Plaintiffs' experts also were deposed at length.[106] Drs. Leamer and Abrantes-Metz performed additional analyses with respect to the merits phase of the case. That work supported briefing relating to Panasonic's motion for summary judgment and Plaintiffs' second renewed motion for class certification.[107] All expert costs were paid by Class Counsel regardless of the case's outcome. No additional money was spent by Class Counsel for expert work in support of the second renewed motion for class certification beyond that needed to oppose Panasonic's

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[101] *See In re Media Vision Tech. Secs. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1995) (Court fees, experts/consultants, service of process, court reporters, transcripts, deposition costs, computer research, photocopies, postage, telephone/fax); *Thornberry v. Delta Air Lines*, 676 F.2d 1240, 1244 (9th Cir. 1982), *judgment vacated and remanded on other grounds*, 461 U.S. 952 (1983) (travel, meals, and lodging).

[102] *See* Berman Decl., Ex. 5; Glackin Decl., Ex. 6; Zapala Decl., Ex. F; Joint Decl., Exs. 4, 15 (summarizing expenses paid from the Litigation Fund and directly by Class Counsel).

[103] For expenses outside of the litigation fund (including travel expenses, document copying, legal research, process servers), Plaintiffs can provide invoices upon request by the Court.

[104] Joint Decl., ¶¶ 80-82. To the extent that some of the invoices request more money than Class Counsel paid, this difference reflects the fact that Class Counsel negotiated discounts on some of the expenses in this case. Notably, DPPs did not provide invoices for ***any*** of their awarded expenses in connection with their motion for attorneys' fees, expenses, and service awards.

[105] Joint Decl., ¶ 80.

[106] Joint Decl., ¶ 85; *see also* Section II.C.3, *supra* (describing experts' work in additional detail).

[107] Expert Report of Edward E. Leamer, Ph.D. (May 25, 2018), ECF No. 2379-8; Expert Reply Report of Edward E. Leamer, Ph.D. (June 29, 2018), ECF No. 2379-10; Expert Report of Rosa M. Abrantes-Metz, Ph.D. (May 25, 2018), ECF No. 2379-10; Expert Rebuttal Report of Rosa M. Abrantes-Metz, Ph.D. (June 29, 2018), ECF No. 2379-12.

summary judgment motion.[108] The cost of expert work here is less than that awarded in other antitrust class actions in this District: *CRTs* ($5.767 million, IPPs); *LCDs* ($6.192 million, IPPs).[109]

Online Document Database Services. Plaintiffs invested a total of $951,168.46 in online document database services.[110] The primary online database had to be capable of hosting the more than 2.7 million documents produced by Defendants (totaling more than eight million pages), as well as voluminous electronic transactional data. Direct purchasers requested, and this Court awarded, a similar amount ($738,527) for document hosting services; and the direct purchaser case ended a year earlier than this one.[111]

Translations and Interpreters. Plaintiffs spent $239,037.66 on document translation and interpreter services.[112] Those expenses were necessitated by the large number of foreign-language documents and witnesses in this case. For example, Plaintiffs obtained translations of more than 1,500 documents written in Japanese, Korean, and Chinese.[113] And in order to economize, Plaintiffs shared translation costs with direct purchasers. This Court awarded direct purchasers reimbursement a similar amount ($209,942.91) for expenses in this category.[114]

D. Plaintiffs request that they be authorized to pay up to $10,000 from the settlement fund for the future expected cost to distribute the settlement funds.

This Court has approved the Settlement Notice Administrator to expend funds from the escrow accounts to pay taxes, tax expenses, notice, and administration costs as set forth in the Settlement Agreements. The Administrator has estimated that there will be a need for up to an additional $10,000 to pay for future costs of distribution—the issuance of hard copy checks.[115] Plaintiffs request that the Court authorize Plaintiffs to pay up to $10,000 for these costs.

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[108] Joint Decl., ¶ 37.

[109] Joint Decl., ¶ 80.

[110] Joint Decl., ¶ 81.

[111] *Id*.

[112] Joint Decl., ¶ 82.

[113] Joint Decl., ¶ 30.

[114] Joint Decl., ¶ 82. In each case where Plaintiffs compared their requested expenses to a similar category in a different case, the expenses awarded were not included in, i.e., were awarded separately from, the attorney fee awards in these cases. *Id*.

[115] Joint Decl. ¶ 92 (citing ECF No. 2475 at ¶ 9).

E. Plaintiffs request that class representatives be awarded reasonable service awards to compensate them for their critical dedication to this case.

Plaintiffs request service awards for the class representatives in the amount of $260,000 ($10,000 for each of the twenty-one individual class representatives, and $25,000 for each of the two governmental class representatives).[116] "[Service] *awards* are fairly typical in class action cases."[117] In the Ninth Circuit, service awards "compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general."[118] Courts have discretion to approve service awards based on the amount of time and effort spent, the duration of the litigation, and the personal benefit (or lack thereof) as a result of the litigation.[119]

Even more than most cases, this litigation required a substantial investment of time by the class representatives. Defendants spent much of the first three years of litigation aggressively attacking the individual representatives. This attack included lengthy and contentious class representative depositions, extended disputes about "metadata" related to receipts and photographs of their lithium-ion battery purchases, and voluminous written discovery.[120] Defendants deposed nearly every class representative, which amounted to thirty-two depositions, lasting a total of over 144 hours on the record (approximately 4.5 hours per deposition on average). Defendants also propounded 22 interrogatories, 37 document requests, and four requests for admission to each of the class representatives, despite the tiny amount of relevant information in their possession: what type of lithium-ion battery product they purchased and when.[121]

Finally, each class representative took his or her responsibilities seriously. In addition to bringing the case, these class representatives continued to prosecute the case following adverse decisions, including this Court's second denial of class certification. They also declined other

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[116] *See* twenty-three class representative declarations organized in the compendium.

[117] *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (emphasis in original).

[118] *Id.* at 958-59.

[119] *See Van Vraken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995).

[120] Joint Decl., ¶ 95.

[121] Joint Decl., ¶ 41.

settlement offers that would have been less advantageous to the class as a whole or that otherwise would have enriched them personally to the detriment of the class.[122] In consultation with counsel, each class representative reviewed and approved of the settlements presented to the Court. In light of the total value of settlement proceeds and the class representatives' extraordinary service and perseverance in this case, including their willingness to be deposed at length and forego a settlement that would have extinguished recovery for the Class, such awards are reasonable.

F. The Class received appropriate notice of Class Counsel's fee application.

Class Counsel's notice to the Settlement Class through the class notice and this motion for fees, expenses, and service awards is sufficient to provide Class Members an opportunity to review and evaluate this fee request prior to the deadline for objections.[123] The class notice advised Settlement Class Members that Class Counsel would seek attorneys' fees "in the amount of $34,035,000 (inclusive of $4,495,000 already awarded by the Court) plus interest," costs and expenses "not to exceed $6,850,000 (inclusive of the $860,188.50 already awarded by the Court)," and service awards "in the amount of $10,000 for each individual Class representative and $25,000 for each governmental entity Class representative."[124] As required by the Court and described in the notice, this motion is being made available at the settlement website thirty-five days before the deadline for requests for exclusion or objections to the settlement.[125]

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request an award of $29,540,000 (net of the prior award) in attorneys' fees, reimbursement of expenses incurred of $5,891,547.34 (net of the prior award), authorization to pay up to $10,000 from the common fund toward future costs to distribute the settlement funds, and $260,000 in service awards to the class representatives.

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[122] Joint Decl., ¶ 96.

[123] *See In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 995 (9th Cir. 2010); *See* Procedural Guidance for Class Action Settlements, U.S. District Court for the Northern District of California, ¶¶ 6, 9, http://www.cand.uscourts.gov/ClassActionSettlementGuidance (last visited Apr. 23, 2019).

[124] ECF No. 2475-9 at 6-7.

[125] *See* ECF No. 2475-9 at 8; *see also* Procedural Guidance ¶ 9.

DATED: April 23, 2019

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