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Interim Co-Lead Counsel for Indirect Purchaser Plaintiffs

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 Document Relates to:

**ALL INDIRECT PURCHASER
ACTIONS**

**DECLARATION OF STEVEN N. WILLIAMS
IN SUPPORT OF INDIRECT PURCHASER
PLAINTIFFS' MOTION FOR
REIMBURESMENT OF CERTAIN
EXPENSES**

1 I, Steven N. Williams, declare as follows:

2 1. I am a partner at the law firm of Cotchett, Pitre & McCarthy, LLP (“CPM”), one
3 of the three law firms appointed by this Court to serve as Interim Co-Lead Class Counsel for
4 the Indirect Purchaser Plaintiffs (“IPPs”) in this litigation. I make this declaration based on my
5 personal knowledge. I submit this declaration pursuant to 28 U.S.C. § 1746 in support of IPPs’
6 Motion for Reimbursement of Certain Expenses (“Motion”).

7 2. This Court appointed CPM, along with Hagens Berman Sobol Shapiro LLP, and
8 Loeff Cabraser Heimann & Bernstein, LLP as Interim Co-Lead Class Counsel (“Co-Lead
9 Counsel”) for the IPPs on May 17, 2013. ECF No. 194. Jennie Anderson of Andrus Anderson
10 LLP was appointed Liaison Counsel for the IPPs. *Id.* Co-Lead Counsel have spent a great deal
11 of time and resources on this case since its inception and have performed and overseen the
12 work performed in this litigation on behalf of the Class.

13 3. The purpose of this declaration is to summarize (a) the factual and procedural
14 history of the litigation, (b) the work performed by Co-Lead Counsel and Supporting Counsel¹
15 (collectively, “Class Counsel”), and (c) the steps Class Counsel employed to ensure efficient
16 management of this litigation.

17 **INTRODUCTION AND SUMMARY OF WORK PERFORMED**

18 4. During the course of this hard-fought, three-year litigation, Co-Lead Counsel
19 supervised and directed the work performed by Supporting Counsel to ensure that the work
20 they performed was accomplished effectively and efficiently.

21 5. As this Court knows from the over 1,440 docket entries, this case has been
22 vigorously contested by some of the most sophisticated defense counsel in the country.

23 6. Class Counsel performed the following services:

- 24 • Conducted an initial case investigation to develop the theories of liability and
25 the facts that formed the basis on the allegations against Defendants. This
26 research included a review of publicly available information regarding the

27 _____
28 ¹ “Supporting Counsel” refers to a number of attorneys and law firms that assisted Co-
Lead Class Counsel in the prosecution of this litigation.

1 lithium ion battery (“LIB”) industry, and consultation with industry experts
2 and economists;

- 3 • Drafted four comprehensive consolidated amended complaints detailing
4 Defendants’ alleged violations of the antitrust laws (ECF Nos. 221, 419, 519,
5 and 1168);
- 6 • Conducted exhaustive legal research regarding the IPPs’ claims and the
7 defenses, particularly with respect to Defendants’ multiple rounds of motions
8 to dismiss, and Toshiba’s motion for summary judgment based its alleged
9 withdrawal from the conspiracy. IPPs largely prevailed on each motion (ECF
10 Nos. 361, 512, and 1160);
- 11 • Propounded multiple sets of discovery that—after extensive meet and confers
12 and negotiations with Defendants—resulted in the identification of 273
13 document custodians and the production of over eight million documents, and
14 voluminous electronic transactional data. Many of these documents were in
15 Japanese and Korean and had to be translated.
- 16 • Organized and oversaw a team of lawyers that reviewed, searched and
17 extensively coded and analyzed these foreign language documents;
- 18 • Engaged in extensive non-party discovery, including obtaining access to and
19 reviewing 71 datasets concerning the non-parties purchases and sales of LIBs
20 and packs and products containing LIBs;
- 21 • Retained expert economists and consultants to analyze and review Defendant
22 and third party data to assist counsel in their investigation and analysis and to
23 prepare expert reports in support of IPPs’ class certification motion. This
24 involved many hours of discussions, research, and analysis.
- 25 • Maintained close communication with the class representatives throughout
26 the litigation, and answered six sets of discovery propounded by Defendants,
27 including Requests for Production of Documents, Interrogatories and
28 Requests for Admission, as well as answering a contention interrogatory

1 concerning Defendants' concealment of their conspiratorial activities;

- 2 • Prepared for and took the depositions of 21 fact and 30(b)(6) witnesses of
3 Defendants and 3 non-party witnesses. Prepared for, took, and defended the
4 depositions of 5 experts in relation to IPPs' class certification motion.
- 5 • Prepared for and defended 32 depositions that Defendants took of IPPs' class
6 representatives. This involved extensive consultation with each class
7 representative and their individual counsel and electronic document retrieval
8 for document production.
- 9 • Engaged and consulted extensively with experts and economists on issues
10 pertaining to electronic discovery, liability, summary judgment, class
11 certification and damages throughout the course of the litigation;
- 12 • Engaged in extensive settlement discussions with the Sony Defendants; and
- 13 • Documented the settlements with the Sony Defendants, briefed motions for
14 preliminary approval, and developed a robust notice program to inform the
15 class members of the pending settlements.

16 7. Throughout this three-year litigation, IPPs have faced the following risks:

- 17 • The risk of litigating against some of the largest and most sophisticated law
18 firms in the world with seemingly limitless resources;
- 19 • The risk of not being reimbursed for out of pocket litigation costs, such as
20 those involved with translating documents and retaining experts;
- 21 • The risk that the consolidated complaints would not withstand the extensive
22 individual and joint motions to dismiss;
- 23 • The risk that Toshiba would prevail on its Motion for Summary Judgment;
- 24 • The risk of not achieving class certification;
- 25 • The risk that even if Plaintiffs were able to obtain a favorable settlement or
26 judgment, that the financial condition or bankruptcy of a Defendant would
27 materially change or lessen the amount of the settlement;
- 28

- 1 • The risk that Defendants would, and in fact have, vehemently contested their
2 participation in the alleged conspiracy;
- 3 • The risk of trying an antitrust case, which is considered “notoriously
4 complex” (*see Weseley v. Spear, Leeds & Kellogg*, 711 F. Supp. 713, 719
5 (E.D.N.Y. 1989); and
- 6 • The changing landscape of the law with respect to civil antitrust actions,
7 proving damages and class actions generally.

8 8. During the course of this litigation, IPPs have propounded multiple sets of
9 discovery, conducted numerous, lengthy meet and confers, and engaged in multiple rounds of
10 motion practice in front of Magistrate Judge Ryu on discovery issues. *See* ECF Nos. 805, 822,
11 836, 938, 1143, and 1177. The net result of these efforts is that Defendants ultimately
12 identified 273 document custodians, and produced over eight million pages of documents as
13 well as voluminous electronic transactional data. Plaintiffs contracted with Catalyst Repository
14 Systems Inc., Everlaw Inc., and Omega Discovery Solutions, LLC to retrieve, host, and review
15 the documents produced by Defendants and third parties in discovery.

16 9. Throughout this litigation, Class Counsel has been in close contact with each of
17 the proposed class representatives, and have collected and produced documents responsive to
18 Defendants requests. IPPs engaged iDiscovery Solutions, Inc. (“IDS”), an e-Discovery vendor,
19 to respond to a motion to compel filed by Defendants, which alleged that IPPs had not
20 adequately preserved, collected, or produced the class representatives’ metadata. In IPPs’
21 view, the issues Defendants raised were overstated. However, in an abundance of caution,
22 Class Counsel and IDS re-collected the class representatives’ documents, and completed a
23 revised document production for each class representative. Defendants agreed to withdraw the
24 motion based on this production. *See* ECF No. 1220.

25 10. To date, IPPs have incurred a total of \$429,604.12 for these document retrieval,
26 hosting, and review services from these providers. *See Exhibit 1.*

27 11. Many of the documents Defendants produced were written in Japanese and
28 Korean and, under the translation protocol that governs the case, the parties had to obtain

1 certified translations of the documents before they could be entered as exhibits at depositions or
2 cited in briefs. *See* ECF No. 665 at 1. As shown in the attached cost summary (**Exhibit 1**),
3 IPPs incurred a total of \$157,362.92 for certified translations of nearly two thousand
4 documents. IPPs have used hundreds of certified translations at depositions and in the briefing
5 in this case.

6 12. On January 22, 2016, IPPs filed their motion for class certification. ECF No.
7 1036. IPPs filed the expert reports of economists Dr. Edward Leamer and Dr. Rosa Abrantes-
8 Metz in support of this motion. ECF Nos. 1036-1 and 1036-2. Drs. Leamer and Abrantes-
9 Metz have been working on this case since the Court appointed of Co-Lead Counsel, and have
10 conducted a significant amount of work analyzing the impact of Defendants' conspiracy and
11 the damages to the IPP class.

12 13. Dr. Leamer relied on work performed by economic consulting firms EconOne
13 Research, LLC, which analyzed Defendants' transactional data. It total, EconOne analyzed
14 data from over 71 third parties, and from each Defendant. This analysis involved a systematic
15 review of over 381 gigabytes of data as well as conducting detailed regressions and sensitivity
16 analyses.

17 14. Dr. Leamer and Dr. Abrantes-Metz were deposed for a collective fourteen hours.

18 15. Defendants filed their opposition to class certification on May 24, 2016. ECF
19 No. 1283. As part of that filing, Defendants submitted two *Daubert* motions and the expert
20 reports of Margaret Guerin-Calvert, Dr. Quinn Horn, and Daniel Moe to counter the opinions
21 offered by Dr. Leamer and Dr. Abrantes-Metz. ECF Nos. 1280-3 and 1280-5. On August 23,
22 2016, IPPs filed their reply in support of their class certification motion. ECF No. 1402-2.
23 IPPs submitted reply reports by Dr. Leamer and Dr. Abrantes-Metz that provided specific
24 responses to criticisms of their work made by Defendants' experts. *Id.*

25 16. Each of the four expert reports filed by the IPPs was based on extensive
26 economic analyses of Defendants' documents, transactional data and opposing expert reports,
27 and took many hours to complete.

EXHIBIT 1

In re Lithium Ion Batteries Antitrust Litigation

Litigation Costs from Litigation Fund for Document Retrieval/Hosting/Review Platforms,
Experts/Consultants, and Document Translations

Inception through September 8, 2016

DESCRIPTION	AMOUNT
Document Retrieval/Hosting/Review Platforms	\$429,604.12
Experts/Consultants	\$3,116,338.70
Document Translations	\$157,362.92
TOTAL COSTS INCURRED FOR THESE EXPENSES	\$3,703,305.74