

1 Steven N. Williams (SBN 175489)
2 **COTCHETT, PITRE & MCCARTHY, LLP**
3 840 Malcolm Road
4 Burlingame, CA 94010
5 Telephone: (650) 697-6000
6 Facsimile: (650) 697-0577
7 swilliams@cpmlegal.com

8 Steve W. Berman (*Pro Hac Vice*)
9 **HAGENS BERMAN SOBOL SHAPIRO LLP**
10 715 Hearst Avenue, Suite 202
11 Berkley, CA 94710
12 Tel: 510-725-3000
13 Fax: 510-725-3001
14 sberman@hbsslaw.com

15 Elizabeth J. Cabraser (SBN 83151)
16 **LIEFF CABRASER HEIMANN & BERNSTEIN LLP**
17 275 Battery Street, 29th Floor
18 San Francisco, CA 94111-3339
19 Tel: 415-956-1000
20 Fax: 415-956-1008
21 ecabraser@lchb.com

22 *Interim Co-Lead Counsel for Indirect Purchaser Plaintiffs*

23 **UNITED STATES DISTRICT COURT**
24 **NORTHERN DISTRICT OF CALIFORNIA**
25 **OAKLAND DIVISION**

26 **IN RE: LITHIUM ION BATTERIES**
27 **ANTITRUST LITIGATION**

Case No. 13-MD-02420 YGR (DMR)

MDL NO. 2420

28 **This Document Relates to:**
ALL INDIRECT PURCHASER ACTIONS

REPLY IN SUPPORT OF INDIRECT
PURCHASER PLAINTIFFS' MOTION
FOR REIMBURSEMENT OF CERTAIN
EXPENSES

DEFINITIONS

1		
2	A.B. Data	A.B. Data, Inc.
3	DPPs	Direct Purchaser Plaintiffs
4	ESI Protocol	Stipulation and Order Regarding Production of Electronically Stored Information and Hard Copy Documents (ECF No. 489)
5		
6	Ex. or Exhibit	Unless otherwise noted, this refers to exhibits to the Declaration of Steven N. Williams in Support of IPPs' Motion for Reimbursement of Certain Expenses
7		
8	FRCP	Federal Rules of Civil Procedure
9	IDS	iDiscovery Solutions, Inc.
10	IPPs	Indirect Purchaser Plaintiffs
11	IPPs' Response to Objections	IPPs' Omnibus Response to Objections to Sony Settlement (filed herewith)
12	IPPs' Motion for Reimbursement or "Motion"	IPPs' Motion for Reimbursement of Certain Expenses (ECF No. 1446)
13	Interim Co-Lead Counsel	Cotchett, Pitre & McCarthy, LLP, Hagens Berman Sobol Shapiro LLP, and Lief Cabraser Heimann & Bernstein, LLP
14		
15	LIBs	Lithium Ion Batteries
16	Preliminary Approval Order	The Court's Order Granting Settlement Class Certification And Preliminary Approval of Class Action Settlements With Sony Defendants (ECF No. 1292)
17		
18	Schachter Declaration	Declaration of Eric Schachter re Dissemination of the Sony Settlement Notice and Requests for Exclusion
19		
20	Sony	Sony Corporation, Sony Energy Devices Corporation, and Sony Electronics, Inc.
21	Sony Settlement or Settlement	IPPs' Proposed Settlement with Sony
22	Settlement Classes	The classes certified for settlement purposes in this Court's order granting preliminary approval (ECF No. 1292 at ¶4)
23		
24	Williams Declaration	Declaration of Steven N. Williams in Support of IPPs' Motion for Reimbursement of Certain Expenses (ECF No. 1441-1)
25		
26		
27		
28		

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	Page
I. INTRODUCTION.....	1
II. ARGUMENT	2
A. IPPs Provided Proper Documentation for Expense Reimbursement	2
B. The Costs Incurred for Providing Notice to the Settlement Classes Were Reasonable and Were Previously Disclosed	4
C. Mr. Moriellis’ Objections Are Meritless	4
1. IPPs’ Should be Reimbursed for Costs Incurred in Furtherance of the Litigation as a Whole Even Though Only Sony Has Settled So Far.....	5
2. IPPs Should be Reimbursed for the Cost of IDS	6
III. CONCLUSION	6

TABLE OF AUTHORITIES

Page(s)

Cases

1

2

3

4

5 *In re Animation Workers Antitrust Litig.*,
123 F. Supp. 3d 1175 (N.D. Cal. 2015) 5

6 *In re Nutella Mktg. & Sales Practices Litig.*,
2012 U.S. Dist. LEXIS 172006 (D.N.J. 2012)..... 3

7

8 *In re Polyurethane Foam Antitrust Litigation*,
2015 U.S. Dist. LEXIS 172911 (N.D. Oh. Dec. 30, 2015) 3

9 *In re Polyurethane Foam Antitrust Litigation*,
2016 U.S. Dist. LEXIS 49592 (N.D. Oh. Apr. 13, 2016) 3

10

11 *Ortiz v. Firebrand*,
527 U.S. 815 (1999) 5

12 *Shane Group, Inc. v Blue Cross Blue Shield of Mich.*,
2015 U.S. Dist. LEXIS 41968 (E.D. Mi. March 31, 2015)..... 3

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 **I. INTRODUCTION**

2 On September 8, 2016, IPPs filed their Motion for Reimbursement of Certain Expenses
3 (“Motion”). In that motion, IPPs requested reimbursement for out of pocket expenses in the
4 amount of \$3,703,305.74 from the Sony Settlement fund. ECF No. 1446 at 1. IPPs explained in
5 the Motion that these costs were incurred for the following services: (1) consultants and experts
6 necessary to advance the interests of the Settlement Classes; (2) document retrieval, hosting, and
7 review platforms, and (3) translations of foreign language documents. *Id.* Each of these costs was
8 necessary for the advancement of this litigation, and was incurred in the best interests of the
9 Settlement Classes. *Id.* The Motion was supported by the Declaration of Steven N. Williams,
10 which listed these expenses and described why incurring them was necessary for the litigation.
11 *See* ECF No. 1444-1 at ¶¶4-20 and Ex. 1.

12 Three individuals filed objections that made arguments relating to this Motion. *See* ECF
13 Nos. 1445, 1483 and 1488.

14 On September 14, 2016, Christopher Andrews, appearing *pro se*, filed an objection, which
15 stated that “[t]he court should delete” this request, because it was submitted “without proper
16 documentation.” ECF No. 1445 at 5. He cites no case law or any other authority.

17 Mr. Andrews also argues that the “cost of the administrator” should have been included in
18 Plaintiffs’ Motion. *Id.* This is not a valid objection because this motion is not seeking
19 reimbursement of those costs. Rather, the Court’s order granting preliminary approval permitted
20 the use of those funds, as provided for in the settlement agreement, for the purpose of providing
21 notice of the settlement to the Class. IPPs anticipated that the notice program would cost no more
22 than \$750,000.00, and this amount is set forth in the Settlement Agreement, which is available on
23 the Settlement website, and which Mr. Andrews has access to. *See* Settlement at A.1(v);
24 Schachter Decl. ¶6. The terms of the Settlement Agreement provide that these funds “may be paid
25 from the Gross Settlement Fund as they become due.” *Id.* at D.13. Furthermore, the actual cost of
26 this notice was \$691,799.97, which is over \$50,000 less than what was anticipated. Schachter
27 Decl. at ¶12. The selection of the notice administrator was done through competitive bidding by
28

1 multiple qualified service providers, and A.B. Data’s proposal was deemed to be the most suitable
 2 notice program at the most competitive price.¹

3 Sam Morielli, an attorney representing himself, and Patrick Sweeny, who is appearing *pro*
 4 *se*, also filed objections raising issues related to IPPs’ Motion. Both of these objections were filed
 5 after the Court imposed deadline. *See* ECF Nos. 1483 and 1486.² These objections, like Mr.
 6 Andrews’, state that IPPs’ Motion should be denied because there are “no receipts.” ECF Nos.
 7 1486 at ¶8 and 1483 at 13. Neither objector cites any case law. Their objections fail for the same
 8 reason as Mr. Andrews’ objections. Mr. Miorelli made two additional arguments, which are all
 9 addressed further below.

10 Each of these objections is meritless and unsupported by legal authority. The objections
 11 should be overruled and IPPs’ Motion should be granted.

12 **II. ARGUMENT**

13 **A. IPPs Provided Proper Documentation for Expense Reimbursement.**

14 Mr. Andrews asserts, incorrectly, that IPPs’ request for reimbursement of certain expenses
 15 from the Sony Settlement fund should be denied because it does not contain “[h]ard evidentiary
 16 proof.” ECF No. 1455 at 5. Mr. Sweeny and Mr. Morielli make the same argument. ECF No.
 17 1486 at ¶8; ECF No. 1483 at 13. Notably, Mr. Andrews does not contest that the costs for which
 18 IPPs seek reimbursement—expert costs, translation costs, and document retrieval, hosting, review
 19 costs—were necessary for prosecution of this lawsuit, and incurred in the best interests of the
 20 settlement classes. He also ignores the fact that IPPs’ request for reimbursement was supported by
 21 _____

22
 23 ¹ The objectors make other arguments about the notice program which will be addressed in IPPs
 24 forthcoming Omnibus Response to Objections to the Sony Settlement to be filed on October 4,
 2016. The objectors also make arguments relating to attorneys’ fees but IPPs are not currently
 seeking fees. *See* ECF No. 1446 at 1.

25 ² IPPs submitted their request for reimbursement of certain costs from the Sony Settlement on
 26 September 8, 2016, which was fourteen days before the September 22, 2106 objection deadline set
 by the Court (ECF No. 1292 at ¶12). This gave each objector sufficient time to object to this
 27 request, and Mr. Andrews was the only objector to do so.
 28

1 an attorney declaration signed under oath attesting to the costs incurred. Mr. Andrews asserts,
2 without citing any authority, that IPPs should have submitted the “invoices” instead. ECF No.
3 1455 at 5. There is no legal requirement that IPPs do so.

4 Mr. Andrews’ assertion to the contrary is premised on his repeated, and unsubstantiated
5 concern that the Court needs to “ensure that this is not some scheme like the defendant engaged in
6 against the class.” *Id.* Mr. Andrews has been repeatedly admonished for making such
7 unsubstantiated insinuations and engaging in unwarranted personal attacks. For example, Mr.
8 Andrews was publicly reprimanded for making a remarkably similar statement in *In re*
9 *Polyurethane Foam Antitrust Litigation*, No. 1:10 MD 2196, 2016 U.S. Dist. LEXIS 49592, at
10 *10-11 (N.D. Oh. Apr. 13, 2016) (“*Poly Foam*”). In his order requiring Mr. Andrews to post an
11 appeal bond, Judge Zouhary stated that among the professional objectors in *Poly Foam*, “Andrews
12 is the worst,” noting that “Andrews’ objections included scurrilous, unfounded accusations.” *Id.*
13 Judge Zouhary further explained that Andrews’ appeal stated that “[t]his looks like a quid pro quo
14 all around.” *Id.* Judge Zouhary held that Andrews’ accusation was made “without a shred of
15 evidence,” and “certainly qualifies as vexatious conduct.” *Id.*

16 In an earlier opinion denying Andrew’s motion to disqualify plaintiffs’ counsel in *Poly*
17 *Foam*, Judge Zouhary noted that Andrews has a “history as a serial, extortionate objector,” and
18 that his “unrestrained language and exorbitant claims reveal his motion is the type that appellate
19 courts warn against: a ‘technique of harassment.’” *In re Polyurethane Foam Antitrust Litigation*,
20 No. 1:10 MD 2196, 2015 U.S. Dist. LEXIS 172911 at *10-12 (N.D. Oh. Dec. 30, 2015) (emphasis
21 added). Other district court Judges have made similar observations. *See In re Nutella Mktg. &*
22 *Sales Practices Litig.*, Case No. 3:11-CV-01086, 2012 U.S. Dist. LEXIS 172006 (D.N.J. 2012)
23 (ECF No. 111, July 9, 2012 Tr. at 128–29); and *Shane Group, Inc. v Blue Cross Blue Shield of*
24 *Mich.*, No. 10-CV-14360, 2015 U.S. Dist. LEXIS 41968, *58 (E.D. Mi. March 31, 2015).

25 There is no legal basis for his objection, and it should be overruled.

26
27 ///

1 **B. The Costs Incurred for Providing Notice to the Settlement Classes Were**
2 **Reasonable and Were Previously Disclosed.**

3 Mr. Andrews argues that the “cost of the administrator” should have been included in
4 Plaintiffs’ motion. ECF No. 1455 at 5. However, this objection is misplaced, because IPPs’
5 Motion is not seeking reimbursement for those costs, and an expenditure of those costs from the
6 Gross Settlement Fund was already authorized by Court’s order granting preliminary approval of
7 the Settlement and directing that notice be provided to the Class. ECF No. 1292 at ¶ 9. If Mr.
8 Andrews is referring to the costs of claims administration, the objection is just as misplaced as no
9 such request has been made to appoint or pay for a claims administrator.

10 Moreover, the Settlement Agreement addresses Mr. Andrews’ concern because it states as
11 follows:

12 “Notice and Administrative Costs” means the reasonable sum of money not in
13 excess of seven-hundred fifty thousand U.S. Dollars (\$750,000.00) to be
14 paid out of the Gross Settlement Fund to pay for notice to the Classes and
 related administrative costs.

15 Settlement at A.1(v). The Settlement also states that these funds “may be paid from the
16 Gross Settlement Fund as they become due.” *Id.* at D.13. The Settlement is available on
17 the Settlement website, which Mr. Andrews has access to. Schachter Decl. ¶6.

18 The selection of the notice program administrator was done through competitive bidding
19 by qualified service providers, and A.B. Data’s proposal was deemed to be the most suitable
20 notice program at the most competitive price. Based upon their experiences in other class action
21 cases and the competitive bidding process used here, Interim Co-Lead Counsel believe this sum to
22 be reasonable in relation to the value of the Settlement.

23 **C. Mr. Moriellis’ Objections Are Meritless.**

24 Mr. Morielli makes two additional arguments against IPPs’ motion, and cites no relevant
25 case law to support these arguments. These are each equally baseless.

26
27 ///

1 **1. IPPs’ Should be Reimbursed for Costs Incurred in Furtherance of the**
2 **Litigation as a Whole Even Though Only Sony Has Settled So Far.**

3 Mr. Morelli argues that “the class should not be forced to pay in full for costs applicable to
4 all MDL Defendants just because defendant Sony resolved part of the case first.” ECF No. 1483
5 at 11. Mr. Morelli ignores the fact that this is a conspiracy case in which the Defendants are
6 jointly and severally liable. *See In re Animation Workers Antitrust Litig.*, 123 F. Supp. 3d 1175,
7 1207 (N.D. Cal. 2015). The costs associated with prosecuting this case cannot be allocated on a
8 Defendant-by-Defendant basis, as Mr. Morelli requests. Moreover, the plan of distribution
9 proposed by IPPs guarantees a *pro rata* distribution to all class members regardless of what state
10 they reside in or what Defendant manufactured the LIB in their qualifying purchase.

11 Mr. Morelli also makes the convoluted argument that because the class identified in the
12 FCAC “differs significantly” than the settlement classes, the reimbursement of expenses creates an
13 “interclass conflict,” because it requires the Settlement Classes to pay for costs that are not
14 incurred for their benefit. *Id.* This argument does not make sense in light of the fact that the
15 Settlement Classes include all LIBs, not just cylindrical LIBs, and are therefore broader than the
16 litigated class identified in the FCAC.

17 Mr. Morelli argues in passing that an individual could be a member of two state damage
18 classes, but that it is “undetermined whether that will eventually affect Mr. Morelli’s distribution
19 of the common fund.” *Id.* at 12. This is incorrect. IPPs have proposed a *pro rata* distribution that
20 guarantees that all class members are treated in the same manner. ECF No. 1209 at 9. Mr.
21 Morelli cites *Ortiz v. Firebrand*, 527 U.S. 815, 856 (1999), to support his argument, but this case
22 holds only that subclasses consisting of “holders of present and future claims” should have
23 separate representation, and does not apply to cases such as this one where consumers allege the
24 same injuries but merely reside in different states. *Ortiz* is not applicable to cases such as this one
25 where the Court has certified a nationwide settlement class.

26 Finally, Mr. Morelli makes the related arguments that “the Court should further not allow
27 litigation expenses incurred after the date of the Settlement Agreement to be taxed against the
28 Class Members.” *Id.* This argument puts the cart before the horse because the Settlement does

1 not take effect until the Court grants final approval, so all of the costs for which IPPs currently
2 seek reimbursement were, by definition, incurred prior to the Settlement.

3 **2. IPPs Should be Reimbursed for the Cost of IDS.**

4 As explained in IPPs Motion, Interim Co-Lead Counsel enlisted the assistance of IDS to
5 retrieve and host documents produced by the class representatives. Williams Decl. at ¶9. Mr.
6 Morelli asserts, without any basis, that because Defendants “involved the Court in this issue” by
7 filing a motion before Magistrate Ryu, that this necessarily means Interim Co-Lead Counsel were
8 “negligent” in their document collection efforts. Ex. 1483 at 12.

9 This is a false accusation. As Interim Co-Lead Counsel argued in their portion of the joint
10 letter brief Mr. Morielli cites, they were not obligated to produce the metadata Defendants were
11 requesting, because the documents at issue were initially collected prior to the entry of the ESI
12 Protocol. However, in an abundance of caution, Interim Co-Lead Counsel authorized IDS to
13 collect this information. ECF No. 1169 at 3-4. This was beneficial to the Settlement Classes
14 because Defendants dropped their motion and needless litigation was avoided. ECF No. 1220.
15 Further, assuming Mr. Morelli’s argument were correct – and it is not – the conclusion would be
16 that the same costs would have been incurred at an earlier time. These costs are inherent in the
17 discovery process and were appropriate and reasonable under the circumstances.

18 **III. CONCLUSION**

19 For the foregoing reasons, IPPs’ Motion should be granted.

20 Dated: September 29, 2016

21 By: /s/ Demetrius Lambrinos
22 Demetrius Lambrinos
23 Steven N. Williams (SBN 175489)
24 Demetrius X. Lambrinos (SBN 246027)
25 Joyce Chang (SBN 300780)
26 **COTCHETT, PITRE & MCCARTHY, LLP**
27 840 Malcolm Road, Suite 200
28 Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577
swilliams@cpmlegal.com
dlambrinos@cpmlegal.com
jchang@cpmlegal.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

By: /s/ Jeff D. Friedman
Jeff D. Friedman

Steve W. Berman (*Pro Hac Vice*)
Jeff D. Friedman (SBN 173886)
Shana Scarlett (SBN 217895)
HAGENS BERMAN SOBOL SHAPIRO LLP
715 Hearst Avenue, Suite 202
Berkeley, CA 94710
Telephone: (510) 725-3000
Facsimile: (510) 725-3001
steve@hbsslaw.com
jeff@hbsslaw.com
shanas@hbsslaw.com

By: /s/ Brendan P. Glackin
Brendan P. Glackin

Elizabeth J. Cabraser (SBN 83151)
Brendan P. Glackin (SBN 199643)
Lin Y. Chan (SBN 255027)
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Telephone: (415) 956-1000
Facsimile: (415) 956-1008
ecabraser@lchb.com
bglackin@lchb.com
lchan@lchb.com

Interim Co-Lead Counsel for Indirect Purchaser Plaintiffs