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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

This Document Relates to:

ALL INDIRECT PURCHASER ACTIONS

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

MDL No. 2420

INDIRECT PURCHASER PLAINTIFFS' *CORRECTED* MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS

Date: August 1, 2017
Time: 2:00 p.m.
Judge: Hon. Yvonne Gonzalez Rogers
Location: Courtroom 1- 4th Floor

DATE ACTION FILED: Oct. 3, 2012

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that at 2:00 p.m. on August 1, 2017, Indirect Purchaser Plaintiffs ("IPPs" or "Plaintiffs") and their counsel ("Class Counsel") will move, and hereby do move, the Honorable Yvonne Gonzalez Rogers, United States District Judge for the Northern District of California, at the United States Courthouse, 1301 Clay Street, Courtroom 1 (4th Floor), Oakland, California, for the following:

1. Award 25% of the total $44,950,000 settlement to attorneys' fees in the amount of $11,240,000;
2. Reimbursement of a portion of litigation expenses incurred in the amount of $4,159,515.28. The categories of litigation expenses for which Class Counsel seeks reimbursement are as follows:
   a. payments made to expert economists;
   b. payments made to vendors for document hosting services; and
   c. payments made to vendors for the translation of foreign language documents; and
3. Service awards totaling $34,500 ($1,500 each for each Class Representative).

This motion is brought pursuant to Federal Rules of Civil Procedure 23(h), 54(b), and 54(d)(2). The motion should be granted because: (1) the requested attorneys' fees are fair, appropriate, and commensurate to the benefit obtained for the class; (2) the expenses for which reimbursement is sought were reasonably and necessarily incurred in connection with the prosecution of this case for the benefit of Plaintiffs and the proposed class; and (3) $1,500 to each Class Representative is warranted for bringing the case, submitting to extensive electronic production of their files, and sitting for extended depositions—sometimes lasting six hours—regarding their lithium-ion battery purchases and participation in this case.

This motion is based upon this Memorandum of Points and Authorities; the *Corrected* Joint Declaration of Steven Williams, Steve W. Berman, and Elizabeth J. Cabraser ("Joint Decl."); the declarations of Class Counsel; the [Proposed] Order submitted herewith; such other

records, pleadings, and papers filed in this action; and upon such argument and further pleadings as may be presented to the Court at the hearing on this motion.

This motion will be available on the website established for this case, www.reversethecharge.com for review by class members.

Dated: May 26, 2017

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF ISSUES TO BE DECIDED

Whether the Court should (1) award the Ninth Circuit benchmark of 25% of the total $44,950,000 settlement to attorneys' fees in the amount of $11.24 million, (2) reimburse Class Counsel $4,159,515.28 for a portion of their litigation costs; and (3) approve service awards totaling $34,500 ($1,500 each for each Class Representative).

II. INTRODUCTION

After more than four years of hard fought litigation, IPPs have obtained settlements with four defendant groups—Sony, LG Chem, Hitachi Maxell, and NEC[1]—in the amount of $64,450,000. The LG Chem, Hitachi Maxell, and NEC settlements alone total $44,950,000 ("Settlement Fund"). These settlements provide a substantial benefit to both the proposed settlement class and the proposed litigation class because they: (1) provide a considerable recovery to the settlement class; and (2) require the settling defendants to cooperate with IPPs in their continuing prosecution of this case against the four remaining defendants. This recovery was accomplished as a result of the dedication, effort, and skill of interim co-lead counsel and the firms working at their direction, including their substantial multi-year investment of time and expenses.

Several aspects of the litigation in this case are particularly noteworthy in evaluating Class Counsel's request. **First**, unlike in other electronic component price-fixing cases, Defendants focused their defense on aggressively attacking individual Class Representatives. Joint Decl. ¶ 17. This attack included 32 long and combative Class Representative depositions, lasting a total

[1] The settling defendants are (1) Sony Corporation, Sony Energy Devices Corporation, and Sony Electronics Inc. ("Sony"); (2) LG Chem, Ltd. and LG Chem America, Inc. ("LG Chem"); (3) Hitachi Maxell, Ltd. and Maxell Corporation of America ("Hitachi Maxell"); and (4) NEC Corporation ("NEC") (collectively, the "Settling Defendants"). The Sony settlement has received final approval (ECF No. 1712), and the other settlements have received preliminary approval (ECF No. 1714), notice has been given to the class, and the final approval hearing is scheduled for August 1, 2017.

The remaining defendants are Samsung SDI Co., Ltd and Samsung SDI America, Inc. ("Samsung"); Panasonic Corporation and Panasonic Corporation of North America ("Panasonic"); Sanyo Electric Co., Ltd. and Sanyo North America Corporation ("Sanyo"); NEC Tokin Corporation ("NEC Tokin"); and Toshiba Corporation ("Toshiba") (collectively, the "Non-Settling Defendants").

of over 144 hours (averaging approximately 4.5 hours/deposition), extended discovery disputes regarding "metadata" that accompanied receipts and photographs of lithium-ion battery product purchases, excessive written discovery (including three sets of interrogatories, three sets of document requests, and one set of requests for admission) and three contested motions regarding substitution of Class Representatives. *Id.* **Second**, Plaintiffs, working in close coordination with attorneys for the Direct Purchaser Class, have taken an enormous amount of discovery, including taking 34 merits depositions (with more than one thousand exhibits), bringing (and prevailing at least in part on) 12 motions to compel, taking three expert depositions, reviewing and analyzing more than 2.7 million pages of documents (approximately 41% of which were in a foreign language), obtaining nearly 1,400 translations of those documents, propounding 22 interrogatories, 78 document requests, and 1,482 requests for admissions, issuing 140 subpoenas of third-parties for data, and taking four third-party depositions. Joint Decl. ¶¶ 18-19. **Third**, Plaintiffs, through expert consultants they retained, conducted a massive amount of data analysis, including review and analysis of more than 381 gigabytes of data and many multiple regression analyses. Joint Decl. ¶24. Professor Edward E. Leamer analyzed impact and damages using statistical modeling and Dr. Rosa M. Abrantes-Metz analyzed whether the available economic evidence supports the existence and impact of the alleged conspiracy on a class-wide basis. *Id.* **Fourth**, Class Counsel have invested a total of 86,123.70 hours and approximately $4.4 million in out-of-pocket expenses since this case began in 2012. Joint Decl. ¶ 28. Throughout the litigation, Class Counsel have prosecuted this case on a contingent basis, funding the case out-of-pocket, without the use of outside litigation funders. Joint Decl. ¶ 29. **Fifth**, because this case was brought by Class Counsel who litigated prior electronic component price-fixing cases, Class Counsel applied that experience to litigate this case with exceptional efficiency. Joint Decl. ¶ 14.

In light of the work and investment of time and money described above, as well as the substantial risks Plaintiffs faced and continue to face, Class Counsel submit that this request for fees and costs is fully appropriate and supported by the case law of this District. Class Counsel seek an award of $11.24 million in fees under the established age-of-the-fund methodology, and at the Ninth Circuit's benchmark percentage. *Vizcaino v. Microsoft Corp.* ("*Vizcaino II*"), 290

F.3d 1043, 1048-50 (9th Cir. 2002). Application of the lodestar cross-check reveals the award to comprise approximately 1/3 of the applicable lodestar (i.e., a negative multiplier) in a hard-fought, intensively litigated case. Class Counsel also seek $4,159,515.28 in unreimbursed out-of-pocket expenses that Class Counsel necessarily incurred (Class Counsel has incurred a total of over $4.4 million in out-of-pocket expenses prosecuting this action, but seek reimbursement of only a subset of those costs here). Finally, Class Counsel seek service awards in an amount of $34,500 ($1,500 each for Class Representative) to compensate Class Representatives for their substantial time and effort and for the service they provided in bringing this antitrust enforcement action.

III. PROCEDURAL HISTORY

A. The Allegations

IPPs allege that from no later than January 1, 2000 to at least May 31, 2011, Defendants conspired to fix the prices of lithium-ion batteries, which are widely used in consumer electronics. 4th Consol. Am. Compl. ("FCAC") ¶4, ECF No. 1168. IPPs allege that Defendants agreed to fix prices, restrict output, and allocate markets. *Id*. ¶6. Defendants' collusive activities included direct communication between competitors, face-to-face meetings, phone conversations, and the use of trade associations. *Id*. ¶¶6, 7, 277-293, 476. Defendants made extensive efforts to conceal their activities by meeting in private rooms at restaurants and hotels, and instructing subordinates to delete evidence of collusive communications. *Id*. ¶¶7, 18. Two Defendants—LG Chem and Sanyo—pled guilty to criminal charges for fixing the prices of lithium-ion batteries, and Sanyo named a third Defendant, Panasonic, as a co-conspirator. *Id.* ¶¶294, 302.

B. The Complaints and Motions to Dismiss

This litigation has been pending for approximately four-and-a-half years. IPPs filed their first complaint on October 4, 2012 in the Northern District of California. *See Hanlon v. LG Chem. et al.*, No. 12-5159 (N.D. Cal.), ECF No. 1. In total, forty-seven complaints were filed in several district courts, each making substantially similar legal and factual allegations. *See* Transfer Order (Feb. 6, 2013), ECF No. 1. On February 6, 2013, the JPML transferred all cases to this Court and found centralization appropriate under 28 U.S.C. §1407. *Id.* On May 17, 2013,

this Court appointed Cotchett, Pitre & McCarthy, LLP, Hagens Berman Sobol Shapiro LLP, and Lieff Cabraser Heimann & Bernstein, LLP as Interim Co-Lead Counsel for the IPPs ("Co-Lead Counsel"). Order Appoint'g Interim Co-Lead Counsel & Liaison Counsel for Direct Purchaser Pls. & Appoint'g Interim Co-Lead Counsel and Liaison Counsel for IPPs (May 17, 2013), ECF No. 194. On July 2, 2013, IPPs filed a detailed 162-page Consolidated Class Action Complaint ("CCAC"). *See* 1st Consol. Am. Class Action Compl., ECF No. 221.

Plaintiffs defended against three rounds of motions to dismiss. **First**, Defendants filed one joint and five individual motions to dismiss the CCAC. *See* ECF Nos. 288 (Joint Motion); 284 (Hitachi and Maxell); 289 (Panasonic and Sanyo); 291 (LG Chem America); 293 (Toshiba); 296 (Sony). Defendants argued: (1) IPPs failed to allege a plausible "overarching" conspiracy involving each Defendant; (2) IPPs' claims were barred by the statute of limitations; (3) Defendants' U.S.-based subsidiaries were not properly named as Defendants; and (4) various state law claims should be dismissed. *Id.* In total, the first round of motions to dismiss generated 278 pages of briefing. Joint Decl. ¶ 20. On January 21, 2014, this Court issued an Order dismissing IPPs' CCAC with leave to amend. Order re: Mots. to Dismiss, ECF No. 361. The Court rejected Defendants' first two arguments, holding that IPPs had alleged a plausible conspiracy as to the Defendants' Korean and Japanese parent companies, but found that IPPs needed to make more detailed allegations as to the Defendant subsidiaries and conspiracy allegations in 2000 and 2001. *Id.* at 3, 21-24. On April 11, 2014, IPPs filed their Second Consolidated Amended Complaint ("SCAC") to conform to the Court's order. IPPs' Corrected Consol. 2d Am. Class Action Compl., ECF No. 419.

Second, Defendants filed a joint supplemental motion to dismiss that challenged IPPs' antitrust standing and claims under various state laws. Defs.' Joint Suppl. Mot. to Dismiss the IPPs' Consol. Am. Compl. (Phase II) (Mar. 7, 2014), ECF No. 401. Briefing related to this motion totaled 284 pages. Joint Decl. ¶ 20.

Third, on April 25, 2015, Defendants filed another round of motions to dismiss, including one joint motion and seven individual motions. *See* ECF Nos. 428 (Joint Motion); 424 (GS Yuasa); 425 (LG Chem America); 427 (Hitachi and Maxell); 426 (NEC); 429 (Panasonic and

Sanyo); 431 (Sony); 430 (Toshiba). In total, the third round of motions to dismiss generated 227 pages of briefing. Joint Decl. ¶ 20. 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), Defendants' motions were denied. Omnibus Order re: Mots. to Dismiss the 2d Consol. Am. Compls. of Direct & IPPs at 36 and 44 (Oct. 2, 2014), ECF No. 512. On October 22, 2014, IPPs filed their Third Consolidated Amended Complaint ("TCAC") to conform to this order. ECF No. 519.

C. Substitution of Class Representatives

On December 2, 2015, IPPs filed a Motion to Amend the TCAC to add, substitute, and dismiss certain class representatives. IPPs' Notice of Mot. & Mot. for Leave to Amend Compl. Pursuant to Fed. R. of Civ. P. 15(a) & 20(a), ECF No. 984. On March 14, 2016, with the exception of five proposed substitute class representatives who only purchased Apple products, the Court granted IPPs' motion. Order Grant'g in Part IPPs' Mot. to Amend Compl., ECF No. 1154. IPPs filed the Fourth Consolidated Amended Complaint ("FCAC") on March 18, 2016. ECF No. 1168.

D. Toshiba's Summary Judgment Motion

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 plaintiffs' claims. Toshiba Corp.'s Notice of Mot. & Mot. for Summ. J. on Withdrawal, ECF No. 735. On November 13, 2015, IPPs and DPPs collectively opposed the motion, and this Court denied Toshiba's motion following oral argument. Pls.' Joint Opp'n to Toshiba Corp.'s Mot. for. Summ. J. on Withdrawal, ECF No. 957; Order Den. Toshiba Corp.'s Mot. for Summ. J. on Withdrawal (Mar. 16, 2016), ECF No. 1160.

E. The Discovery Process

An enormous amount of discovery has occurred in this case.

1. Class Representative Discovery

Defendants spent the bulk of the first three years of litigation aggressively attacking the individual Class Representatives. This attack included lengthy and contentious Class

Representative depositions, extended disputes about "metadata" related to receipts and photographs of Class Representatives' lithium-ion battery purchases, and voluminous written discovery. For document collection and production alone, document hosting, and ESI discovery, IPPs spent approximately $660,994.53. A substantial portion of this was paid to iDiscovery Solutions and Omega Discovery Solutions to collect and review Class Representative documents for production. Defendants also deposed every Class Representative in the FCAC, which amounted to 32 depositions, lasting a total of over 144 hours (approximately 4.5 hours per deposition on average). Consequently, IPPs and their counsel incurred enormous time and expense preparing for and defending these depositions. 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. Joint Decl. ¶17.

2. Written Discovery and Document Review and Analysis

IPPs have also propounded significant written discovery, including 78 document requests, 22 interrogatories, 1,482 requests for admissions,[2] and 140 subpoenas to third-parties for data. Joint Decl. . ¶ 18. Of the $660,994.53 spent for ESI and discovery, the majority was for document hosting and document review platforms. To date, IPPs have spent over 58,000 hours reviewing and analyzing the 2,760,613 pages of documents (much of which was in Japanese, Korean, or Chinese) that were produced from over 250 negotiated custodians. *Id.* ¶ 18. IPPs contracted with Catalyst, Omega Discovery Solutions, and iDiscovery Solutions to retrieve, host, review, and synthesize these documents. *Id.* ¶ 18. Due to the large number of foreign language documents in this case, IPPs had to retain foreign language document reviewers and spent $199,193.97 to obtain certified translations of nearly 1,400 documents. Joint Decl. ¶ 18, Declaration of Brendan Glackin submitted herewith, ¶ 29. In order to economize, IPPs shared translation costs with Direct Purchaser Plaintiffs. *Id.* Thus, the $199,193.97 in translation costs incurred by IPPs represents only half of the total cost of translations for the IPPs and DPPs combined.

[2] Many of these requests for admissions addressed document authentication.

3. Plaintiffs' Depositions

IPPs have aggressively prosecuted this case by taking 34 merits depositions of Defendants' witnesses, three expert depositions, and four depositions of third-parties. Joint Decl. ¶ 19, 23. Of the merits depositions, almost all witnesses testified in Japanese or Korean, requiring additional time and expense. *Id.* ¶ 19. To increase efficiency, IPPs and DPPs coordinated on these depositions, alternating on who took the lead on each deposition. *Id.* In total, the merits depositions lasted more than 80 days and involved more than 1,000 exhibits.[3] *Id.* ¶

4. Motions to Compel

The discovery in this case involved significant disputes that required Plaintiffs to bring (and prevail at least in part on) twelve motions to compel:

Order on Motion to Compel	Date	Outcome
Order on Joint Disc. Letter Br. re LG Chem's Interrog. Resp., ECF No. 805	Aug. 21, 2015	Granted
Order on Joint Disc. Letter, ECF No. 690	Mar. 17, 2015	Granted
Order on Joint Disc. Letter, ECF No. 710	Apr. 1, 2015	Granted
Minute Entry re Joint Disc. Letter Br. re LG Chem's Interrog. Resp., ECF No. 781	Aug. 13, 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 Grant'g 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 Mot. to Compel Robert Bosch Tool Corp., ECF No. 1530	Oct. 13, 2016	Granted in part
Minute Entry re Disc. Letter Br. re Mot. to Compel Canon, 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

As with depositions of defendant witnesses, IPPs coordinated briefing and argument of these motions with DPPs for efficiency purposes. Joint Decl. ¶ 22. Nevertheless, these motions

[3] DPPs and IPPs coordinated preparation for these depositions for efficiency purposes, and IPPs first-chaired twenty-one of the merits depositions. Joint Decl. ¶ 19.

necessitated large amounts of time for meet-and-confers, briefing, and hearing preparation. *Id.*

5. Data Analysis and Expert Work

As part of IPPs' motion for class certification and opposition to Defendants' *Daubert* motions, IPPs engaged in a massive amount of data analysis. Joint Decl. ¶¶ 24-25. IPPs retained University of California Los Angeles Economics Professor Edward E. Leamer to analyze the impact of the conspiracy and resulting damages using statistical modeling. Joint Decl. ¶ 24. Economic consulting firm EconOne performed work at the direction of Dr. Leamer, which included analyzing Defendants' and non-parties' transactional data. *Id.* EconOne analyzed data from more than 71 non-parties and from each Defendant. *Id.* This analysis involved a systematic analysis of more than 381 gigabytes of data. *Id.* Class Counsel also engaged an industry expert and applEcon for additional data collection. *Id.* IPPs also engaged Dr. Rosa Abrantes-Metz to analyze the available economic evidence and whether it supports the existence and impact of the alleged conspiracy. *Id.* The work of Drs. Leamer and Abrantes-Metz informed all aspects of IPPs' prosecution of this case, including their settlement negotiations. *Id.* As a result of this work, IPPs incurred a total of $3,299,326.78 in expert expenses. Glackin Decl., ¶ 29.

6. Class Certification and *Daubert* Motions

IPPs filed their motion for class certification along with the expert reports of economists Dr. Edward Leamer and Dr. Rosa Abrantes-Metz on January 22, 2016. ECF Nos. 1036, 1036-1, 1036-2. Defendants filed their opposition to class certification on May 24, 2016. Defs.' Opp'n to IPPs' Mot. Class Cert., ECF No. 1551. As part of that filing, Defendants submitted two *Daubert* motions and the expert reports of Margaret Guerin-Calvert, Dr. Quinn Horn, and Daniel Moe. *Id.*; Defs.' Mot. to Exclude Proposed Test. of IPPs' Experts, ECF Nos. 1280-3; 1280-5. On August 23, 2016, IPPs filed their reply in support of class certification, along with reply reports by Drs. Leamer and Abrantes-Metz. IPPs' Reply in Further Supp. of Mot. Class Cert., ECF No. 1402-2. Each of the expert reports filed by IPPs was based on extensive economic analyses of Defendants' and third-party documents, transactional data and opposing expert reports, and took many hours to complete. Joint Decl. ¶ 25. Drs. Leamer and Abrantes-Metz were deposed by

Defendants for a collective sixteen-and-a-half hours. Joint Decl. ¶ 24.

The Court held a class certification hearing on November 11, 2016, and issued an order denying IPPs' motion for class certification without prejudice on April 12, 2017. Order Deny'g Without Prejudice Mots. for Class Cert.; Grant'g in Part & Deny'g in Part Mots. to Strike Expert Reports or Portions Thereof, ECF No. 1735. In the same order, this Court denied Defendants' *Daubert* motions as to Dr. Abrantes-Metz, and granted the motion in part as to Dr. Leamer, on the grounds that more analyses were needed on the degree of pass-through to the IPP class. *Id.*

F. Settlement History

Thus far, IPPs have settled with half of the Defendant families in this case, securing a Settlement Fund totaling $44,950,000 ($64,450,000 including the Sony settlement) in cash for the IPP Class. Joint Decl. ¶ 30. Class Counsel have also secured cooperation from the four settling Defendants in the ongoing action against Non-Settling Defendants, two of whom (Samsung and Sanyo) are the biggest worldwide manufacturers of lithium-ion batteries. *Id.* ¶ 31. IPPs entered into the four settlements only after extensive discovery and analysis of liability and damages evidence. *Id.* ¶ 32. The amount of each settlement, and the percentage share of each Defendant's single damages that each settlement represents is provided below.

Defendant Family	Damages Attributed to Defendant Family By IPPs	Percent Share of Total Damages	Contribution to Settlement Fund	Percent Recovery for IPPs (of Damages Attributed to Defendant Family by IPPs)
Hitachi Maxell	$3,187,687	0.3%	$3,450,000	108.2%
NEC	$967,035	0.1%	$2,500,000	258.5%
LG Chem	$123,312,217	12.8%	$39,000,000	31.6%
Sony	$239,725,760	24.8%	$19,500,000	8.1%[4]
TOTAL	**$367,192,699**	**38%**	**$64,450,000**	**17.55%**

The terms of these settlements are detailed in IPPs' various motions for preliminary and final approval.[5]

[4] The Sony settlement included prismatic, polymer, and cylindrical lithium-ion batteries, whereas the other settlement classes are cylindrical-only. To make a meaningful comparison across settlements, IPPs provided the estimated recovery for the Sony settlement against the current damage model. The Sony settlement was also the first, "ice-breaker," settlement.

[5] *See* IPPs' Mot. for Prelim. Approval of the Sony Settlement at 5-9 (Apr. 8. 2016), ECF No. 1209; IPPs' Mot. for Final Approval of the Sony Settlement at 6-9 (Oct. 4, 2016), ECF No. 1504; IPPs' Mot. for Prelim. Approval of the LG Chem Settlement at 3-5 (Dec. 6, 2016), ECF No. 1652; IPPs' Mot. for Prelim. Approval of the Hitachi & NEC Settlements at 3-6 (Jan. 24, 2017), ECF No. 1672.

IV. ARGUMENT

A. The Requested Fee Is Reasonable and Appropriate.

Recognizing that this case is ongoing, IPPs request an award of $11.24 million in attorneys' fees, which represents 25% of the Settlement Fund and 32.62% of their lodestar incurred from June 1, 2013 to February 28, 2017. Courts routinely award interim fees from initial settlements in multi-defendant cases. *See, e.g.*, *In re Air Cargo Shipping Servs. Litig.*, No. 06-md-1775, 2015 WL 5918273, at *6-7 (E.D.N.Y. Oct. 9, 2015) (awarding fourth round of interim attorneys' fees); Order Grant'g DPPs' Mot. for an Award of Att'ys' Fees, Reimbursement of Expenses, & Class Representative Incentive Awards, *In re Optical Disk Drive Antitrust Litig.*, No. 3:10-md-02143 (N.D. Cal. July 23, 2015), ECF No. 1658 (granting attorney's fees in the amount of 30% interim settlement fund); *In re Transpacific Passenger Air Transp. Antitrust Litig*., No. C 07-05634 CRB, 2015 WL 3396829, at *4 (N.D. Cal. May 26, 2015) (granting interim fees); Order Grant'g Class Pls.' Mot. for Interim Award of Att'ys' Fees & Reimbursement of Expenses, *In re Plasma-Derivative Protein Therapies Antitrust Litig.*, No. 1:09-cv-07666 (N.D. Ill. Jan. 22, 2014), ECF No. 693 (awarding one-third interim fee from initial settlement in multi-defendant case); *In re Southeastern Milk Antitrust Litig.*, No. 2:08-MD-1000, 2013 WL 2155387, at *1 (E.D. Tenn. May 17, 2013) (noting initial one-third fee award from early settlements and approving additional fee from later settlements); Order Awarding Att'ys' Fees & Reimbursement of Litig. Expenses to Pls.' Co-Lead Counsel, *In re Urethane Antitrust Litig.*, MDL No. 1616 (D. Kan. Dec. 13, 2011), ECF No. 2210 (awarding one-third fee from initial settlements with litigation continuing); *In re Auto. Refinishing Paint Antitrust Litig.*, No. MDL 1426, 2008 WL 63269, at *1 (E.D. Pa. Jan. 3, 2008) (noting prior 32% fee award from initial settlements and approving additional fee from later settlements); *In re Diet Drugs Prod. Liab. Litig.*, No. 99-md-1203, 2002 WL 32154197, at *12 (E.D. Pa., Oct. 3, 2002) (awarding attorneys' fees after four years of litigation and noting "[t]o make them wait any longer for at least some award would be grossly unfair").

This litigation fits this paradigm. It has been ongoing for nearly five years, and will likely continue for several more. Class Counsel assumed substantial risks and incurred substantial out-

of-pocket costs in pursuing recovery for the Settlement Class, and Class Counsel litigated this case efficiently. Granting this request would partially compensate Class Counsel for the work performed so far.

1. Class Counsel Are Entitled to a Fee Under the Common Fund Doctrine.

The common fund doctrine applies in the Ninth Circuit. *Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th Cir. 2003). Under this doctrine, counsel have an equitable right to be compensated for their successful efforts in creating a common fund. *Id.* at 968; *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (". . . a litigant or a lawyer who recovers a common fund . . . is entitled to a reasonable attorney's fee from the fund as a whole"); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994) (same). 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 attorney's fee from the fund as a whole." *Van Gemert*, 444 U.S. at 478; *see also Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 392–93 (1970); *Cent. R.R. & Banking Co. of Ga. v. Pettus*, 113 U.S. 116, 123 (1885).

The common fund doctrine is particularly appropriate in antitrust actions. The Supreme Court has repeatedly recognized that private antitrust litigation is essential to the effective enforcement of the antitrust laws. *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. Standard Oil Co.*, 405 U.S. 251, 266 (1972); *Wash. Pub. Power*, 19 F.3d at 1296. Appropriate fee awards in cases like this one encourage meritorious class actions, and thereby promote private enforcement of, and compliance with, the antitrust laws. In *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 653-54 (1985), the Supreme Court said:

> What we have described as "the public interest in vigilant enforcement of the antitrust laws through the instrumentality of the private treble-damage action," is buttressed by the statutory mandate that the injured party also recover costs, "including a reasonable attorney's fee." 15 U.S.C. §15(a). **The interest in wide and effective enforcement has thus, for almost a century, been vindicated by enlisting the assistance of "private Attorneys General"; we have always attached special importance to their role because "[e]very violation of the antitrust laws is a blow to the free-enterprise system envisaged by Congress."**

(internal citations omitted, emphasis added). Indeed, "[i]n the absence of adequate attorneys' fees awards, many antitrust actions would not be commenced[.]" *Alpine Pharmacy, Inc. v. Charles Pfizer & Co., Inc.*, 481 F.2d 1045, 1050 (2d Cir. 1973).

The most appropriate way to calculate a reasonable fee where, as here, contingency fee litigation has produced a common fund, is the percentage-of-the-fund method. *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984); *Vizcaino II*, 290 F.3d at 1047; *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990) (common fund fee is generally "calculated as a percentage of the recovery"). The percentage method comports with the legal marketplace because it "helps ensure that the fee award will simulate marketplace rates, since most common fund cases are the kinds of cases normally taken on a contingency fee basis, by which counsel is promised a percentage of any recovery." *See* Alan Hirsch et al., Fed. Judicial Ctr., *Awarding Attorneys' Fees & Managing Fee Litig.* at 73 (2d ed. 2005).

The percentage-of-the-fund method aligns class counsel's interests with those of the class, and properly incentivizes capable counsel, not to only accept challenging cases, but to push for the best result that can be achieved for the class. *See*, *e.g.*, *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (percentage method "directly aligns the interests of the class and its counsel") (citation omitted). Moreover, the percentage-of-the-fund method encourages efficiency and discourages waste.[6] The lodestar method, by contrast, encourages counsel to bill time and to create opportunities to bill time. Calculating the fee here as a percentage-of-the-fund, rather than merely as a function of counsels' billed time, rewards Class Counsel for assuming the risks of this case and efficiently prosecuting it.

Thus, most district courts in the Ninth Circuit use the percentage-of-the-fund method, and virtually all of the major recent antitrust class actions in the Northern District of California have applied the percentage-of-the-fund approach. *See, e.g.*, *In re TFT-LCD Antitrust Litig.*, No. M 07-

[6] The lodestar method's emphasis on time has drawn substantial criticism because it incentivizes inefficiency. *Vizcaino II*, 290 F.3d at 1050 n.5 ("the lodestar method creates incentives for counsel to expend more hours than may be necessary on litigating a case so as to recover a reasonable fee"); *In re Apple iPhone/iPod Warranty Litig.*, 40 F. Supp. 3d 1176, 1180 (N.D. Cal. 2014) ("Whatever merits the lodestar method might have, particularly outside the context of a common fund case, it has also been subject to heavy criticism by commentators and in the courts."); *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1378 (N.D. Cal. 1989).

1827 SI, 2011 WL 7575003, at *1–2 (N.D. Cal. Dec. 27, 2011) ("*LCD I*); *In re TFT-LCD Antitrust Litig.*, No. M 07-1827 SI, 2013 WL 149692, at *1–2 (N.D. Cal. Jan. 14, 2013) ("*LCD II*") (30%); Order Award'g Class Counsel Att'ys' Fees, Reimbursement of Expenses & Incentive Award, *In re Static Random Access Memory Antitrust Litig*., No. 07-13-md-1819-CW (N.D. Cal. June 30, 2011), ECF No. 1370 (30%) ("*SRAM")*; Order Grant'g Final Approval of Settlement & Enter'g Final J. of Dismissal with Prejudice, *Meijer v. Abbott Labs.*, No. C-07-05985 (N.D. Cal. Aug. 11, 2011), ECF No. 514 (33⅓%) ("*Meijer*").

2. The Requested $11.24 Million Fee Award Falls Within the Range of Reasonableness.

Class Counsel's requested fee calculated at the 25% benchmark set by the Ninth Circuit is within the range of reasonableness. *See, e.g.*, *Vizcaino II*, 290 F.3d at 1047 ("in common fund cases, the 'benchmark' award is 25% of the recovery obtained") (citation omitted); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir. 2015) ("[I]n this circuit, the benchmark percentage is 25%."). In common fund cases, fee awards tend to be approximately 30% or higher. *Activision*, 723 F. Supp. at 1377 ("[T]his court finds that in most recent cases the benchmark is closer to 30%"); *Knight v. Red Door Salons, Inc.*, No. 08-01520 SC, 2009 WL 248367, at *6 (N.D. Cal. Feb. 2, 2009) ("[I]n most common fund cases, the award exceeds that [25%] benchmark."); *see also Lofton v. Verizon Wireless (VAW) LLC*, No. C 13-05665 YGR, 2016 WL 7985253, at *1 (N.D. Cal. May 27, 2016) (30% of the common fund); *Perry v. Arise Virtual Solutions Inc.*, No. 11-01488 YGR, 2013 WL 12174056, at *2 (N.D. Cal. May 15, 2013) (30% of the common fund).

Although Plaintiffs do not seek fees beyond 25% of the Settlement Fund here, awarding fees beyond the 25% benchmark is especially common in antitrust cases within this District. In fact, many have awarded fees of **at least 30%** of the common fund. *See, e.g.*, *LCD I*, 2011 WL 7575003, at *1–2 (**30%**); *LCD II,* , 2013 WL 149692, at *1–2 (**30%**); Order Grant'g Award of Att'y's Fees, Reimbursement of Expenses & for Class Representative Incentive Payments at 2-3, *In re Static Random Access Memory (SRAM) Antitrust Litig.*, No. 4:07-md-01819-CW (N.D. Cal. Oct. 14, 2011), ECF No. 1407 (**33⅓%**); *SRAM,* No. 07-13-md-1819-CW (N.D. Cal. June 30,

2011), ECF No. 1370 (**30%**); *Meijer,* C-07-05985 (N.D. Cal. Aug. 11, 2011), ECF No. 514 (**33⅓%**). This pattern reflects the common characteristics of these cases: hard-fought litigations spanning many years against gigantic corporations employing the finest defense counsel for hire.

In considering whether an award represents a fair percentage of the recovery, the following factors may be considered:

> [T]he extent to which class counsel achieved exceptional results for the class, whether the case was risky for class counsel, whether counsel's performance generated benefits beyond the cash settlement fund, the market rate for the particular field of law (in some circumstances), the burdens class counsel experienced while litigating the case (e.g., cost, duration, foregoing other work), and whether the case was handled on a contingency basis.

Online DVD, 2015 WL 846008, at *14 (citations omitted). The Court may also consider the volume of work performed, counsels' skill and experience, the complexity of the issues faced, and the reaction of the class. *See, e.g.*, *In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at *18–23 (C.D. Cal. June 10, 2005) ("*Heritage Bond*"). Consideration of these factors supports the fees requested here.

a. <u>This Litigation Involves Significant Risk.</u>

Risk is an important factor in determining a fair fee award—and it is particularly important in this case, given its current posture. *Online DVD*, 2015 WL 846008, at *14. **First**, this is, intrinsically, a difficult and risky case due to the scope of the conspiracy alleged and complexity associated with showing that lithium-ion battery overcharges existed and were passed down the distribution chain to consumers. The fact that this Court denied (without prejudice) IPPs' motion for class certification exemplifies the complexity and risk associated with this case. Order Deny'g Without Prejudice Mots. for Class Cert.; Grant'g in Part & Deny'g in Part Mots. to Strike Expert Reports or Portions Thereof (Apr. 12, 2017), ECF No. 1735. The Defendants' lengthy, multi-round motions to dismiss based on conspiracy and antitrust standing narrowed the case and could have ended it. The Court permitted an early summary judgment motion by Toshiba based on a withdrawal defense that likewise could have terminated the case against that defendant. It is because of these kinds of issues that many courts have noted that "[a]ntitrust litigation in general, and class action litigation in particular, is unpredictable." *See In re NASDAQ Mkt.-Makers*

Antitrust Litig., 187 F.R.D. 465, 475 (S.D.N.Y. 1998); *In re Superior Beverage/Glass Container Consol. Pretrial*, 133 F.R.D. 119, 127 (N.D. Ill. 1990).

Second, while many electronic component cases in this district share these characteristics, in most cases plaintiffs had the benefit of a more extensive concurrent criminal investigation the outcome of which more closely mapped the conspiracy pled and proven by the plaintiffs. *See In re TFT-LCD Antitrust Litig.*, No. M 07-1827 SI, 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). For example, while the plaintiffs in *TFT-LCD* proved a broader and longer conspiracy than the criminal enforcement authorities, nearly all the civil defendants pled guilty to something, and some pled guilty to a lengthy and continuous criminal enterprise. *Id.* That case was nevertheless hard-fought and risky. Here, however, only two Defendants—Sanyo and LG Chem—pled guilty to criminal price-fixing. FCAC ¶¶294, 302. And, while each admitted to participating in a lithium-ion battery price-fixing conspiracy, their pleas covered a much more narrow time period—April 2007 to September 2008—than that alleged by IPPs. *Id.*

b. In the Face of These Risks, Class Counsel Achieved an Excellent Recovery for the Class.

Recovery is an important factor to be considered in determining an appropriate fee award. *See Hensley v. Eckerhart*, 461 U.S. 424, 431 (1983); *In re Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008). Here, in the face of the daunting risks set forth above, Class Counsel secured a pre-class certification Settlement Fund of $44.95 million in addition to the $19.5 million Sony settlement. Class Counsel estimate that this recovery represents approximately 17.55% of the damages attributed to the Settling Defendant families. Meanwhile, IPPs still seek to recover from two of the Defendants with the largest market share—Samsung and Sanyo—who remain in the litigation, as well as Toshiba.

Defendant	IPP Settlement	Damages Attributed to Defendant Family	Percent Recovery for IPPs (of Damages Attributed to Defendant Family)
Hitachi Maxell	$3,450,000	$3,187,687	108.23%
LG Chem	$39,000,000	$123,312,217.00	31.63%

NEC	$2,500,000	$967,035	258.52%
Sony	$19,500,000	$239,725,760	8.13%
Total	**$64,450,000**	**$367,192,699**	**17.55%**

Recovering more than 17% of IPPs' total damages attributable to these Defendant families is a substantial achievement on behalf of the class and is an important factor weighing in favor of Plaintiffs' requested $11.24 million fee award, which is less than the percentage fee awards granted in similar cases. *See, e.g.*, *In re Medical X-Ray Film Antitrust Litig.*, No. CV-93-5904, 1998 WL 661515, at *7-8 (E.D.N.Y. Aug. 7, 1998) (court increased 25% benchmark to 33.3% where counsel recovered 17% of damages); *In re Crazy Eddie Sec. Litig.*, 824 F. Supp. 320, 326 (E.D.N.Y. 1993) (court increased 25% benchmark to 33.8% where counsel recovered 10% of damages); *In re Gen. Instr. Sec. Litig.*, 209 F. Supp. 2d 423, 431, 434 (E.D. Pa. 2001) (one-third fee awarded from settlement fund that was 11% of the plaintiffs' estimated damages); *In re Corel Corp., Inc. Sec. Litig.*, 293 F. Supp. 2d 484, 489-90, 498 (E.D. Pa. 2003) (one-third fee awarded from settlement fund that equaled about 15% of damages).

Moreover, with each settlement, the percentage recovery measured by damages attributed to that Defendant family increased, eventually increasing to more than 250%. Sony, the first settling Defendant, paid 8.13% of the damages attributed to it; the second Settling Defendant, LG Chem, paid 31.63% of its attributable damages; Hitachi Maxell paid 108.23% of its attributable damages; and NEC paid 258.52% of its attributable damages. Achieving **17.5%** of single damages through settlements with only **half** of the defendant families in this case is substantial given the percentages of damages recovered after settlement with **all defendants** in similar litigation. *See, e.g.*, *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. C-07-5944 (JST), 2016 WL 3648478, at *7 (N.D. Cal. July 7, 2016)) (**IPPs recovered 20%**); IPPs and Att'ys Gen.'s Joint Appl. for Att'ys' Fees; IPPs' Appl. for Costs & Incentive Awards; & Att'ys Gen.'s Appl. for Costs at 4, *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, No. M-02-1486-PJH (N.D. Cal Feb. 28, 2014), ECF No. 2181 (**IPPs recovered 12%**); Notice of Mot. & Mot. for Award of Att'y's Fees, Reimbursement of Expenses, & Incentive Awards at 15, *In re Static Random Access Memory Antitrust Litig.*, No. 07-13-md-1819-CW (N.D. Cal. July 27, 2011), ECF

Nol. 1375 (**IPPs recovered 15%**); *see also* Mot. for Preliminary Approval of Class Action Settlements with Hitachi Maxell, Ltd., Maxell Corp. of Am., & NEC Corp. at 9-10 (Jan. 24, 2017), ECF No. 1672 (comparing other electronic component price-fixing settlements). Achieving these results prior to class certification is even more remarkable and of even greater value to the class, for the simple and obvious reason that given the Court's recent order the class might otherwise face the possibility of recovering *nothing*.

c. A High Level of Skill Was Required to Prosecute This Case.

The effort and skill displayed by counsel and the complexity of the issues involved are additional factors used in determining a proper fee. *Vizcaino II*, 290 F.3d at 1048; *In re Omnivision*, 559 F. Supp. 2d at 1046-47; *Gustafson v. Valley Ins. Co.*, No. CV 01-1575-BR, 2004 WL 2260605, at *2 (D. Or. Oct. 6, 2004). These factors strongly support the reasonableness of the fee requested here in light of the circumstances of the litigation, which included practical barriers to discovery, massive amounts of discovery, and significant economic analysis.

First, because this case covers an alleged ten-plus-year conspiracy involving eight multinational Defendant families, Class Counsel reviewed more than 2.7 million pages of predominantly foreign-language documents, translated nearly 1,400 foreign language documents, and propounded seventy-eight document requests, twenty-two interrogatories, and 1,482 requests for admission. Finding the right needles in such a haystack requires more than hiring people who speak Japanese and Korean. It requires attorneys with specialized knowledge in antitrust, in organizing and running a foreign language review, in selecting and administering the appropriate database software, in managing hundreds upon hundreds of certified translations—and some of whom also speak Japanese and Korean. Class Counsel brought to bear hard-learned lessons from *TFT-LCD*, *ODD*, *CRT*, *SRAM* and many other cases, and the class 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 foreign-language depositions under their belts to take them. These lawyers brought a degree of skill and experience to the depositions that could be matched by very few other firms. Based on lessons learned in other cases, Class Counsel also set up watchlists early in the discovery process to prevent the still-

remaining foreign employees of Defendants from leaving their employment without IPPs being permitted a chance to depose them. *See, e.g.*, Order re Dep. Protocol 2 (Dec. 3, 2014), ECF No. 593 (permitting Plaintiffs to establish watchlists of potential witnesses); Order re Seok Hwan Kwak 2 (Feb. 14, 2017), ECF No. 1675 ("Judge Gonzalez Rogers will take up the matter of appropriate sanctions for LG Chem's failure to comply with the court orders regarding Kwak's deposition in the context of summary judgment or trial" due to failure to comply with the watchlist protocol by producing witness for deposition).

The economic and damages issues in this case demanded an equal level of highly specialized skill—as demonstrated by the class certification motion. Class Counsel were not learning on the job; rather, they brought to bear years of experience in prosecuting class certification in some of the most complex, high profile and hard-fought antitrust cases in recent district history, such as *Optical Disk Drives*, *High Tech Employees*, and *Automotive Parts*. This specialized knowledge was on display in the voluminous analyses and arguments submitted to the Court in the initial round of class certification briefing.

Second, the caliber of opposing counsel is another important factor in assessing the quality of Class Counsel's work. *Vizcaino v. Microsoft Corp.* ("*Vizcaino I*"), 142 F. Supp. 2d 1299, 1303 (W.D. Wash. 2001); *In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 634 (D. Colo. 1976); *Arenson v. Bd. of Trade*, 372 F. Supp. 1349, 1354 (N.D. Ill. 1974). Here, Class Counsel was opposed by attorneys from some of the best and largest firms in the country with extensive resources at their disposal. This again reflects not only the high stakes of the case, but also the degree of specialized skill and knowledge necessary to litigate it on either side.

Third, Class Counsel respectfully submit that the sheer scale of what were always multiple simultaneous discovery, motions and other projects further demonstrates the value of Class Counsel's skill and experience. This included:

- Preparing four comprehensive consolidated amended complaints detailing Defendants' alleged violations of the antitrust laws (ECF Nos. 221, 419, 519, and 1168);
- Conducting exhaustive legal research regarding the claims and the defenses, particularly with respect to Defendants' multiple rounds of motions to dismiss, and Toshiba's motion for summary judgment based on its alleged withdrawal from the

conspiracy. Joint Decl. ¶ 27. IPPs largely prevailed on each motion (ECF Nos. 361, 512, and 1160);

- Propounding multiple sets of discovery that—after extensive meet and confers and negotiations with Defendants—resulted in the identification of over 250 document custodians and the production of more than 2.7 million documents, and voluminous electronic transactional data. Many of these documents were in Japanese and Korean and had to be translated, Joint Decl. ¶ 18;

- Organizing a team of lawyers that reviewed, searched, and extensively coded and analyzed these foreign language documents, *id.* ¶ 18;

- Engaging in extensive non-party discovery, including obtaining access to and reviewing 71 datasets concerning the non-parties' purchases and sales of lithium-ion batteries and packs and products containing lithium-ion batteries, Joint Decl. ¶ 23;

- 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 in support of IPPs' class certification motion. This involved many hours of discussions, research, and analysis, Joint Decl. ¶ 24;

- Maintaining close communication with Class Representatives throughout the litigation and answering seven sets of discovery propounded by Defendants, including document requests, interrogatories, and requests for admission, Joint Decl. ¶ 17, 50-51;

- Deposing 34 fact witnesses of Defendants and four non-party witnesses, Joint Decl. ¶ 19;

- Deposing five experts in relation to IPPs' class certification motion, Joint Decl. ¶ 5;

- Defending the depositions of 32 Class Representatives. This involved extensive consultation with each Class Representative and their individual counsel and electronic document retrieval for document production, Joint Decl. ¶¶ 17, 48-51;

- Defending against Toshiba's Motion for Summary Judgment, Joint Decl. ¶ 21;

- Preparing for, briefing and arguing IPPs' Motion for Class Certification, Joint Decl.. ¶¶ 24-25;

- Securing settlements with Sony, LG Chem, Hitachi Maxell, and NEC, Joint Decl. ¶¶ 24, 26; and

- Building a notice program to inform Class Members of the pending settlements, Joint Decl. ¶ 26.

In other words, IPPs were not generally fighting on two fronts at once—more like three or four.

d. <u>The Contingent Nature of the Fee Justifies the Requested Award.</u>

The Ninth Circuit has confirmed that a fair fee award must include consideration of the contingent nature of the fee. *See, e.g.*, *Vizcaino II*, 290 F.3d at 1050; *Online DVD*, 2015 WL

846008, at *14 & n.14. It is well-established that attorneys who take on the risk of a contingency case should be compensated for the risk they assume. *Wash. Pub. Power*, 19 F.3d at 1299. Thus far, Class Counsel have not received any compensation for nearly five years of work on this case. This assumption of a lengthy and significant risk on behalf of the IPP Class supports the requested $11.24 million.

3. The Lodestar Cross-Check Confirms the Reasonableness of the Requested Award.

Finally, fees awarded at the 25% benchmark are particularly appropriate here, where application of the lodestar cross-check shows a multiplier of less than .5 in a hard-fought, intensely litigated case. The requested $11.24 million represents approximately 32.62% of the total lodestar, i.e., .32.62 multiplier. Joint Decl. ¶ 35. Class Counsel have spent 86,123.70 total hours prosecuting this action. This cross-check demonstrates that the proposed fee is more than reasonable. *See Online DVD*, 2015 WL 846008, at *15; *Vizcaino II*, 290 F.3d at 1048-50.

Moreover, all of this time was reasonable and necessary for effective prosecution. *Online DVD*, 2015 WL 846008, at *9. Class Counsel took meaningful steps to ensure that their work was efficient.[7] Class Counsel applied their experience litigating other electronic component cases to this case, resulting in exceptional efficiency given the scale of this case. Joint Decl. ¶ 14. For instance, Class Counsel's lodestar here, where the bulk of merits discovery is complete, is substantially lower than the lodestar reported in *Capacitors* ($44.4 million; DPPs), *CRTs* ($83.8 million; IPPs) or *LCDs* ($148 million; IPPs). Counsel's Mot. for Att'ys' Fees & Reimbursement

[7] *See* Joint Decl.; Cotchett Pitre & McCarthy LLP Decl. ¶ 8; Hagens Berman Sobol Shapiro Decl. ¶ 2; Glackin Decl. (Lieff Cabraser Heimann & Bernstein) ¶¶ 3-19; ADR Office of Ken Mann Decl.; Andrus Anderson LLP Decl. ; Bangs, McCullen, Butler, Foye & Simmons Decl.; Bleichmar Fonti & Auld LLP Decl.; Block & Leviton Decl.; Bonnett Fairbourn Friedman & Balint Decl.; Bramson, Plutzik, Mahler & Birkhaeuser Decl.; Branstetter Stranch & Jennings Decl.; Breall & Breall Decl.; Cafferty Clobes Meriwether & Sprengel Decl.; Cohen Milstein Sellers & Toll Decl.; Cuneo Gilbert & La Duca Decl.; Emerson Scott Decl.; Goldman Scarlato Karon & Penny Decl.; Green & Noblin Decl.; Grossman LLP Decl.; Karon LLC Decl.; Keller Grover Decl.; Keller Rohrback Decl.; Kirby McInerney Decl.; Krause, Kalfayan, Benink & Slavens Decl.; Langson & Lott Time Decl.; Law Office of George Rikos Decl.; Lexington Law Group Decl.; Milberg LLP Decl.; Nicholas & Tomasevic LLP Decl.; Pomerantz LLP Decl.; Reich Radcliffe & Kuttler Decl.; Renne Sloan Holtzman Sakai Decl.; Robbins Geller Rudman & Dowd Decl.; Schneider Wallace Cottrell Konecky Decl.; Schubert Jonckheer & Kolbe Decl.; Scott + Scott Decl.; Shaffer Lombardo Shurin Decl.; Straus & Boies Decl.; Susman Godfrey Decl.; Tostrud Law Group Decl.; Wood Law Firm, LLC Decl.; Wyatt & Blake Decl.

of Expenses at 12, *In re Capacitors Antitrust Litig.*, No. 3:14-cv-03264-JD (Jan. 30, 2017), ECF No. 1458 (DPPs, four months prior to class certification); 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.

Throughout, Class Counsel have been mindful of the efficiency guidelines set forth in Exhibit A of this Court's Modified Pretrial Order No. 1 (May 24, 2013), ECF No. 202. Joint Decl. ¶ 37. 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. Joint Decl. ¶ 39. Of the hours spent on this case, 68.68% represent hours by Co-Lead Counsel. Joint Decl. ¶ 38. The law firms of Straus & Boies, Kirby McInerney, and Susman Godfrey represent 15.10% of the total hours due to their respective roles of handling translations and translation objections, handling high level foreign language document analysis and deposition check interpreting, and defending Class Representative depositions. Joint Decl. ¶ 38. The bulk of the time spent by other firms involved document review and handling issues related to their respective client Class Representatives. *Id.*

Moreover, the fee request is supported by detailed time records and the hourly rates charged also reflect the reasonable prevailing rates.[8] *See* Joint Decl. ¶ 42, Ex. 1 (2015 National

[8] *See* Joint Decl.; Cotchett Pitre & McCarthy LLP Decl. ¶ 24; Hagens Berman Sobol Shapiro Decl. ¶ 2; Glackin Decl. (Lieff Cabraser Heimann & Bernstein) ¶ 26; ADR Office of Ken Mann Decl. ¶ 8; Andrus Anderson LLP Decl. ¶ 10; Bangs, McCullen, Butler, Foye & Simmons Decl. ¶ 7; Bleichmar Fonti & Auld LLP Decl. ¶ 7; Block & Leviton Decl. ¶ 7; Bonnett Fairbourn Friedman & Balint Decl. ¶ 7; Bramson, Plutzik, Mahler & Birkhaeuser Decl. ¶ 7; Branstetter Stranch & Jennings Decl. ¶ 7; Breall & Breall Decl. ¶ 7; Cafferty Clobes Meriwether & Sprengel Decl. ¶ 7; Cohen Milstein Sellers & Toll Decl. ¶ 7; Cuneo Gilbert & La Duca Decl. ¶ 7; Emerson Scott Decl. ¶ 7; Goldman Scarlato Karon & Penny Decl. ¶ 7; Green & Noblin Decl. ¶ 7; Grossman LLP Decl. ¶ 7; Karon LLC Decl. ¶ 7; Keller Grover Decl. ¶ 8; Keller Rohrback Decl. ¶ 7; Kirby McInerney Decl. ¶ 7; Krause, Kalfayan, Benink & Slavens Decl. ¶ 7; Langson & Lott Time Decl. ¶ 7; Law Office of George Rikos Decl. ¶ 7; Lexington Law Group Decl. ¶ 7; Milberg LLP Decl. ¶ 7; Nicholas & Tomasevic LLP Decl. ¶ 7; Pomerantz LLP Decl. ¶ 7; Reich Radcliffe & Kuttler Decl. ¶ 7; Renne Sloan Holtzman Sakai Decl. ¶ 7; Robbins Geller Rudman & Dowd Decl. ¶ 7; Schneider Wallace Cottrell Konecky Decl. ¶ 7; Schubert Jonckheer & Kolbe Decl. ¶ 7;

Law Journal Billing Survey).[9] Class Counsel capped document reviewer rates at $450 per hour for foreign language reviewers and $350 per hour for English language reviewers. Joint Decl. ¶ 40. Class Counsel's fee request of $11.24 million thus amounts to less than 33% of their lodestar of $34,452,208.50. Joint Decl. ¶ 35. This confirms its reasonableness. *See Online DVD*, 2015 WL 846008, at *15 (fact that fee sought is less than the lodestar suggests fairness of award); *In re Portal Software, Inc. Sec. Litig.*, No. C-03-5138 VRW, 2007 WL 4171201, at *16 (N.D. Cal. Nov. 26, 2007); and *LCD II*, 2013 WL 149692, at *1.

B. 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. *See In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 995 (9th Cir. 2010); N.D. Cal. Procedural Guidance for Class Action Settlements at 3. The class notice advised Settlement Class Members that Class Counsel would seek attorneys' fees "not to exceed 30% of the $44.95 million Settlement Fund," costs and expenses, and service awards in the amount of $1,500 each. Ex. 2 ("Long-Form Notice") at 5 (Mar. 9, 2017), ECF No. 1700-4; *see also* Ex. 4 (Summary Notice) at 2, ECF No. 1700-6. The notice also advises that such a motion would be available at the settlement website

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Scott + Scott Decl. ¶ 8; Shaffer Lombardo Shurin Decl. ¶ 7; Straus & Boies Decl. ¶ 7; Susman Godfrey Decl. ¶ 5; Tostrud Law Group Decl. ¶ 7; Wood Law Firm, LLC Decl. ¶ 7; Wyatt & Blake Decl. ¶ 7. Although time detail is submitted with historical rates, Class Counsel seek fees at their current rates.

[9] *See also* Cotchett Pitre & McCarthy LLP Decl. ¶¶ 22-24; Hagens Berman Sobol Shapiro Decl. ¶ 1; Glackin Decl. (Lieff Cabraser Heimann & Bernstein) ¶¶ 21-24; ADR Office of Ken Mann Decl. ¶ 7; Andrus Anderson LLP Decl. ¶10; Bangs, McCullen, Butler, Foye & Simmons Decl. ¶ 7; Bleichmar Fonti & Auld LLP Decl. ¶ 7; Block & Leviton Decl. ¶ 7; Bonnett Fairbourn Friedman & Balint Decl. ¶ 7; Bramson, Plutzik, Mahler & Birkhaeuser Decl. ¶ 6; Branstetter Stranch & Jennings Decl. ¶ 6; Breall & Breall Decl. ¶ 6; Cafferty Clobes Meriwether & Sprengel Decl. ¶ 6; Cohen Milstein Sellers & Toll Decl. ¶ 6; Cuneo Gilbert & La Duca Decl. ¶ 6; Emerson Scott Decl. ¶ 6; Goldman Scarlato Karon & Penny Decl. ¶ 6; Green & Noblin Decl. ¶ 6; Grossman LLP Decl. ¶ 6; Karon LLC Decl. ¶ 6; Keller Grover Decl. ¶ 7; Keller Rohrback Decl. ¶ 6; Kirby McInerney Decl. ¶ 6; Krause, Kalfayan, Benink & Slavens Decl. ¶ 6; Langson & Lott Time Decl. ¶ 6; Law Office of George Rikos Decl. ¶ 6; Lexington Law Group Decl. ¶ 6; Milberg LLP Decl. ¶ 6; Nicholas & Tomasevic LLP Decl. ¶ 6; Pomerantz LLP Decl. ¶ 6; Reich Radcliffe & Kuttler Decl. ¶ 6; Renne Sloan Holtzman Sakai Decl. ¶ 6; Robbins Geller Rudman & Dowd Decl. ¶ 6; Schneider Wallace Cottrell Konecky Decl. ¶ 6; Schubert Jonckheer & Kolbe Decl. ¶ 6; Scott + Scott Decl. ¶ 7; Shaffer Lombardo Shurin Decl. ¶ 6; Straus & Boies Decl. ¶ 6; Susman Godfrey Decl. ¶6; Tostrud Law Group Decl. ¶ 6; Wood Law Firm, LLC Decl. ¶ 6; Wyatt & Blake Decl. ¶ 6.

fourteen days before the deadline for requests for exclusion or objections to the settlement. Long-Form Notice at 5. Class Counsel is filing this motion and posting it on the settlement website on May 26, 2017, which is seventeen days before the June 12, 2017 deadline to object or opt-out.

C. Co-Lead Counsel Should be Authorized to Distribute Fees Among Class Counsel.

Co-Lead Counsel also request the Court's authorization to distribute the awarded attorneys' fees in a manner that, in the judgment of Co-Lead Counsel, fairly compensates each firm for its contribution to the prosecution of IPPs' 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." *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). Accordingly, Co-Lead Counsel respectfully request that the Court authorize them to allocate the fees that are awarded among Class Counsel.

D. Class Counsel Should be Reimbursed for Their Reasonable Litigation Expenses.

Class Counsel also request reimbursement of litigation costs and expenses they incurred on behalf of the Class in the amount of $4,159,515.28. Glackin Decl., ¶ 29. Attorneys who create a common fund are entitled to reimbursement of their out-of-pocket expenses so long as they are reasonable, necessary, and directly related to the prosecution of the action. *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *see also OmniVision*, 559 F. Supp. 2d

at 1048; and 1 Alba Conte, *Attorney Fee Awards* § 2.19 (3d ed. 2004). Class Counsel's expenses are summarized in the Declaration of Brendan P. Glackin with invoices attached.[10] These expenses were reasonable and necessary for the prosecution of this action and are customarily approved by courts as proper litigation expenses. Moreover, these expenses sought are only a subset of the expenses in this case, which are over $4.4 million. Glackin Decl. ¶ 30, Joint Decl. ¶ 28. The expenses sought **exclude** (1) costs for travel, copying, printing, filing fees, legal research and so forth; (2) deposition-related expenses; and (3) expert expenses that post-date 2016. Class Counsel believe that this request for expenses is reasonable in light of the length of this case and the fact that Class Counsel may continue to litigate this case for years before its conclusion. Joint Decl. ¶ 46.

E. Class Representatives Should Receive Service Awards Totaling $34,500.

Class Counsel request service awards for the class representatives in the amount of $34,500 ($1,500 each).[11] "[Service] *awards* are fairly typical in class action cases." *Rodriguez v. W. Publ'g Corp*., 563 F.3d 948, 958 (9th Cir. 2009) (emphasis in original). 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." *Id.* at 958-59. 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. *See Van Vraken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995).

Each of these factors weighs in favor of compensating the Class Representatives for their service on behalf of the IPP Class. Class Representatives have remained actively involved

[10] To the extent that some of the invoices request more money than Class Counsel actually paid, this difference reflects the fact that Class Counsel negotiated discounts on some of the expenses in this case.

[11] The Class Representatives for whom Class Counsel seek service awards are those named in the LG Chem, Hitachi Maxell, and NEC settlements: Christopher Hunt, Piya Robert Rojanasathit, Steven Bugge, Tom Pham, Bradley Seldin, Patrick McGuinness, Jason Ames, William Cabral, Joseph O'Daniel, David Tolchin, Matt Bryant, Sheri Harmon, Christopher Bessette, Linda Lincoln, Bradley Van Patten, the City of Palo Alto, the City of Richmond, John Kopp, Drew Fennelly, Donna Shawn, Cindy Booze, Matthew Ence, and Caleb Batey.

throughout the litigation of this case.[12] Each has responded to more than 22 interrogatories and 37 document requests. Each has also been deposed at length by Defendants, and has devoted time to diligently prepare for his or her deposition with Class Counsel. In light of this service, $1,500 awards for each individual Class Representative are reasonable.

In addition, the amount of $1,500 per Class Representative is well below the level of presumptive reasonableness. "[C]ourts in the Northern District of California have held that a $5,000 enhancement award is presumptively reasonable." *Perry*, 2013 WL 12174056, at *3 (citing *Villegas v. J.P. Morgan Chase & Co.*, No. 09-CV-00261 SBA, 2012 WL 5878390, at *7 (N.D. Cal. Nov. 21, 2012)); *see also Moore v. Verizon Commc'n, Inc.*, No. C–09–1823 SBA, 2013 WL 4610764, at *15 (N.D. Cal. Aug. 28, 2013) ("In this district, a $5,000 payment is presumptively reasonable.").

V. CONCLUSION

For the foregoing reasons, IPPs' motion should be granted. Accordingly, this Court should award attorneys' fees calculated at 25% of the Settlement Fund ($11.24 million in attorneys' fees), litigation expenses in the amount of $4,159,515.28, and service awards totaling $34,500 for the Class Representatives.

[12] Joint Decl. at ¶¶17, 50-51; Christopher Hunt Decl.; Piya Robert Rojanasathit Decl.; Steven Bugge Decl.; Tom Pham Decl.; Bradley Seldin Decl.; Patrick McGuinness Decl.; Jason Ames Decl.; William Cabral Decl.; Joseph O'Daniel Decl.; David Tolchin Decl.; Matt Bryant Decl.; Sheri Harmon Decl.; Christopher Bessette Decl.; Linda Lincoln Decl.; Bradley Van Patten Decl.; City of Palo Alto Decl.; City of Richmond Decl.; John Kopp Decl.; Drew Fennelly Decl.; Donna Shawn Decl.; Cindy Booze Decl.; Matthew Ence Decl.; Caleb Batey Decl.

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Respectfully submitted,

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