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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**

**INDIRECT PURCHASER PLAINTIFFS’
NOTICE OF MOTION AND MOTION FOR
REIMBURSEMENT OF CERTAIN
EXPENSES; AND MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT**

**IPPS’ NOTICE OF MOTION AND MOTION FOR REIMBURSEMENT OF CERTAIN
EXPENSES; CASE NO. 13-md-02420 YGR (DMR)**

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that at 2:00 pm on November 8, 2016 Indirect Purchaser Plaintiffs (“IPPs” or “Plaintiffs”) and their counsel (“Class Counsel”) will move, and hereby do move, this Court before the Honorable Yvonne Gonzalez Rogers, United States District Judge, at the United States Courthouse, 450 Golden Gate Avenue, Courtroom 1 (4th Floor), San Francisco, California, for reimbursement of litigation expenses in the amount of \$3,703,305.74 for certain costs incurred for (1) consultants and experts necessary to advance the interests of the proposed class, (2) document retrieval, hosting, and review platforms, and (3) translations of foreign language documents. 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 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. This motion is based upon this Memorandum of Points and Authorities; the Declaration of Steven N. Williams; the [proposed] order submitted herewith; and 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.

Dated: September 8, 2016

Respectfully submitted,

By /s/ Steven N. Williams
Steven N. Williams

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557 F.2d 759 (9th Cir. 1977)5

Other Authorities

1 Alba Conte, *Attorney Fee Awards*
§ 2.19 (3d ed. 2004)5

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

After over four years of hard fought litigation, IPPs have entered into a proposed settlement with the Sony defendants (“Sony”) in the amount of \$19.5 million (the “Settlement Fund”). The final approval hearing for the Sony settlement is set for November 8, 2016 before the Court.

Since the inception of this case, IPP Class Counsel have incurred substantial out-of-pocket expenses for the benefit of the proposed class, as well as substantial attorney time performing work on behalf of the proposed class. At this time, IPPs seek reimbursement of only some of these expenses. IPPs are not currently seeking any award of attorneys’ fees.

The expenses for which IPPs presently seek reimbursement are for (1) consultants and experts necessary to advance the interests of the proposed class, (2) document retrieval, hosting and review platforms, and (3) translations of foreign language documents. As reflected in the Declaration of Steven N. Williams (“Williams Decl.”) accompanying this motion, Class Counsel have incurred \$3,703,305.74 in out-of-pocket expenses related to these three items.

The costs for which Class Counsel seeks reimbursement were necessarily incurred in the prosecution of this complex antitrust class action. The efforts Class Counsel have taken to litigate this case, as well as the risk they have faced in doing so, are also detailed in the Williams Declaration.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. Litigation History

1. Pre-Complaint Investigation, Early Complaints, Service of Process, and the Judicial Panel on Multidistrict Litigation (“JPML”)

The first IPP complaint in this litigation was filed on October 4, 2012 in the Northern District of California. *Hanlon v. LG Chem. et al.*, No. 12-12419 (N.D. Cal.), ECF No. 1 (complaint). Thereafter, additional complaints making substantially similarly legal and factual allegations were filed in several federal district courts. In total, forty-seven such actions were filed. ECF No. 1 (Transfer Order). Class Counsel participated in proceedings before the

1 JPML, where Defendants and numerous Plaintiffs in the tag-along actions argued that that all
2 related actions should be transferred and centralized in the Northern District of California. On
3 February 6, 2013, the JPML transferred all cases to this Court, finding centralization
4 appropriate under 28 U.S.C. § 1407. *Id.*

5 **2. Appointment of Leadership**

6 On May 17, 2013, this Court appointed Cotchett, Pitre & McCarthy, LLP, Hagens
7 Berman Sobol Shapiro LLP, and Lieff Cabraser Heimann & Bernstein, LLP as Interim Co-
8 Lead Class Counsel (“Co-Lead Counsel”) for the IPPs. ECF No. 194. Jennie Anderson of
9 Andrus Anderson LLP was appointed Liaison Counsel for the IPPs. ECF No. 194.

10 **3. The Consolidated Complaints and Two Rounds of Motions to Dismiss**

11 On July 2, 2013, IPPs filed a 162-page, factually-detailed Consolidated Class Action
12 Complaint (“CCAC”). ECF No. 221. The CCAC named 27 Defendants from nine corporate
13 families that manufactured LIBs. *Id.* This complaint outlined IPPs’ allegations that these
14 companies conspired to fix the prices of LIBs used in consumer electronics in the U.S. *Id.*

15 In response to the CCAC, Defendants filed five individual motions and one joint motion
16 to dismiss. *See* ECF Nos. 288 (Joint Motion); 284 (Hitachi and Maxell); 289 (Panasonic and
17 Sanyo); 291 (LG Chem America); 293 (Toshiba); and 296 (Sony). Among the arguments
18 made by Defendants were: (1) that Plaintiffs had failed to allege a plausible “overarching”
19 conspiracy involving each Defendant under *Twombly* and *Iqbal*; (2) that IPPs’ claims were
20 barred by the statute of limitations; (3) that Defendants’ U.S.-based subsidiaries were not
21 properly named as Defendants; and (4) that various state law claims should be dismissed. *Id.*

22 On July 21, 2014, this Court issued a detailed, 29-page Order dismissing IPPs’ CCAC with
23 leave to amend. ECF No. 361. The Court rejected Defendants’ first two arguments, and held
24 that IPPs had alleged a plausible conspiracy as to the Defendants’ Korean and Japanese parent
25 companies, but found that IPPs needed to make more detailed allegations as to the Defendant
26 subsidiaries. *Id.* at 3.

27 On April 11, 2014, IPPs filed their Corrected Second Amended Consolidated Class
28 Action Complaint (“SCAC”). ECF No. 419. The SCAC expanded to 196-pages and added

1 significant detail regarding Defendants' domestic subsidiaries. *Id.* On April 25, 2015,
2 Defendants filed a joint motion to dismiss the SCAC on multiple grounds. ECF 428. With the
3 exception of the Court's dismissal of two state law claims (Montana and New Hampshire), and
4 the dismissal of the State Governmental Damages Subclass (except California), Defendants'
5 motion was denied. *See* ECF No. 512 at 36 and 44.

6 On October 22, 2014, IPPs filed their Third Consolidated Amended Complaint
7 ("TCAC") to conform to this Court's order on the SCAC. ECF No. 519. On December 2,
8 2015, IPPs filed a Motion to Amend the TCAC to add, substitute, and drop certain class
9 representatives. ECF No. 984. On March 14, 2016, with the exception of five proposed
10 substitute class representatives who had only purchased Apple products, the Court granted
11 IPPs' Motion to Amend. ECF No. 1154.

12 **4. Toshiba's Summary Judgment Motion**

13 On June 30, 2015, Toshiba filed a motion for summary judgment, and argued that
14 Plaintiffs' claims were barred by the statute of limitations because Toshiba withdrew from the
15 conspiracy by 2004. ECF No. 735. On November 13, 2015 IPPs and DPPs collectively
16 opposed the motion. ECF No. 957. On March 16, 2016, after hearing oral argument, the Court
17 denied Toshiba's motion. ECF No. 1106.

18 **5. The Discovery Process and the Need for Document Retrieval, Hosting 19 and Review Platforms and Certified Translations**

20 During the course of this litigation, IPPs have propounded multiple sets of discovery,
21 conducted numerous, lengthy meet and confers, and engaged in multiple rounds of motion
22 practice in front of Magistrate Judge Ryu on various discovery issues. *See* ECF Nos. 805, 822,
23 836, 938, 1143, and 1177. The net result of these efforts is that Defendants ultimately
24 identified 273 document custodians, and produced over eight million pages of documents as
25 well as voluminous electronic transactional data. Williams Decl. ¶¶6, 8. Additionally,
26 Plaintiffs engaged a vendor to retrieve class representative documents related to this litigation
27 for production to Defendants. *Id.* ¶9. Plaintiffs contracted with Catalyst Repository Systems
28 Inc., Everlaw Inc., Omega Discovery Solutions, LLC, and iDiscovery Solutions, Inc. to

1 retrieve, host, and review documents produced in discovery. To date, IPPs have incurred a
2 total of \$429,604.12 for these document hosting services. *Id.* at ¶10 and Ex. 1.¹

3 Many of the documents produced in discovery are written in Japanese and Korean, and
4 IPPs had to obtain certified translations of the documents before they could be used in
5 depositions and court filings. *See* ECF No. 665 at 1 and Williams Decl. ¶10. To date, IPPs
6 have incurred a total of \$157,362.92 in charges for certified translations for nearly two
7 thousand documents. Williams Decl. at ¶10 and Ex. 1. IPPs have used hundreds of certified
8 translations at depositions and in the briefing in this case to date. *Id.*

9 **6. Class Certification and the Need for Expert Economists**

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

16 Defendants filed their opposition to class certification on May 24, 2016. ECF No.
17 1283. As part of that filing, Defendants submitted two *Daubert* motions and the expert reports
18 of Margaret Guerin-Calvert, Dr. Quinn Horn, and Daniel Moe to counter the opinions offered
19 by Dr. Leamer and Dr. Abrantes-Metz. ECF Nos. 128-3; 1280-5. On August 23, 2016, IPPs
20 filed their reply in support of their class certification motion. ECF No. 1402-2. IPPs submitted
21 reply reports by Dr. Leamer and Dr. Abrantes-Metz that provided specific responses to
22 criticisms of their work made by Defendants' experts. *Id.* Each of the four expert reports filed
23 by IPPs was based on extensive economic analyses of Defendants' documents, transactional
24 data and opposing expert reports, and took many hours to complete. Williams Decl. ¶¶12-16.
25 Drs. Leamer and Abrantes-Metz were deposed for a collective fourteen hours. *Id.* ¶14.

27 ¹ All references to "Ex." or "Exhibit" refer to exhibits to the Declaration of Steven N.
28 Williams filed in support of this motion.

1 Dr. Leamer relied on work performed by the economic consulting firm EconOne
2 Research, LLC, which analyzed Defendants' transactional data. *Id.* ¶13. EconOne analyzed
3 data from over 71 third parties, and from each Defendant. *Id.* This analysis involved a
4 systematic review of over 381 gigabytes of data as well as conducting detailed regressions and
5 sensitivity analyses. *Id.* Class Counsel have also engaged applEcon LLC for additional data
6 collection, and have engaged an industry expert. *Id.* ¶17.

7 As a result of this extensive work, IPPs have incurred a total of \$3,116,338.70 in expert
8 expenses. *See id.* at ¶19 and Ex 1.

9 **B. Settlement History**

10 On April 8, 2016, IPPs filed their motion for preliminary approval of their settlement
11 with Sony. ECF No. 1209. That motion describes the terms of the settlement and explains
12 why it is fair adequate and reasonable. *Id.*

13 **III. CLASS COUNSEL ARE ENTITLED TO REIMBURSEMENT OF THEIR
14 REASONABLE LITIGATION EXPENSES.**

15 For four years, IPP Class Counsel have funded and advanced the substantial expenses and
16 costs required to prosecute the litigation, and did so without any guarantee of reimbursement.
17 Having achieved the substantial settlements currently before the Court, Class Counsel should be
18 reimbursed for litigation expenses and costs in the amount of \$3,703,305.74. *See* Williams Decl.
19 ¶16 and Ex. 1. The costs for which Class Counsel seek reimbursement are only a subset of the
20 total costs incurred to litigate this case to date, which include substantial deposition-related
21 expenses and expenses related to the collection of third-party data.

22 The law is clear that attorneys who create a common fund are entitled to reimbursement
23 of their out-of-pocket expenses so long as they are reasonable, necessary and directly related to
24 the prosecution of the Action. *See Vincent v. Hughes Air West*, 557 F.2d 759, 769 (9th Cir.
25 1977); *In re OmniVision Techs., Inc.*, 559 F. Supp. 2d 1036, 1048 (N.D. Cal. 2008); 1 Alba
26 Conte, *Attorney Fee Awards* § 2.19 (3d ed. 2004). Here, Class Counsel's expenses are detailed
27 in the Williams Declaration and exhibits.

1 The expenses for which IPPs seek reimbursement—document translations, document
2 retrieval, hosting, and review platforms, and expert costs—were reasonable and necessary for
3 the prosecution of this action. Williams Decl. ¶¶4-20. Such costs are customarily approved by
4 courts as proper litigation expenses. *See, e.g., In re Toyota Motor Corp. Unintended*
5 *Acceleration Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 8:10ML 02151 JVS (FMOx),
6 2013 U.S. Dist. LEXIS 123298, at *319 (C.D. Cal. July 24, 2013) (awarding reimbursement of
7 expert expenses”); *Katz v. China Century Dragon Media, Inc.*, No. LA CV11-02769 JAK
8 (SSx), 2013 U.S. Dist. LEXIS 189987, at *25 (C.D. Cal. Oct. 10, 2013) (awarding
9 reimbursement of translation expenses); and *In re Marsh & McLennan Cos., Inc. Sec. Litig.*,
10 2009 U.S. Dist. LEXIS 120953, at *59 (S.D.N.Y. Dec. 23, 2009) (awarding reimbursement of
11 “electronic document hosting” expenses).

12 IV. CONCLUSION

13 For the foregoing reasons, this Court should permit the payment of litigation expenses
14 in the amount of \$3,703,305.74.

15
16 Dated: September 8, 2016

Respectfully submitted,

17 By /s/ Steven N. Williams
18 Steven N. Williams

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