

1 Steve W. Berman (*Pro Hac Vice*)
HAGENS BERMAN SOBOL SHAPIRO LLP
2 715 Hearst Avenue, Suite 202
Berkeley, CA 94710
3 Telephone: (510) 725-3000
Facsimile: (510) 725-3001
4 steve@hbsslaw.com

5 Elizabeth J. Cabraser (SBN 083151)
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
6 275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
7 Telephone: (415) 956-1000
Facsimile: (415) 956-1008
8 ecabraser@lchb.com

9 Adam J. Zapala (SBN 245748)
COTCHETT, PITRE & McCARTHY, LLP
10 840 Malcolm Road, Suite 200
Burlingame, CA 94010
11 Telephone: (650) 697-6000
Facsimile: (650) 697-0577
12 azapala@cpmlegal.com

13 *Class Counsel for Indirect Purchaser Plaintiffs*

14 [Additional Counsel Listed on Signature Page]

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 OAKLAND DIVISION

18 IN RE LITHIUM ION BATTERIES
19 ANTITRUST LITIGATION,

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

20 MDL No. 2420

21 This Documents Relates to:
22 ALL INDIRECT PURCHASER ACTIONS

INDIRECT PURCHASER PLAINTIFFS'
NOTICE OF RENEWED MOTION AND
RENEWED MOTION FOR
ATTORNEYS' FEES, EXPENSES, AND
SERVICE AWARDS

24 Date: May 20, 2020
25 Time: 2:00 pm
26 Judge: Hon. Yvonne Gonzalez Rogers
Court: Courtroom 1, 4th Floor

27 DATE ACTION FILED: Oct. 3, 2012
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

	<u>Page</u>
I. INTRODUCTION	1
II. THE WORK UNDERTAKEN BY THE INDIRECT PURCHASERS	3
A. Class Counsel undertook substantial pre-litigation investigation.	3
B. Class Counsel successfully litigated motions to dismiss and summary judgment. .	3
C. Class Counsel engaged in substantial discovery.	4
1. Class Counsel with direct purchasers obtained critical discovery.....	4
2. Class Counsel conducted substantial written and document discovery.	5
3. Class Counsel undertook a large amount of expert discovery.	6
4. Class Counsel took and defended over eighty depositions.	7
D. This case required extensive work on behalf of the class representatives.....	7
E. Class Counsel’s motion practice and trial preparation maximized Class recovery.	8
F. The Ninth Circuit granted a limited remand giving this Court jurisdiction to consider whether any modification of the attorney’s fee award is warranted.	9
III. ARGUMENT	10
A. Class Counsel’s fee request is reasonable.	11
1. A thirty percent award is reasonable under a percentage-of-the-fund analysis.	12
2. A lodestar cross-check confirms the reasonableness of the requested fees.....	18
B. Co-Lead Counsel requests authorization to distribute fees among Class Counsel.	21
C. The out-of-pocket expenses were necessary for effective representation of the Class.	21
D. Plaintiffs request authorization to pay up to \$10,000 for future distribution costs.	23
E. The requested service awards compensate critical dedication to this case.	23
F. The Class received appropriate notice of Class Counsel’s fee application.	25
IV. CONCLUSION	25

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

1

2

3

4 *Allapattah Servs., Inc. v. Exxon Corp.*,

5 454 F. Supp. 2d 1185 (S.D. Fla. 2006)..... 11

6 *In re Bluetooth Headset Prods. Liab. Litig.*,

7 654 F.3d 935 (2011) 19

8 *Boeing Co. v. Van Gemert*,

9 444 U.S. 472 (1980) 11

10 *Bowling v. Pfizer, Inc.*,

11 102 F.3d 777 (6th Cir. 1996)..... 21

12 *In re Cathode Ray Tube (CRT) Antitrust Litig.*,

13 2016 WL 3648478 (N.D. Cal. July 7, 2016) 14

14 *In re Cathode Ray Tube (CRT) Antitrust Litig.*,

15 2016 WL 4126533 (N.D. Cal. Aug. 3, 2016)..... 12, 16

16 *In re Checking Account Overdraft Litig.*,

17 830 F. Supp. 2d 1330 (S.D. Fla. 2011)..... 12

18 *China Agritech, Inc. v. Resh*,

19 138 S. Ct. 1800 (2018) 24, 25

20 *Chun-Hoon v. McKee Foods Corp.*,

21 716 F. Supp. 2d 848 (N.D. Cal. 2010)..... 19

22 *de Mira v. Heartland Emp’t Serv., LLC*,

23 2014 WL 1026282 (N.D. Cal. Mar. 13, 2014) 13

24 *Gong-Chun v. Aetna Inc.*,

25 2012 WL 2872788 (E.D. Cal. July 12, 2012)..... 19

26 *Harris v. Marhoefer*,

27 24 F.3d 16 (9th Cir. 1994)..... 21

28 *Hartless v. Clorox Co.*,

273 F.R.D. 630 (S.D. Cal. 2011) 21

Hawaii v. Stand. Oil Co.,

405 U.S. 251 (1972) 11

Hopkins v. Stryker Sales Corp.,

2013 WL 496358 (N. D. Cal. Feb. 6, 2013)..... 17

1 *In re Hyundai and Kia Fuel Econ. Litig.*,
 2 926 F.3d 539 (9th Cir. 2019) (en banc) 12, 15, 19

3 *In re Ikon Office Sols., Inc., Secs. Litig.*,
 4 194 F.R.D. 166 (E.D. Pa. 2000) 12

5 *In re Linerboard Antitrust Litig.*,
 6 2004 WL 1221350 (E.D. Pa. June 2, 2004)..... 12, 14

7 *In re Lithium Ion Batteries Antitrust Litig.*,
 8 777 F. App'x 221 (9th Cir. 2019)..... 9, 19

9 *In re Lithium Ion Batteries Antitrust Litig.*,
 10 777 F. App'x 231 (9th Cir. 2019)..... 9

11 *In re Media Vision Tech. Secs. Litig.*,
 12 913 F. Supp. 1362 (N.D. Cal. 1995)..... 22

13 *In re Mercury Interactive Corp. Sec. Litig.*,
 14 618 F.3d 988 (9th Cir. 2010)..... 25

15 *Morganstein v. Esber*,
 16 768 F. Supp. 725 (C.D. Cal. 1991)..... 21

17 *In re Omnivision Techs., Inc.*,
 18 559 F. Supp. 2d 1036 (N.D. Cal. 2008)..... 21

19 *In re Online DVD-Rental Antitrust Litig.*,
 20 779 F.3d 934 (9th Cir. 2015) 11, 12, 13, 17

21 *In re Optical Disk Drive Prod. Antitrust Litig.*,
 22 2016 WL 7364803 (N.D. Cal. Dec. 19, 2016) 14

23 *In re Pac. Enters. Sec. Litig.*,
 24 47 F.3d 373 (9th Cir. 1995)..... 15

25 *Pillsbury Co. v. Conboy*,
 26 459 U.S. 248 (1983) 11

27 *In re Polyurethane Foam Antitrust Litig.*,
 28 168 F. Supp. 3d 985 (N.D. Ohio 2016) 21

In re Polyurethane Foam Antitrust Litig.,
 2015 WL 1639269 (N.D. Ohio Feb. 26, 2015) 12

In re Portal Software, Inc. Sec. Litig.,
 2007 WL 4171201 (N.D. Cal. Nov. 26, 2007)..... 19

Reiter v. Sonotone Corp.,
 442 U.S. 330 (1979) 11

1 *Rodriguez v. W. Publ'g Corp.*,
 2 563 F.3d 948 (9th Cir. 2009)..... 23, 24

3 *In re Static Random Access Memory (SRAM) Antitrust Litig.*,
 4 No. 07-md-1819-CW (N.D. Cal. Oct. 14, 2011), ECF No. 1407..... 12, 16

5 *Staton v. Boeing Co.*,
 6 327 F.3d 938 (9th Cir. 2003)..... 11

7 *In re TFT-LCD (Flat Panel) Antitrust Litig.*,
 8 2013 WL 1365900 (N.D. Cal. Apr. 3, 2013)..... 12, 16, 19

9 *Thornberry v. Delta Air Lines*,
 10 676 F.2d 1240 (9th Cir. 1982), *judgment vacated and remanded on other grounds*, 461 U.S.
 11 952 (1983) 22

12 *In re Urethane Antitrust Litig.*,
 13 2016 WL 4060156 (D. Kan. July 29, 2016)..... 11

14 *Van Vracken v. Atl. Richfield Co.*,
 15 901 F. Supp. 294 (N.D. Cal. 1995)..... 24

16 *Vincent v. Hughes Air West, Inc.*,
 17 557 F.2d 759 (9th Cir. 1977)..... 21

18 *In re Vitamins Antitrust Litig.*,
 19 2001 WL 34312839 (D.D.C. July 16, 2001) 12

20 *Vizcaino v. Microsoft Corp.*,
 21 290 F.3d 1043 15, 17, 18, 19

22 *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*,
 396 F.3d 96 (2d Cir. 2005) 11, 15

23 *In re Warfarin Sodium Antitrust Litig.*,
 391 F.3d 516 (3d Cir. 2004) 21

24 *In re Wash. Pub. Power Supply Sys. Sec. Litig.*,
 19 F.3d 1291 (9th Cir. 1994)..... 17

FEDERAL RULES

24 Federal Rule of Civil Procedure 23 9

25 Federal Rule of Civil Procedure 30(b)(6)..... 6

SECONDARY AUTHORITIES

27 Eisenberg, Miller & Germano, *Attorneys' Fees in Class Actions: 2009-2013*,
 28 92 N.Y.U. L. Rev. 937, 952 (2017)..... 12, 19

1 F. Patrick Hubbard, *Substantive Due Process Limits on Punitive Damages Awards: “Morals*
2 *Without Technique”?*, 60 Fla. L. Rev. 349, 383 (2008)..... 18

3 Herbert M. Kritzer, *The Wages of Risk: The Returns of Contingency Fee Legal Practice*,
4 47 DePaul L. Rev. 267, 286 (1998)..... 18

5 Lester Brickman, *ABA Regulation of Contingency Fees: Money Talks, Ethics Walks*,
6 65 Fordham L. Rev. 247, 248 (1996) 17

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

GLOSSARY OF DEFINED TERMS

Term	Definition
Berman Decl.	Declaration of Steve W. Berman in Support of Indirect Purchaser Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards, ECF No. 2487-4
Class Counsel	Co-Lead Counsel and Supporting Counsel
Class Representative Compendium	Compendium of Class Representative Declarations in Support of Indirect Purchaser Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards, ECF No. 2487-7
Class Representatives	Jason Ames, Caleb Batey, Christopher Bessette, Cindy Booze, Matt Bryant, Steven Bugge, William Cabral, Matthew Ence, Drew Fennelly, Sheri Harmon, Christopher Hunt, John Kopp, Linda Lincoln, Patrick McGuiness, Joseph O'Daniel, Tom Pham, Piya Robert Rojanasathit, Bradley Seldin, Donna Shawn, David Tolchin, Bradley Van Patten, the City of Palo Alto, and the City of Richmond
Co-Lead Counsel	Hagens Berman Sobol Shapiro LLP, Lieff Cabraser Heimann & Bernstein, LLP, and Cotchett, Pitre & McCarthy, LLP
DPPs	Direct Purchaser Plaintiffs
Glackin Decl.	Declaration of Brendan P. Glackin in Support of Indirect Purchaser Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards, ECF No. 2487-5
Hitachi Maxell	Hitachi Maxell, Ltd., Maxell Corporation of America
IPPs/Plaintiffs	Indirect Purchaser Plaintiffs
Joint Decl.	Joint Declaration of Steve W. Berman, Brendan P. Glackin, and Adam J. Zapala in Support of Indirect Purchaser Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards, ECF No. 2487-2
LG Chem	LG Chem, Ltd., LG Chem America, Inc.
LIB	Lithium Ion Batteries
NEC	NEC Corporation
Panasonic/Sanyo	Panasonic Corporation, Panasonic Corporation of North America, Sanyo Electric Co., Ltd., Sanyo North America Corporation
SDI	Samsung SDI Co., Ltd., Samsung SDI America, Inc.
Sony	Sony Corporation, Sony Energy Devices Corporation, Sony Electronics, Inc.
Supporting Counsel	Class Counsel that assisted Co-Lead Counsel in litigating this case on behalf of Plaintiffs, apart from Co-Lead Counsel
Supporting Counsel Compendium	Compendium of Supporting Counsel Declarations in Support of Indirect Purchaser Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards, ECF Nos. 2487-8 to 2487-11
TOKIN	TOKIN Corporation
Toshiba	Toshiba Corporation
Zapala Decl.	Declaration of Adam J. Zapala in Support of Indirect

	Purchaser Plaintiffs' Motion for Attorneys' Fees and Reimbursement of Expenses on Behalf of Cotchett, Pitre & McCarthy, LLP, ECF No. 2487-6
ECF DOCUMENTS	
ECF No.	Unless otherwise noted, all "ECF No." references are to the docket in <i>In re Lithium Ion Batteries Antitrust Litig.</i> , No. 13-md-02420 YGR (DMR) (N.D. Cal. May 17, 2013)
ECF No. 221	Indirect Purchaser Plaintiffs' Consolidated Amended Class Action Complaint, July 2, 2013
ECF No. 276	Order Setting Briefing Limits and Schedule, Aug. 26, 2013
ECF No. 361	Order re Motions to Dismiss, Jan. 21, 2014
ECF No. 395	Order re Phase II Motion to Dismiss Briefing And Plaintiffs' Second Amended Complaints, Feb. 27, 2014
ECF No. 419	Indirect Purchaser Plaintiffs' Corrected Consolidated Second Amended Class Action Complaint, Apr. 11, 2014
ECF No. 428	Certain Defendants' Joint Motion to Dismiss the Direct Purchaser Plaintiffs' Second Consolidated Amended Complaint, Apr. 25, 2014
ECF No. 512	Omnibus Order re Motions to Dismiss the Second Consolidated Amended Complaints of Direct and Indirect Purchaser Plaintiffs
ECF No. 519	Indirect Purchaser Plaintiffs' Third Consolidated Amended Class Action Complaint, Oct. 22, 2014
ECF No. 735	Motion for Summary Judgment on Withdrawal, June 30, 2015
ECF No. 982	Motion for Leave to Amend Complaint Pursuant to Federal Rules of Civil Procedure 15(a) and 20(a) filed by Indirect Purchaser Plaintiffs, Nov. 30, 2015
ECF No. 984	Motion for Leave to Amend Complaint Pursuant to Federal Rules of Civil Procedure 15(a) and 20(a) filed by Indirect Purchaser Plaintiffs, Dec. 2, 2015
ECF No. 1033	Motion to Amend/Correct Complaint Pursuant to Federal Rules of Civil Procedure 15(a) and 20(a), Jan. 22, 2016
ECF No. 1036	Indirect Purchaser Plaintiffs' Motion for Class Certification, Jan. 22, 2016
ECF No. 1154	Order Granting in Part Indirect Purchaser Plaintiffs' Motion to Amend Complaint, Mar. 14, 2016
ECF No. 1168	Indirect Purchaser Plaintiffs' Fourth Consolidated Amended Class Action Complaint, Mar. 18, 2016
ECF No. 1551	Defendants' Memorandum of Points and Authorities in Opposition to IPPs' Motion for Class Certification, Oct. 31, 2016
ECF No. 1553	Motion to Strike Proposed Expert Testimony of Dr. Edward E. Leamer, Oct. 31, 2016
ECF No. 1554	Motion to Strike Proposed Expert Testimony of Dr. Rosa M. Abrantes-Metz, Oct. 31, 2016
ECF No. 1652	Indirect Purchaser Plaintiffs' Motion for Preliminary

1		Approval of Class Action Settlement with LG Chem, Dec. 6, 2016
2	ECF No. 1672	Indirect Purchaser Plaintiffs' Motion for Preliminary Approval of Class Action Settlement with Hitachi Maxell, Ltd., Maxell Corporation of America, and NEC Corporation, Jan. 24, 2017
3		
4	ECF No. 1735	Order Denying Without Prejudice Motions for Class Certification; Granting in Part and Denying in Part Motions to Strike Expert Reports or Portions Thereof, Apr. 12, 2017
5		
6	ECF No. 2005	ORDER Granting in Part and Denying in Part Without Prejudice Motion for an Award of Attorney Fees, Reimbursement of Expenses and Service Awards, Oct. 27, 2017
7		
8	ECF No. 2197	Order Denying Indirect Purchaser Plaintiffs' Renewed Motion for Class Certification, Mar. 5, 2018
9		
10	ECF No. 2322	Order Granting Direct Purchaser Plaintiffs' Motion for Award of Attorney Fees, Reimbursement of Expenses and Service Awards, May 16, 2018
11	ECF No. 2459	Indirect Purchaser Plaintiffs' Notice of Motion and Motion to Direct Notice to the Class Regarding the SDI, Tokin, Toshiba & Panasonic Settlements, Jan. 24, 2019
12		
13	ECF No. 2486	Order Granting Stipulation Regarding Modification to Direct Notice Campaign, Apr. 8, 2019
14	ECF No. 2513	Supplemental Submission in Support of Indirect Purchaser Plaintiffs' Motion For Final Approval and Request for Attorneys' Fees, Expenses, and Service Awards, July 19, 2019
15		
16	ECF No. 2516	Order Granting Indirect Purchaser Plaintiffs' Motion For Final Approval of Settlements With SDI, Tokin, Toshiba and Panasonic Defendants, Granting Motion for Attorneys' Fees, Expenses and Service Awards, Aug. 16, 2019
17		
18		
19	ECF No. 2534	Notice of Appeal to the 9th Circuit Court of Appeals filed by Gordon Morgan, Sept. 16, 2019
20	ECF No. 2558	Motion for Indicative Ruling filed by Gordon Morgan and Michael Frank Bednarz, Nov. 12, 2019
21	ECF No. 2562	Indirect Purchaser Plaintiffs' Opposition to Motion for Indicative Ruling, Nov. 26, 2019
22	ECF No. 2564	Reply in Support of Motion for Indicative Ruling, Dec. 3, 2019
23	ECF No. 2567	Order Granting in Part the Motion for Indicative Ruling, Dec. 12, 2019
24	ECF No. 2579	Ninth Circuit Order, Jan. 30, 2020
25	ECF No. 2581	Indirect Purchaser Plaintiffs' Motion for Administrative Relief to Modify Language in the Court-Approved Class Notice, Feb. 4, 2020
26		
27		
28		

NOTICE OF RENEWED MOTION AND RENEWED MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on May 20, 2020, at 2:00 p.m. or as soon thereafter as the matter may be heard by the Honorable Yvonne Gonzalez Rogers of the United States District Court for the Northern District of California, Oakland Division, located at Courtroom 1, 4th Floor, 1301 Clay Street, Oakland, California, Indirect Purchaser Plaintiffs (“Plaintiffs”) will and hereby do move the Court for an award of attorneys’ fees, expenses, and service awards. This motion is based on this notice of renewed motion and renewed motion, the accompanying memorandum of points and authorities, the declarations in support of the renewed motion, argument by counsel at the hearing before this Court, any papers filed in reply, such oral and documentary evidence as may be presented at the hearing of this renewed motion, and all papers and records on file in this action.

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

I. INTRODUCTION

After more than seven years of hard-fought litigation, Interim Co-Lead Counsel (“Class Counsel”) secured settlements totaling \$113.45 million for the Indirect Purchaser Plaintiffs (“Plaintiffs”). In light of the substantial risks and complex issues in this litigation, as well as the \$113.45-million settlement fund created, Plaintiffs respectfully request an award of \$33,829,176 in attorneys’ fees—just under 30 percent of the common fund; (2) reimbursement of expenses incurred in connection with this litigation totaling \$6,751,735.84; and (3) service awards for each of the class representatives—\$10,000 for each of the twenty-one individual class representatives and \$25,000 for each of two governmental entity class representatives. Class Counsel simply seek reinstatement of the of the Court’s original fee, cost and service awards—no more, not even additional costs generated on the appeals.

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

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

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

3 The requested 30-percent fee award is reasonable compared to awards in similar antitrust
4 class actions. For example, this Court approved a 30-percent fee award to counsel for direct
5 purchaser plaintiffs in this action.¹ In other large antitrust class actions litigated in this District,
6 courts have awarded similar percentages in attorneys’ fees. A recent empirical study of attorneys’
7 fees in class action settlements also supports the 30-percent fee request.

8 The reasonableness of the requested award is further confirmed by a “lodestar cross-check.”
9 Based on Class Counsel’s total lodestar for the case of \$41,458,223.50 as submitted in connection
10 with the 2019 fee motion, the requested award would lead to a *negative* multiplier of 0.82 or less.²
11 This Court explained in granting counsel for the direct purchasers a 30-percent fee award that their
12 negative multiplier “obviate[d] concern about any windfall given the size of the settlement
13 recovery.”³ Because the cross-check “results in an effective hourly rate far below the market rate
14 for the hours devoted to the case by class counsel,” the Court found that the “requested fee award is
15 reasonable and justified by the circumstances of this case.”⁴ The same is true here.

16 Beyond fees, the requested expenses were all critical to the representation of the Class. And
17 the amount of the expenses, including the three largest categories of expenses (expert costs, online
18 document databases, and translations and interpreters), are consistent with the amount of expenses
19 reimbursed in comparable cases. The service awards are reasonable given the substantial
20 commitment to the Class and investment of time provided to this case by the class representatives.
21 The fees, costs and service awards made by this Court’s order of August 16, 2019 were reasonable
22 then, and remain reasonable now. Plaintiffs respectfully request that their motion be granted.

24 ¹ ECF No. 2322 at 3.

25 ² Removing the 427.9 hours (\$205,824 in fees) spent on the third motion for class certification,
26 the negative multiplier is 0.825, assuming a thirty-percent fee award. However Class Counsel have
27 also not recalculated the lodestar to include hundreds of hours invested over the last year of appeals
28 and subsequent proceedings in this Court. The multiplier is certainly lower than 0.82 at this point.

³ ECF No. 2322 at 2.

⁴ *Id.*

II. THE WORK UNDERTAKEN BY THE INDIRECT PURCHASERS

A. Class Counsel undertook substantial pre-litigation investigation.

Although they do not seek to recover for work prior to their appointment, Class Counsel undertook substantial efforts to investigate the class's claims before filing. This work included the retention of economists with extensive experience in technology markets to obtain and analyze historical pricing data showing abnormal price changes during the conspiracy period. Counsel also collected data on lithium-ion battery raw material costs and translated and reviewed numerous Asian language documents discussing the lithium-ion batteries' market.

B. Class Counsel successfully litigated motions to dismiss and summary judgment.

At the outset, the Court instituted a three-phased approach to addressing the sufficiency of the pleadings. *See* ECF Nos. 276, 395. On July 2, 2013, Plaintiffs filed a 162-page, factually detailed Consolidated Class Action Complaint. ECF No. 221. In response to this complaint, Defendants filed five individual motions to dismiss and one joint motion. Defendants argued, among other things: (1) that Plaintiffs failed to sufficiently allege facts stating a plausible "overarching" conspiracy involving each Defendant; (2) that Plaintiffs' claims were barred by the statute of limitations; (3) that Defendants' U.S.-based subsidiaries were not properly named as Defendants; and (4) that various state law claims should be dismissed. Joint Decl., ¶ 20. In total, the first round of motions to dismiss generated 278 pages of briefing. *Id.* On Jan. 21, 2014, this Court held that Plaintiffs had adequately alleged a conspiracy, but dismissed the complaint on other grounds with leave to amend. ECF No. 361.

On April 11, 2014, Plaintiffs filed their Corrected Second Amended Consolidated Class Action Complaint. The complaint expanded to 196 pages and added significant detail regarding Defendants' domestic subsidiaries. ECF No. 419. On April 25, 2014, Defendants filed a joint motion to dismiss the operative complaint, representing a second phase of challenges. ECF No. 428. Principally, Defendants' motion addressed whether Plaintiffs had antitrust standing to proceed in this suit. This round of briefing totaled 284 pages. Joint Decl., ¶ 21. With the exception of the Court's dismissal of two state law claims (Montana and New Hampshire), and the dismissal of the State Governmental Damages Subclass (except California), the Court denied Defendants' motion.

1 See ECF No. 512 at 36 and 44. Around the same time, several Defendants filed individual motions
2 to dismiss relating to the corporate structures of those Defendants and whether they or their
3 subsidiaries could properly be sued. This round of motions generated 227 pages of briefing. Joint
4 Decl., ¶ 22. The Court denied each such motion. See ECF No. 512 at 55-56.

5 On October 22, 2014, Plaintiffs filed their Third Consolidated Amended Complaint. ECF
6 No. 519. Over a year later, in connection with their class certification motion, Plaintiffs filed
7 motions to amend the complaint to substitute certain proposed class representatives and to narrow
8 the proposed class to seek damages only for products containing cylindrical LIBs.⁵ On March 14,
9 2016, the Court granted Plaintiffs leave to file an amended complaint (ECF No. 1154), and on
10 March 18, 2016, Plaintiffs filed the operative Fourth Amended Class Action Complaint (“Operative
11 Complaint” or “Complaint”). ECF No. 1168.

12 On June 30, 2015, Toshiba moved for summary judgment arguing that it had withdrawn
13 from the conspiracy by 2004, and that the statute of limitations therefore barred all of Plaintiffs’
14 claims. ECF No. 735. Plaintiffs worked with the direct purchaser plaintiffs to tailor discovery to
15 address this argument. Joint Decl., ¶ 24. On November 13, 2015, Plaintiffs and direct purchasers
16 jointly opposed the motion, and this Court denied Toshiba’s motion following oral argument. *Id.*

17 **C. Class Counsel engaged in substantial discovery.**

18 **1. Class Counsel with direct purchasers obtained critical discovery.**

19 From the beginning, Class Counsel maximized efficiency by coordinating discovery efforts
20 with the direct purchaser class. For example, direct and indirect purchasers jointly drafted proposed
21 orders and protocols for coordinated discovery, depositions, translations, and discovery of
22 electronically stored information. Counsel also worked together to negotiate search terms, to ensure
23 the completeness of discovery responses, and to schedule depositions. *Id.*, ¶ 26.

24
25
26
27

⁵ ECF No. 1033; *see also* ECF Nos. 982, 984. The case initially included products containing
28 three different lithium-ion battery types.

1 **2. Class Counsel conducted substantial written and document discovery.**

2 Plaintiffs propounded substantial written discovery, including 78 document requests, 24
3 interrogatories (some of which were jointly served on all Defendants), and 1,534 requests for
4 admissions. *Id.*, ¶ 28. Because of the need to prove pass-through of the overcharge through a
5 multistep distribution chain (an evidentiary burden not faced by direct purchasers), Class Counsel
6 also served over 140 subpoenas to third parties for data and documents. *Id.*, ¶ 29.

7 Class Counsel spent tens of thousands of hours reviewing and analyzing Defendants'
8 written discovery responses and the documents produced by Defendants and third parties. In total,
9 Plaintiffs obtained documents from 273 custodians, spanning over 2.7 million documents and eight
10 million pages, as well as voluminous electronic transactional data. Because most documents were
11 produced in Japanese, Korean, or Chinese, Plaintiffs retained foreign-language reviewers or
12 utilized staff attorneys fluent in those languages and specialists in antitrust cartels to conduct a
13 thorough analysis. Plaintiffs contracted with Catalyst and Omega Discovery Solutions to retrieve,
14 host, review, and synthesize these documents. In addition, Plaintiffs spent over \$200,000 to obtain
15 certified translations of more than 1,500 documents. *Id.*, ¶ 30.

16 To obtain this discovery, Plaintiffs brought and prevailed on, at least in part, fourteen
17 fiercely contested motions to compel, which necessitated large amounts of time for meet-and-
18 confers, briefing, and hearing preparation.

Order on Motion to Compel	Date	Outcome
Order on Joint Disc. Letter Br., re Worldwide Transactional Data, ECF No. 624	Dec. 23, 2014	Granted
Order on Joint Disc. Letter Br., ECF No. 690	Mar. 17, 2015	Granted
Order on Joint Disc. Letter Br., ECF No. 710	Apr. 1, 2015	Granted
Order on Joint Disc. Letter Br. re LG Chem's Interrog. Resp., ECF No. 805	Aug. 21, 2015	Granted
Order on Pls.' Mot. to Continue Dep. Hiroshi Kubo, ECF No. 822	Aug. 31, 2015	Granted
Order re Pls.' Mot. to Compel Dep. Seok Hwan Kwak, ECF No. 836	Sept. 15, 2015	Granted
Minute Entry re Joint Disc. Letter Br. re LG Chem's Data Preservation and Docs. Used to Refresh Deponent's Memory, ECF No. 1066	Feb. 4, 2016	Granted
Order re Pls.' Mot. to Compel Dep. Jae Jeong Joe, ECF No. 1177	Mar. 24, 2016	Granted

Order on Motion to Compel	Date	Outcome
Minute Entry re Disc. Letter Br. re Compel'g Produc. of Walmart Data, ECF No. 1411	Aug. 25, 2016	Granted
Minute Entry re Disc. Letter Br. re Mots. to Compel, ECF No. 1530	Oct. 13, 2016	Granted in part
Minute Entry re Disc. Letter Br. re Compel'g Sanyo to Produce Docs. of Hiroshi Shimokomaki, ECF No. 1547	Oct. 27, 2016	Granted in part
Minute Order re Disc. Letter Br. re Compel'g Simplo USA to Produce Docs., ECF No. 1905	Aug. 10, 2017	Granted in part
Minute Order re Disc. Letter Br. Re Compel'g Simplo USA to Produce Docs., ECF No. 1968	Oct. 3, 2017	Granted
Minute Order re Joint Disc. Letter Br., ECF No. 2269 (<i>see also</i> ECF No. 2338)	Apr. 19, 2018	Granted in part

Plaintiffs prioritized their discovery disputes based on issues critical to the case. For instance, in its initial motion denying class certification, the Court held that Plaintiffs had failed to provide “analysis for packers in the IPP class since plaintiffs had not obtained data from any of the packers for the cylindrical batteries covered by the class definition.” ECF No. 1735 at 19:5-7. Plaintiffs subsequently subpoenaed packer Simplo USA to produce data from its overseas parent Simplo Taiwan, the world’s largest third-party packer. Simplo USA resisted the subpoena, requiring Plaintiffs to (i) oppose a motion to quash a deposition subpoena in Wyoming, (ii) win a contested motion to transfer the Simplo discovery to this MDL Court, (iii) file multiple motions to compel in this Court, (iv) take a Rule 30(b)(6) deposition of Simplo USA to support those motions, (v) oppose Simplo USA’s motion for a stay of proceedings pending appeal to the Ninth Circuit, and (vi) bring a motion for discovery sanctions. Joint Decl., ¶ 32. Plaintiffs succeeded in obtaining the Simplo data.

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

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

Over the course of the litigation, in support of multiple motions for class certification and in opposition to Panasonic’s motion for summary judgment, Plaintiffs undertook large amounts of

1 expert work. Plaintiffs submitted four expert reports totaling 435 pages in support of their motions
2 to certify a class. Joint Decl., ¶ 34. Professor Edward E. Leamer and the economists supporting him
3 analyzed impact and damages using statistical modeling and conducted nearly 2,000 regressions.
4 Dr. Rosa Abrantes-Metz, a specialist in cartel theory, analyzed whether the available economic
5 evidence supported the existence and impact of the conspiracy on a class-wide basis. Drs. Leamer
6 and Abrantes-Metz performed additional analyses with respect to the merits phase of the work. *Id.*

7 The experts' work included an analysis of common impact involving close to 700 separate
8 complex regressions for individual LIB cell numbers and close to 500 separate regressions for
9 individual purchasers. Dr. Leamer also performed over 1,000 regression analyses of pass-through
10 for various manufacturer, distributor, and retailer companies—reflecting a million observations and
11 over 400,000 products. The pass-through analyses involved extensive work processing and
12 analyzing large transactional databases involving roughly 4,000 datasets and approximately 400
13 gigabytes of third-party data. For example, transactional data from Best Buy alone contained over
14 200 million records, and data from CompUSA contained close to 7 million records. Additionally,
15 experts undertook a detailed review of both subpoenaed and public information to ascertain the
16 types of batteries in the class members' products. *Id.*, ¶ 36.

17 **4. Class Counsel took and defended over eighty depositions.**

18 To adequately prosecute a case involving multiple defendants, with foreign witnesses who
19 could not be compelled to testify live at trial, Plaintiffs gathered key evidence via deposition.
20 Plaintiffs took nearly 40 fact depositions (lasting more than 80 days) and seven expert depositions,
21 using approximately 769 exhibits. Many of these depositions were conducted through Japanese and
22 Korean interpreters, adding to their length, complexity, and cost. To increase efficiency, Plaintiffs
23 and the direct purchasers coordinated taking these depositions, alternating on who took the lead.
24 Plaintiffs also defended five expert and 32 class representative depositions. *Id.*, ¶¶ 39, 41.

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

26 Defendants took 32 class representative depositions, lasting over 144 hours (approximately
27 4.5 hours per deposition on average). Defendants propounded 22 interrogatories, 37 document
28 requests, and four requests for admission to each of the class representatives. *Id.*, ¶ 41.

1 **E. Class Counsel’s motion practice and trial preparation maximized Class recovery.**

2 In November 2015, Plaintiffs reached their first settlement with the Sony Defendants for
 3 \$19.5 million. On January 22, 2016, Plaintiffs filed their initial motion for class certification along
 4 with the expert reports of economists Dr. Edward Leamer and Dr. Rosa Abrantes-Metz. ECF Nos.
 5 1036, 1036-1, 1036-2. Defendants opposed and filed *Daubert* motions. ECF Nos. 1551, 1553.
 6 1554. In total, these motions generated 475 pages of briefing. Joint Decl., ¶ 43.

7 Between November 2016 and January 2017, Plaintiffs obtained \$44.95 million in
 8 settlements with Hitachi (\$3.45 million), NEC (\$2.5 million), and LG Chem (\$39 million) (“Round
 9 2 Settlements”). Plaintiffs reached these resolutions while the class certification motion was
 10 pending, finalizing the LG Chem settlement on the eve of the class certification hearing.⁶

11 After additional briefing, 16.5 hours of deposition testimony by Plaintiffs’ experts, and a
 12 hearing, this Court on April 12, 2017 issued an order denying Plaintiffs’ class certification motion
 13 without prejudice, denying Defendants’ *Daubert* motion as to Dr. Abrantes-Metz, and granting the
 14 motion in part as to Dr. Leamer. Joint Decl., ¶ 45.

15 Plaintiffs filed a renewed motion for class certification on September 26, 2017, which was
 16 opposed. In total, this generated 259 pages of briefing. *Id.*, ¶ 47. In early 2018, while Plaintiffs’
 17 renewed motion was pending, they reached settlement agreements with three additional defendants.
 18 The settlements included a \$39.5 million settlement with SDI shortly before this Court issued its
 19 decision on the renewed motion. TOKIN and Toshiba each agreed to pay \$2 million. *Id.*, ¶ 47.

20 On March 5, 2018, the Court denied Plaintiffs’ renewed motion for class certification. ECF
 21 No. 2197 at 8. Plaintiffs and the last defendant, Panasonic/Sanyo, then engaged in extensive
 22 briefing related to summary judgment and *Daubert* motions. Joint Decl., ¶ 48. In total, these
 23 motions, including Plaintiffs’ second renewed motion for class certification, spanned 506 pages. *Id.*
 24 The parties also began preparing for trial, which was scheduled to commence January 28, 2019. *Id.*
 25 On November 7, 2018, Plaintiffs and Panasonic/Sanyo reached a settlement of \$5.5 million
 26 (together with the SDI, Tokin and Toshiba settlements, the “Round 3 Settlements”). *Id.*

27
 28 ⁶ Joint Decl., ¶ 44; *see* ECF No. 1652 at 2; ECF No. 1672 at 3.

1 **F. The Ninth Circuit granted a limited remand giving this Court jurisdiction to consider**
 2 **whether any modification of the attorney’s fee award is warranted.**

3 Two objectors, Michael Frank Bednarz and Christopher Andrews, filed appeals regarding
 4 the Round 2 Settlements. On September 16, 2019, in Bednarz’s appeal, the Ninth Circuit vacated
 5 this Court’s final approval order of the Round 2 Settlements and remanded the case for further
 6 proceedings.⁷ Holding that a “more fulsome analysis is required” of “Rule 23’s requirements,” the
 7 Ninth Circuit “express[ed] no opinion on whether the representation, settlement class, and
 8 settlement agreements satisfy Rule 23.”⁸ The matter was “remand[ed] to allow” this Court ““to
 9 properly exercise its discretion’ consistent with Rule 23’s rigorous procedural requirements.”⁹
 10 Given this disposition, in Andrews’ appeal, the Ninth Circuit vacated this Court’s interim fee
 11 award of \$4,495,000 and cost award of \$860,188.50 (ECF No. 2005).¹⁰

12 On January 22, 2019, Plaintiffs moved for preliminary approval of the Round 3 Settlements
 13 totaling \$49 million. ECF No. 2459. As the Court directed, notice of the Round 3 Settlements was
 14 sent to the class. ECF No. 2486. On August 16, 2019, the Court granted final approval of the
 15 Round 3 Settlements and approved a plan of distribution allocating 90 percent of the settlement
 16 funds to claims arising from *Illinois Brick* repealer states and 10 percent of the settlement funds
 17 from non-repealer states. ECF No. 2516 at 12. Concurrently, the Court approved an additional
 18 attorney fee and cost award (in addition to the interim award) of \$29,334,176 in fees and
 19 \$5,891,547.34 in out-of-pocket expenses. *Id.* at 14-15. Combined with the interim award, the Court
 20 awarded a total of \$6,751,735.84 in costs and \$33,829,176 in fees prior to resolution of the appeals.
 21 *Id.* at 14-15, 16.

22 Objector Gordon Morgan (represented by Mr. Bandas) appealed the Court’s order regarding
 23 attorneys’ fees and reimbursement of expenses for the Round 3 Settlements.¹¹ He then filed a
 24

25 ⁷ *In re Lithium Ion Batteries Antitrust Litig.*, 777 F. App’x 221 (9th Cir. 2019).

26 ⁸ *Id.* at 22.

27 ⁹ *Id.* (citation omitted).

28 ¹⁰ *In re Lithium Ion Batteries Antitrust Litig.*, 777 F. App’x 231 (9th Cir. 2019).

¹¹ ECF No. 2534.

1 motion with this Court for an indicative ruling to determine the effect, if any, of the Ninth Circuit’s
2 decision regarding the Round 2 Settlements on the Court’s award of attorneys’ fees in connection
3 with the Round 3 Settlements. ECF Nos. 2558, 2562, 2564. On December 12, 2019, this Court
4 granted Morgan’s motion in part, ruling that “[s]hould the Ninth Circuit elect to remand the
5 pending appeal of objector Morgan, this Court will consider whether any modification of its
6 attorney fee award is warranted in connection with the Indirect Purchaser Plaintiffs’ revised
7 distribution plan and any class member objections thereto.” ECF No. 2567 at 1-2. The Court found
8 that doing so would “be sensible from a procedural and efficiency standpoint.” *Id.* at 1.

9 On January 30, 2020, vacating the fee award in connection with the Round 2 Settlements,
10 the Ninth Circuit granted a limited remand “for the limited purpose of considering whether any
11 modification of the attorney’s fee award is warranted and entering a new attorney’s fee award.”
12 ECF No. 2579 at 2. Thus, with Morgan’s pending appeal currently stayed, this Court has
13 jurisdiction to rule anew on attorneys’ fees. *Id.*

14 III. ARGUMENT

15 Because compensation to Class Counsel will come from the common fund and the
16 aggregate settlement recovery has not changed, Plaintiffs seek the same award they did previously.
17 They respectfully request an award of \$33,829,176, in attorney’s fees—just under 30 percent of the
18 common fund. Applying a lodestar cross-check, this would result in a *negative* 0.82 multiplier of
19 Class Counsel’s total lodestar of \$41,458,223.50. Although Plaintiffs do not seek compensation for
20 the additional time spent, Class Counsel’s lodestar has increased considerably over the past year
21 due to continued district court and Ninth Circuit proceedings.

22 Plaintiffs also request reimbursement of expenses incurred in connection with this litigation
23 of \$6,751,735.84. Finally, Plaintiffs request that this Court reinstate the service awards of \$10,000
24 to the twenty-one individual class representatives and service awards of \$25,000 to the two
25 governmental class representatives.¹²

26
27 ¹² The fee award requested reflects the elimination of fees originally sought for the third class
28 certification motion. This discrete lodestar amount (\$205,824) was removed previously at the

1 **A. Class Counsel’s fee request is reasonable.**

2 Class Counsel have produced a shared benefit for the settlement class in the form of the
 3 \$113.45 million common fund. The Supreme Court has explained that “a litigant or a lawyer who
 4 recovers a common fund for the benefit of persons other than himself or his client is entitled to a
 5 reasonable attorneys’ fee from the fund as a whole.”¹³ Here, an award of reasonable attorneys’ fees
 6 from the common fund compensates Class Counsel for vigorously litigating this action on behalf of
 7 millions of consumers across the country victimized by Defendants’ illegal conduct. The Supreme
 8 Court has explained that such work is critical to the effective enforcement of the antitrust laws.¹⁴

9 Courts in the Ninth Circuit award attorney’s fees in common fund cases under either the
 10 “percentage-of-recovery” method or the “lodestar” method.¹⁵ Some courts have expressed a
 11 preference for the percentage-of-recovery method because it “directly aligns the interests of the
 12 class and its counsel and provides a powerful incentive for the efficient prosecution and early
 13 resolution of litigation[.]”¹⁶ Regardless of which method is chosen as the primary one, the Ninth
 14 Circuit encourages “a cross-check using the other method.”¹⁷ In this case, both methods support
 15 Class Counsel’s fee request.

16 Federal district courts routinely award class counsel fees equivalent to, and often exceeding,
 17 30 percent of the common fund, including in so-called “megafund” cases, even where the common
 18 fund exceeds 100 million dollars.¹⁸ In this case, as noted, the Court awarded 30 percent of the

19 _____
 20 Court’s direction. ECF No. 2513 at 1 (IPPs’ supplemental submission); ECF No. 2516 at 13 n.4, 15
 (final approval order).

21 ¹³ *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Staton v. Boeing Co.*, 327 F.3d 938,
 967 (9th Cir. 2003) (same).

22 ¹⁴ *See, e.g. Pillsbury Co. v. Conboy*, 459 U.S. 248, 262-63 (1983); *Reiter v. Sonotone Corp.*,
 442 U.S. 330, 331 (1979); *Hawaii v. Stand. Oil Co.*, 405 U.S. 251, 266 (1972).

23 ¹⁵ *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir. 2015).

24 ¹⁶ *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (internal quotation
 25 marks and citations omitted).

¹⁷ *Online DVD*, 779 F.3d at 949.

26 ¹⁸ *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1210 (S.D. Fla. 2006)
 27 (awarding 31.33% fee on \$1.075 billion settlement fund); *accord In re Urethane Antitrust Litig.*,
 2016 WL 4060156 (D. Kan. July 29, 2016) (awarding 33.33% fee on \$835 million settlement;
 28 “Counsel’s expert has identified 34 megafund cases with settlements of at least \$100 million in

1 common fund to counsel for the direct purchaser class.¹⁹ In comparable large antitrust class actions
 2 involving cartels of electronics manufacturers litigated in this District, with many of the same
 3 defendants here, courts have awarded similar percentages in attorneys' fees.²⁰

4 A recent empirical study of fees in class action settlements also supports a fee of 30
 5 percent. The authors found that, of the 19 antitrust settlements between 2009 and 2013 with a mean
 6 recovery of \$501.09 million and a median recovery of \$37.3 million, the mean and median
 7 percentages awarded were 27 percent and 30 percent, respectively.²¹ Moreover, should the Court
 8 grant this fee request, Class Counsel will have a *negative* lodestar multiplier of 0.82, which further
 9 supports the reasonableness of the request.

10 **1. A thirty percent award is reasonable under a percentage-of-the-fund analysis.**

11 When applying the percentage-of-the fund method, the Court begins with a 25 percent
 12 benchmark used as the “starting point” for analysis.²² In its en banc *Hyundai* decision last year, the
 13 Ninth Circuit reiterated: “Similar to the lodestar, the 25% benchmark can be adjusted upward or
 14 downward, depending on the circumstances.”²³ Courts in this district have recognized that “in

15 _____
 16 which the court awarded fees of 30 percent or higher.”); *see also, e.g., In re Polyurethane Foam*
 17 *Antitrust Litig.*, 2015 WL 1639269, at *7 (N.D. Ohio Feb. 26, 2015) (awarding 30% fee on \$147.8
 18 million settlement fund); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1366
 19 (S.D. Fla. 2011) (awarding 33.3% fee on \$510 million settlement fund); *In re Linerboard Antitrust*
 20 *Litig.*, 2004 WL 1221350, at *1 (E.D. Pa. June 2, 2004) (awarding 30% fee on \$202.5 million
 21 settlement fund); *In re Cardizem CD Antitrust Litig.*, No. 99-md-1278 (E.D. Mich. Nov. 26, 2002),
 22 at 18-20 (awarding 30% of a \$110 million dollar fund, which produced a multiplier of 3.7); *In re*
 23 *Vitamins Antitrust Litig.*, 2001 WL 34312839, at *9 (D.D.C. July 16, 2001) (awarding 34.6% fee
 24 on \$365 million settlement fund); *In re Ikon Office Sols., Inc., Secs. Litig.*, 194 F.R.D. 166, 170
 25 (E.D. Pa. 2000) (awarding 30 percent fee on \$111 million settlement fund).

26 ¹⁹ ECF No. 2322 at 1, 3 (also explaining that the “range of awards made in similar cases
 27 justifies an award of 30% here”).

28 ²⁰ *See, e.g., In re Cathode Ray Tube (CRT) Antitrust Litig.*, 2016 WL 4126533 (N.D. Cal. Aug.
 3, 2016) (30 percent for IPP settlement); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 2013 WL
 1365900 (N.D. Cal. Apr. 3, 2013) (28.6 percent for IPP settlement); Order Granting Award of
 Attorneys' Fees, Reimbursement of Expenses & Incentive Payments, *In re Static Random Access*
Memory (SRAM) Antitrust Litig., No. 07-md-1819-CW (N.D. Cal. Oct. 14, 2011), ECF No. 1407
 (33 percent for IPP settlement).

²¹ Eisenberg, Miller & Germano, *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. L.
 Rev. 937, 952 (2017) (“EMG Study”).

²² *Online DVD*, 779 F.3d at 949, 955.

²³ *In re Hyundai and Kia Fuel Econ. Litig.*, 926 F.3d 539, 570 (9th Cir. 2019) (en banc).

1 most common fund cases, the award *exceeds* the benchmark.”²⁴ The Ninth Circuit asks district
2 courts to “consider[] all of the circumstances of the case” and “reach[] a reasonable percentage.”²⁵

3 The Ninth Circuit instructs that courts may consider the following factors: (1) whether
4 counsel achieved exceptional results for the class; (2) whether the case was risky for class counsel;
5 (3) whether the case was handled on a contingency basis; (4) the market rate for the particular field
6 of law; and (5) the burdens class counsel experienced while litigating the case.²⁶ Each of these
7 factors supports Class Counsel’s request for a total fee award of 30 percent of the common fund.

8 **a. Class Counsel achieved exceptional results for the Class.**

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

Defendant Family	Contribution to Settlement Fund	Nationwide Damages Attributed to Defendant by Plaintiffs	Percent Recovery
<i>First Round of Settlements Presented</i>			
Sony	\$19,500,000	\$252,143,962.33	7.7%
<i>Second Round of Settlements Presented</i>			
LG Chem	\$39,000,000	\$116,894,327.36	33.4%
Hitachi Maxell	\$3,450,000	\$2,898,206.46	119.0%
NEC	\$2,500,000	\$966,068.82	258.8%
<i>Third Round of Settlements Presented</i>			
SDI	\$39,500,000	\$209,636,934.20	18.8%
TOKIN	\$2,000,000	\$966,068.82 ²⁷	207.0%
Toshiba	\$2,000,000	\$5,796,412.93	34.5%
Panasonic/Sanyo	\$5,500,000	\$378,698,977.90	1.5%
TOTAL	\$113,450,000	\$967,034,890.00²⁸	11.7%

22 ²⁴ *de Mira v. Heartland Emp’t Serv., LLC*, 2014 WL 1026282, at *1 (N.D. Cal. Mar. 13, 2014).
23 (quoting *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008)).

24 ²⁵ *Online DVD*, 779 F.3d at 949.

25 ²⁶ *Id.* at 954-55.

26 ²⁷ The “attributable damages” for TOKIN and NEC are the same because they operated as one
27 entity during the class period. Accordingly, the percentage recoveries are likely to be higher.

28 ²⁸ At their initial motion for class certification, Plaintiffs’ damages expert estimated that,
nationwide, indirect purchaser damages totaled \$967,034,890 for the period of January 2000
through May 31, 2011. *See* [Corrected] Expert Report of Edward E. Leamer, Feb. 2, 2016, ECF
No. 1599-4 at 78.

1 The \$113.45 million total common fund represents 11.7 percent of the total single damages
 2 estimated for a *nationwide* class during an *eleven-and-a-half year* class period that Defendants
 3 ferociously opposed. Given the case’s risks and challenges, this is a strong result. The quality of
 4 the merits and expert evidence presented enabled Plaintiffs to obtain substantial settlements for the
 5 Class, despite not ultimately prevailing on their class certification motions. Indeed, Plaintiffs
 6 achieved settlements with SDI, TOKIN, and Toshiba totaling \$43.5 million, approximately 20.11%
 7 of the \$216 million in estimated nationwide damages attributed to those Defendants, after the Court
 8 denied Plaintiffs’ original motion for class certification and while Plaintiffs’ renewed motion was
 9 pending—“a time of extraordinary risk for the class receiving no recovery at all.”²⁹ Plaintiffs took a
 10 calculated risk, leaving only Panasonic/Sanyo potentially liable for damages. The risk of no further
 11 recovery increased when the renewed motion was denied. But Class Counsel persevered to
 12 maximize recovery for the Class, settling with Panasonic/Sanyo for \$5.5 million close to trial.

13 Comparing Plaintiffs’ recovery against the likely total estimated damages to the Class also
 14 indicates the excellence of the results. Plaintiffs’ expert, Dr. Leamer, estimated damages of \$573
 15 million for the thirty jurisdictions which allow claims by indirect purchasers. Joint Decl., ¶ 59.
 16 Plaintiffs’ \$113.45 million in total settlements is approximately 20 percent of that amount, which
 17 further underscores the quality of the recovery.³⁰

18 **b. This case posed enormous risks and challenges.**

19 That this recovery was obtained despite enormous risks also support the reasonableness of
 20 the 30-percent fee request. Courts have recognized that the “antitrust class action is arguably the
 21 most complex action to prosecute.”³¹ Even where liability is proven, there is the very real risk that
 22
 23

24 ²⁹ See *In re Optical Disk Drive Prod. Antitrust Litig.*, 2016 WL 7364803, at *14 (N.D. Cal.
 Dec. 19, 2016) (explaining the great risk associated with this time in a case).

25 ³⁰ See *In re Cathode Ray Tube (CRT) Antitrust Litig.*, 2016 WL 3648478, at *7 n.19 (N.D. Cal. July
 26 7, 2016) (citing survey of 71 settled cartel cases which showed that the weighted mean—weighting
 settlements according to their sales—was 19% of possible single damages recovery).

27 ³¹ *Linerboard*, 2004 WL 1221350, at *10 (quoting *In re Motorsports Merch. Antitrust Litig.*,
 112 F. Supp. 2d 1329, 1337 (N.D. Ga. 2000)).

1 plaintiffs will “recover[] no damages, or only negligible damages, at trial, or on appeal.”³² And this
2 litigation was especially challenging.

3 *First*, Plaintiffs overcame the denial of class certification to recover well over \$100 million
4 collectively for the Class. In *Hyundai*, the Ninth Circuit recently underscored its approval of
5 percentage awards of 28 to 33 percent where recoveries were obtained despite denial of a
6 significant motion. In funding and litigating a class action of the scope here, this type of setback is
7 a real risk warranting a fully compensatory percentage award.³³

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

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

26 ³² See *Wal-Mart Stores*, 396 F.3d at 118 (“Indeed, the history of antitrust litigation is replete
27 with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or
28 only negligible damages, at trial, or on appeal.” (quoting *In re NASDAQ Market-Makers Antitrust
Litig.*, 187 F.R.D. 465, 475 (S.D.N.Y. 1998)).

³³ See *Hyundai*, 926 F.3d at 571 (noting affirmance of 28 percent fee in *Vizcaino*. where
plaintiffs initially lost on class definition, and affirmance of 33 percent fee in *In re Pac. Enters.
Sec. Litig.*, 47 F.3d 373, 375 (9th Cir. 1995), where district court indicated before settlement that
many defendants would likely be granted summary judgment).

1 *Third*, this is an intrinsically difficult case due to the scope and length of the conspiracy
2 alleged and the complexity associated with proving the existence of overcharges. Class Counsel
3 reviewed more than 2.7 million predominantly foreign-language documents, which required
4 attorneys with specialized knowledge of antitrust law, of organizing and running a foreign
5 language review, and of managing hundreds of certified translations—including some who had
6 these skills and who could also speak Japanese or Korean. Class Counsel brought to bear hard-
7 learned lessons from *TFT-LCD*, *ODD*, *CRT*, *SRAM*, and other antitrust cases, and the class
8 benefited enormously. After reviewing the documents and having dozens translated in the weeks
9 before each deposition, Class Counsel in many instances assigned lawyers with dozens of prior
10 foreign-language depositions in cartel cases to take them. These lawyers brought a degree of skill
11 and experience to the depositions that could be matched by very few other firms.

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

18 *Fourth*, Plaintiffs did not have the benefit of a more extensive concurrent criminal
19 investigation, the outcome of which could have been more closely aligned with the conspiracy
20 pleaded in the Complaint.³⁴ For example, while the plaintiffs in *LCDs* proved a broader and longer
21 conspiracy than the criminal enforcement authorities, nearly all of the civil defendants pleaded
22 guilty to something, and some pleaded guilty to a lengthy and continuous criminal enterprise.³⁵ By
23 contrast, here, only two Defendants, Sanyo and LG Chem, pleaded guilty to criminal price-fixing.
24 Each of these Defendants admitted to participating in a lithium-ion battery price-fixing conspiracy,
25

26 ³⁴ *See In re TFT-LCD Antitrust Litig.*, 2013 WL 1365900, at *7 (N.D. Cal. Apr. 3, 2013)
27 (recognizing that class counsel's risk is minimized when civil litigation has the benefit of parallel
28 criminal price-fixing charges and guilty pleas).

³⁵ *Id.*

1 but their plea agreements covered a much narrower time period and class of products—April 2007
2 to September 2008 and only cylindrical batteries used in laptops—than those alleged here.

3 In light of these significant risks and complex issues, the large common settlement fund
4 achieved in this case demonstrates the high level of skill and of work required by Class Counsel to
5 face down these challenges. This supports finding that the requested fee award is reasonable.³⁶

6 **c. Counsel’s litigation on a contingency basis supports the fee request.**

7 The Ninth Circuit has held that a fair fee award must include consideration of the contingent
8 nature of the fee.³⁷ And it is well-established that attorneys who take on the risk of a contingency
9 case should be compensated for the risk they assume.³⁸ Here, the contingent nature of Class
10 Counsel’s engagement incentivized counsel to both achieve excellent results for the Class and to do
11 so as efficiently as possible. A 30-percent fee award reasonably compensates Class Counsel for the
12 lengthy financial burden of this risky case, in which Class Counsel has been carrying a total
13 lodestar now exceeding \$41.46 million, and paying millions of dollars in out-of-pocket expenses
14 for over seven years with no guarantee of recovery.³⁹

15 **d. The market rate supports the 30 percent fee request.**

16 The market rate for antitrust class action lawyers with Class Counsel’s experience also
17 supports the 30-percent fee request. Courts in antitrust class actions have routinely awarded class
18 counsel fees of 30 percent or more of the common fund, including this Court’s 30-percent fee
19 award to counsel for the direct purchasers in this case. *See* Section III.A, *supra*. A 30-percent
20 award is also below the 33 percent market rate for contingent representation.⁴⁰ The blended billing

21 _____
22 ³⁶ *See* ECF No. 2322 at 1 (this Court cited the results obtained for direct purchasers in the face
of the high risks and complexity of this case, to justify, in part, the 30 percent fee award).

23 ³⁷ *See, e.g., Online DVD*, 779 F.3d at 954-55 & n. 14; *Vizcaino v. Microsoft Corp.*, 290 F.3d
1043, 1050.

24 ³⁸ *See In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994).

25 ³⁹ *See, e.g.,* ECF No. 2322 at 1-2 (this Court awarded DPP Counsel their requested fees based
26 in part on the fact that their fees were “entirely contingent upon success”); *Hopkins v. Stryker Sales
Corp.*, 2013 WL 496358, at *3 (N. D. Cal. Feb. 6, 2013) (awarding 30% fee because the “case was
conducted on an entirely contingent fee basis against a well-represented Defendant”).

27 ⁴⁰ *Vizcaino*, 290 F.3d at 1049 (explaining that fees requested were at or below “the standard
28 contingency fee for similar cases,” supporting the reasonableness of the request); *see, e.g., Lester*

1 rate for Class Counsel in this case of \$336.82 per hour⁴¹—which Harvard Law Professor William
 2 B. Rubenstein recently showed was below the average blended billing rate of \$528.11 per hour for
 3 forty approved class action settlements in the Northern District of California in 2016 and 2017—
 4 further confirms that the fee request is at, or perhaps below, the market rate.⁴²

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

6 The Ninth Circuit instructs district courts to consider the burdens class counsel experienced
 7 while litigating the case (*e.g.*, cost, duration, and foregoing other work). This litigation has been
 8 pending since 2012. Class Counsel has advanced substantial sums out-of-pocket and devoted
 9 substantial time to this litigation—more than 101,000 hours for a lodestar of \$41.46 million—and
 10 foregone other work while litigating this case. Joint Decl., ¶ 10.

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

12 As this Court has held, “the lodestar cross-check is meant to ‘confirm that a percentage of
 13 [the] recovery amount does not award counsel an exorbitant hourly rate.’”⁴³ Over the course of this
 14 hard-fought case, Class Counsel incurred a total lodestar of \$41,458,223.50, based on 101,048.2
 15 hours of work, which excludes substantial time spent over the past year when this Court initially
 16
 17

18 Brickman, *ABA Regulation of Contingency Fees: Money Talks, Ethics Walks*, 65 Fordham L. Rev.
 19 247, 248 (1996) (noting that “standard contingency fees” are “usually thirty three percent to forty
 20 percent of gross recoveries” (emphasis omitted)); F. Patrick Hubbard, *Substantive Due Process
 21 Limits on Punitive Damages Awards: “Morals Without Technique”?*, 60 Fla. L. Rev. 349, 383
 22 (2008) (discussing “the usual 33-40 percent contingent fee” (quoting *Mathias v. Accor Econ.
 23 Lodging, Inc.*, 347 F.3d 672, 677 (7th Cir. 2003))); Herbert M. Kritzer, *The Wages of Risk: The
 24 Returns of Contingency Fee Legal Practice*, 47 DePaul L. Rev. 267, 286 (1998) (reporting the
 25 results of a survey of Wisconsin lawyers, which found that “[o]f the cases with a [fee calculated as
 26 a] fixed percentage [of the recovery], a contingency fee of 33% was by far the most common,
 27 accounting for 92% of those cases”).

28 ⁴¹ See Joint Decl., ¶ 74. “A blended billing rate is captured by simply dividing the total fee
 sought by the number of hours worked, thus providing the average hourly billing rate for the case
 across timekeepers ranging from high-end partners to paralegals.” Joint Decl., Ex. 2 at 16 n.23.

⁴² See Joint Decl., Ex. 2 at 16-18 (Professor Rubenstein explaining why the blended hourly rate
 is a good indicator of the reasonableness of a fee request).

⁴³ ECF No. 2322, at 2 (quoting *Online DVD*, 779 F.3d at 949 (citation and internal quotation
 marks omitted)); see also *Vizcaino*, 290 F.3d at 1050 (“the lodestar calculation can be helpful in
 suggesting a higher percentage when litigation has been protracted”).

1 granted final approval.⁴⁴ The requested fee award of just under 30 percent of the common fund, or
 2 \$33,829,176, therefore represents approximately 82 percent of the total lodestar, or a negative 0.82
 3 multiplier. A 30-percent fee award is particularly appropriate in this case, where the lodestar cross-
 4 check results in a *negative* multiplier. The Ninth Circuit recently described as “modest” a *positive*
 5 fee enhancement of 1.22 and observed that multipliers up to 3.65 have been sustained in complex
 6 and labor-intensive class actions like this one.⁴⁵

7 A negative multiplier is below the usual range of multipliers also surveyed in *Vizcaino*,
 8 which looked at common fund settlements between \$50 and \$200 million. *Vizcaino* found that 20
 9 of the 24 cases it surveyed had a multiplier between 1.0 and 4.0.⁴⁶ Although the settlement
 10 recoveries in this case total \$113.45 million, Class Counsel requests a fee award that would result
 11 in a negative multiplier, even though the EMG Study shows that *multipliers increase as the size of*
 12 *the recovery increases*. The EMG Study also found that the mean lodestar multiplier for recoveries
 13 above \$75 million was 2.72.⁴⁷ This Court noted in its order approving a 30-percent fee award for
 14 direct purchasers’ counsel that a negative multiplier “obviates concern about any windfall” in the
 15 context of a large recovery because counsel earned an effective hourly rate below the market rate.⁴⁸
 16 Other courts have held that a negative multiplier supports the reasonableness of a fee request.⁴⁹

17 Moreover, the lodestar in this case reflects exceptional efficiency on the part of Class
 18

19 ⁴⁴ Joint Decl., ¶ 61; ECF No. 2516 at 1-2.

20 ⁴⁵ *Hyundai*, 926 F.3d at 571-72.

21 ⁴⁶ See *Vizcaino*, 290 F.3d at 1051 n.6 (9th Cir. 2002).

22 ⁴⁷ EMG Study, 92 N.Y.U. L. Rev. at 966.

23 ⁴⁸ ECF No. 2322 at 2; see *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942
 24 (2011).

25 ⁴⁹ See, e.g., *TFT-LCD (Flat-Panel) Antitrust Litig.*, 2013 WL 149692, at *1 (N.D. Cal. Apr. 3,
 26 2013) (negative multiplier of 0.86 confirmed amount of attorneys’ fees requested was fair and
 27 reasonable); *Gong-Chun v. Aetna Inc.*, 2012 WL 2872788, at *23 (E.D. Cal. July 12, 2012)
 28 (negative multiplier of .79 suggested that fee award was reasonable); *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 853–54 (N.D. Cal. 2010) (negative multiplier of .59 indicated fee award was “reasonable and a fair valuation of the services rendered to the class by class counsel”); *In re Portal Software, Inc. Sec. Litig.*, 2007 WL 4171201, at *16 (N.D. Cal. Nov. 26, 2007) (negative lodestar multiplier of 0.83 or 0.74 “suggests that the requested percentage based fee is fair and reasonable”).

1 Counsel given the scale of this case. Throughout the litigation, Co-Lead Counsel took meaningful
2 steps to ensure that Class Counsel’s work was limited to reasonable and necessary work.⁵⁰ Class
3 Counsel have been mindful of the efficiency guidelines set forth in Exhibit A of this Court’s
4 Modified Pretrial Order No. 1, May 24, 2013, ECF No. 202. Counsel applied their experience
5 litigating other electronic component cases to this case, resulting in additional efficiencies. Joint
6 Decl. ¶ 14. As a result, Class Counsel’s lodestar is substantially lower than the lodestar reported in
7 *Capacitors* (\$82.6 million; DPPs), *CRTs* (\$83.8 million; IPPs), and *LCDs* (\$148 million; IPPs); or
8 by counsel for the direct purchaser plaintiffs in this case (\$72.5 million).⁵¹

9 Class Counsel also delegated work to other law firms where appropriate. Of the hours spent
10 on this case, 71.7 percent represent hours by the three co-lead firms. Joint Decl., ¶ 71. The law
11 firms of Straus & Boies, Kirby McInerney, Cohen Milstein, and Susman Godfrey represent a
12 further 17.1 percent of the total hours. They addressed translations and translation objections,
13 handled high-level foreign-language document analysis and deposition check-interpreting,
14 responded to written discovery of class representatives, defended class representative depositions,
15 and advocated before a neutral with respect to allocation of settlement funds. *Id.* The bulk of the
16 time spent by other firms involved document review and issues related to their respective client
17 class representatives. *Id.* Class Counsel also capped document reviewer rates at \$450 per hour for
18 foreign-language reviewers and \$350 per hour for English-language reviewers. *Id.*, ¶ 68. Moreover,
19 the blended hourly rate for Class Counsel, if they are awarded 30 percent of the common fund, is
20

21 ⁵⁰ Berman Decl. ¶ 17; Zapala Decl., ¶ 15; Glackin Decl., ¶ 2; *see* Joint Decl. ¶ 62 (citing
22 declarations of Supporting Counsel). Class Counsel also audited the time records prior to their
23 submission here and eliminated time entries that did not comply with this Court’s order or were
24 otherwise inefficient or duplicative. Class Counsel also did not include in the lodestar fees for any
25 time expended prior to the appointment of lead counsel, or fees for any time spent in connection
26 with this or the prior fee motion. Joint Decl., ¶ 66.

27 ⁵¹ DPPs’ Mot. for Attys’ Fees & Reimbursement of Expenses at 12, *In re Capacitors Antitrust*
28 *Litig.*, No. 3:14-cv-03264-JD (N.D. Cal. Mar. 1, 2019), ECF No. 1458 (DPPs); IPPs’ Notice of
Mot. & Mot. for Award of Attys’ 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 Attys’ Fees &
Incentive Awards at 5, *In re TFT-LCD Antitrust Litig.*, No. M 07-1827 SI at 5 (N.D. Cal. Sep. 7,
2012), ECF No. 6662; *see* ECF No. 2322 at 3 (this Court, citing DPPs’ “reasonable lodestar”).

1 \$336.82 per hour, below the market rate, further confirming the reasonableness of the fee request.

2 Lastly, this fee request is supported by detailed time records.⁵² In sum, Class Counsel’s
3 total fee request for the entire litigation of \$33,829,176 amounts to just 82 percent of their lodestar
4 as of March 11, 2019, and confirms the fee request’s reasonableness.

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

6 Consistent with customary practice, Co-Lead Counsel requests the Court’s authorization to
7 distribute the awarded attorneys’ fees in a manner that, in the judgment of Co-Lead Counsel, fairly
8 compensates each supporting law firm for its contribution to the prosecution of Plaintiffs’ claims.
9 “Federal courts routinely affirm the appropriateness of a single fee award to be allocated among
10 counsel and have recognized that lead counsel are better suited than a trial court to decide the
11 relative contributions of each firm and attorney.”⁵³

12 **C. The out-of-pocket expenses were necessary for effective representation of the Class.**

13 Plaintiffs request reimbursement of out-of-pocket expenses of \$6,751,735.84. Joint Decl., ¶
14 77. Courts reimburse attorneys prosecuting class claims on a contingent basis for “reasonable
15 expenses that would typically be billed to paying clients in non-contingency matters,” *i.e.*, costs
16 “incidental and necessary to the effective representation of the Class.”⁵⁴ Reimbursable litigation
17 expenses include those for document production, experts and consultants, depositions, translation
18

19 ⁵² Berman Decl., ¶¶ 11-12; Zapala Decl., ¶¶ 20, 22; Glackin Decl., ¶¶ 26-27; *See* Joint Decl. ¶¶
20 63-64 (referencing declarations of Supporting Counsel and exhibits attached thereto).

21 ⁵³ *Hartless v. Clorox Co.*, 273 F.R.D. 630, 646 (S.D. Cal. 2011), *aff’d in part*, 473 F. App’x
22 716 (9th Cir. 2012); *see also Morganstein v. Esber*, 768 F. Supp. 725, 728 (C.D. Cal. 1991)
23 (explaining that “inasmuch as class counsel have indicated that they are able amicably
24 to allocate this award amongst themselves, this order does not do so”); *In re Polyurethane Foam*
25 *Antitrust Litig.*, 168 F. Supp. 3d 985, 1007 (N.D. Ohio 2016); *see, e.g., In re Warfarin Sodium*
26 *Antitrust Litig.*, 391 F.3d 516, 533 n.15 (3d Cir. 2004) (affirming the district court’s decision, and
27 declining to “deviate from the accepted practice of allowing counsel to apportion fees amongst
28 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).

⁵⁴ *In re Omnivision Techs.*, 559 F. Supp. 2d at 1048; *see also Harris v. Marhoefer*, 24 F.3d 16,
19 (9th Cir. 1994); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759 (9th Cir. 1977) (Under the
common fund doctrine, plaintiffs’ counsel should receive reimbursement of all reasonable out-of-
pocket expenses and costs in prosecution of the claims and in obtaining a settlement).

1 services, travel, mail, and postage costs.⁵⁵

2 The total expenses for which Plaintiffs seek reimbursement are broken down by category in
3 the supporting declarations and exhibits.⁵⁶ For the bulk of expenses in this litigation, Class Counsel
4 created a litigation fund, funded by them. Plaintiffs submit invoices that support all payments from
5 the litigation fund—accounting for \$6,236,203.90, or 92.3 percent of the \$6,751,735.84 in total
6 costs incurred to date in this action.⁵⁷ Plaintiffs provide further detail below regarding the three
7 largest cost categories, which account for approximately 76.9 percent of their total costs—experts,
8 online document databases, and translations and interpreters. Joint Decl., ¶¶ 80-82.⁵⁸

9 Experts and Consultants. Plaintiffs invested \$4,857,677.85 in economic experts. *Id.*, ¶ 80.
10 They supported Plaintiffs’ class certification motions and opposition to summary judgment with
11 lengthy reports and analyses. Plaintiffs’ experts also were deposed at length. *Id.*, ¶ 85. Drs. Leamer
12 and Abrantes-Metz performed additional analyses with respect to the merits phase of the case. That
13 work supported briefing relating to Panasonic’s motion for summary judgment and Plaintiffs’
14 second renewed motion for class certification.⁵⁹ All expert costs were paid by Class Counsel
15 regardless of the case’s outcome. No additional money was spent by Class Counsel for expert work
16 in support of the second renewed motion for class certification beyond that needed to oppose
17 Panasonic’s summary judgment motion. Joint Decl., ¶ 37. The cost of expert work here is less than
18

19 ⁵⁵ See *In re Media Vision Tech. Secs. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1995) (Court
20 fees, experts/consultants, service of process, court reporters, transcripts, deposition costs, computer
21 research, photocopies, postage, telephone/fax); *Thornberry v. Delta Air Lines*, 676 F.2d 1240, 1244
(9th Cir. 1982), *judgment vacated and remanded on other grounds*, 461 U.S. 952 (1983) (travel,
meals, and lodging).

22 ⁵⁶ See Berman Decl., Ex. 5; Glackin Decl., Ex. 6; Zapala Decl., Ex. F; Joint Decl., Exs. 4, 15
(summarizing expenses paid from the litigation fund and directly by Class Counsel).

23 ⁵⁷ For expenses outside of the litigation fund (including travel expenses, document copying,
24 legal research, process servers), Plaintiffs can provide invoices upon request by the Court.

25 ⁵⁸ To the extent that some of the invoices request more money than Class Counsel paid, this
26 difference reflects the fact that Class Counsel negotiated discounts on some of the expenses in this
27 case. Notably, DPPs did not provide invoices for **any** of their awarded expenses in connection with
28 their motion for attorneys’ fees, expenses, and service awards.

⁵⁹ Expert Report of Edward E. Leamer, Ph.D., May 25, 2018, ECF No. 2379-8; Expert Reply
Report of Edward E. Leamer, Ph.D., June 29, 2018, ECF No. 2379-10; Expert Report of Rosa M.
Abrantes-Metz, Ph.D., May 25, 2018, ECF No. 2379-10; Expert Rebuttal Report of Rosa M.
Abrantes-Metz, Ph.D., June 29, 2018, ECF No. 2379-12.

1 that awarded in other antitrust class actions in this District: *CRTs* (\$5.767 million, IPPs); *LCDs*
 2 (\$6.192 million, IPPs). *Id.*, ¶ 80.

3 Online Document Database Services. Plaintiffs invested a total of \$951,168.46 in online
 4 document database services. *Id.*, ¶ 81. The primary online database had to be capable of hosting the
 5 more than 2.7 million documents produced by Defendants (totaling more than eight million pages),
 6 as well as voluminous electronic transactional data. Direct purchasers requested, and this Court
 7 awarded, a similar amount (\$738,527) for document hosting services; and the direct purchaser case
 8 ended much earlier than this one.

9 Translations and Interpreters. Plaintiffs spent \$239,037.66 on document translation and
 10 interpreter services. Joint Decl., ¶ 82. Those expenses were necessitated by the large number of
 11 foreign-language documents and witnesses in this case. Plaintiffs obtained translations of more
 12 than 1,500 documents written in Japanese, Korean, and Chinese. *Id.*, ¶ 30. And in order to
 13 economize, Plaintiffs shared translation costs with direct purchasers. This Court awarded direct
 14 purchasers reimbursement a similar amount (\$209,942.91) for expenses in this category. *Id.*, ¶ 82.

15 **D. Plaintiffs request authorization to pay up to \$10,000 for future distribution costs.**

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

21 **E. The requested service awards compensate critical dedication to this case.**

22 Plaintiffs request service awards for the class representatives in the amount of \$260,000
 23 (\$10,000 for each of the twenty-one individual class representatives, and \$25,000 for each of the
 24 two governmental class representatives).⁶⁰ As the Ninth Circuit has observed, “[service] awards are
 25 fairly typical in class action cases.”⁶¹ These awards “compensate class representatives for work

26 _____
 27 ⁶⁰ See ECF No. 2487-7.

28 ⁶¹ *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (emphasis in original).

1 done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the
2 action, and, sometimes, to recognize their willingness to act as a private attorney general.”⁶² This
3 “attendant financial benefit” incentivizes, as here, years of time and effort on behalf of many
4 unnamed class members who rely on the class representative to protect their rights.⁶³ Courts have
5 discretion to approve service awards based on the amount of time and effort spent, the duration of
6 the litigation, and the personal benefit (or lack thereof) as a result of the litigation.⁶⁴

7 Even more than most cases, this litigation required a substantial investment of time by the
8 class representatives. Defendants spent much of the first three years of litigation aggressively
9 attacking the individual representatives. This attack included lengthy and contentious class
10 representative depositions, extended disputes about “metadata” related to receipts and photographs
11 of their lithium-ion battery purchases, and voluminous written discovery. Joint Decl., ¶ 95.
12 Defendants deposed nearly every class representative, which amounted to thirty-two depositions,
13 lasting a total of over 144 hours on the record (approximately 4.5 hours per deposition on average).
14 Defendants also propounded 22 interrogatories, 37 document requests, and four requests for
15 admission to each of the class representatives, despite the tiny amount of relevant information in
16 their possession: what type of lithium-ion battery product they purchased and when. *Id.*, ¶ 41.

17 Finally, each class representative took his or her responsibilities seriously. In addition to
18 bringing the case, these class representatives continued to prosecute the case following adverse
19 decisions, including this Court’s second denial of class certification. They also declined other
20 settlement offers that would have been less advantageous to the class as a whole or that otherwise
21 would have enriched them personally to the detriment of the class.⁶⁵ In consultation with counsel,
22 each class representative reviewed and approved of the settlements presented to the Court. In light
23 of the total value of settlement proceeds and the class representatives’ extraordinary service and

24 ⁶² *Id.* at 958-59.

25 ⁶³ *China Agritech, Inc. v. Resh*, _U.S._, 138 S. Ct. 1800, 1811 & n.7 (2018) (noting “class
26 representative might receive a share of class recovery above and beyond her individual claim”).

27 ⁶⁴ *See Van Vracken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995).

28 ⁶⁵ Joint Decl., ¶ 96; ECF No. 2513.

1 perseverance in this case, including their willingness to be deposed at length and forego a
 2 settlement that would have extinguished recovery for the Class, such awards are reasonable.⁶⁶

3 **F. The Class received appropriate notice of Class Counsel’s fee application.**

4 Class Counsel’s notice to the Settlement Class through the class notice and this motion for
 5 fees, expenses, and service awards is sufficient to provide Class Members an opportunity to review
 6 and evaluate this fee request prior to the deadline for objections.⁶⁷ The class notice advised
 7 Settlement Class Members that Class Counsel’s fee request “*will not exceed 30% of the cumulative*
 8 *Settlement Fund* of \$113.45 million for a total request of \$33,829,176” in attorneys’ fees, along
 9 with cost and expense reimbursement “not to exceed \$6,751,735.84” and service awards “in the
 10 amount of \$10,000 for each of the individual class representatives, and \$25,000 each for two
 11 government entities for the work they have undertaken on behalf of the Plaintiffs.”⁶⁸ As described
 12 in the notice, this motion is being made available at the settlement website thirty-five days before
 13 the deadline for requests for exclusion or objections to the settlement.⁶⁹

14 **IV. CONCLUSION**

15 Plaintiffs respectfully request an award of \$33,829,176 in attorney’s fees—just under 30
 16 percent of the common fund, reimbursement of expenses incurred of \$6,751,735.84, authorization
 17 to pay up to \$10,000 from the common fund toward future costs to distribute the settlement funds,
 18 and \$260,000 in service awards to the class representatives.

19
 20
 21
 22
 23
 24

⁶⁶ See, e.g., *China Agritech*, 138 S. Ct. at 1811 n.7 (citing with approval \$25,000 incentive award).

25 ⁶⁷ See *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 995 (9th Cir. 2010); See
 26 Procedural Guidance for Class Action Settlements, U.S. District Court for the Northern District of
 California, ¶¶ 6, 9, <http://www.cand.uscourts.gov/ClassActionSettlementGuidance> (last visited
 March 9, 2020).

27 ⁶⁸ ECF No. 2581-1 at 6; see also ECF No. 2583 (approving slight revisions to class notice).

28 ⁶⁹ ECF No. 2581-1 at 7; see also Procedural Guidance, ¶ 9, *supra* note 69.

1 DATED: March 9, 2020

HAGENS BERMAN SOBOL SHAPIRO LLP

2 By /s/ Steve W. Berman
3 STEVE W. BERMAN

4 Steve W. Berman (pro hac vice)
5 Shana E. Scarlett (217895)
6 Benjamin J. Siegel (256260)
7 715 Hearst Avenue, Suite 202
8 Berkeley, CA 94710
9 Telephone: (510) 725-3000
10 Facsimile: (510) 725-3001
11 steve@hbsslw.com
12 shanas@hbsslw.com
13 bens@hbsslw.com

9 DATED: March 9, 2020

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

10 By /s/ Brendan P. Glackin
11 BRENDAN P. GLACKIN

12 Elizabeth J. Cabraser (SBN 083151)
13 Brendan P. Glackin (199643)
14 Lin Y. Chan (SBN 255027)
15 Michael K. Sheen (288284)
16 275 Battery Street, 29th Floor
17 San Francisco, CA 94111-3339
18 Telephone: (415) 956-1000
19 Facsimile: (415) 956-1008
20 ecabraser@lchb.com
21 bglackin@lchb.com
22 lchan@lchb.com
23 msheen@lchb.com

19 DATED: March 9, 2020

COTCHETT, PITRE & McCARTHY, LLP

20 By /s/Adam J. Zapala
21 ADAM J. ZAPALA

22 Joseph W. Cotchett (36324)
23 Adam J. Zapala (245748)
24 Tamarah P. Prevost (313422)
25 840 Malcolm Road
26 Burlingame, CA 94010
27 Telephone: (650) 697-6000
28 Facsimile: (650) 697-0577
jcotchett@cpmlegal.com
azapala@cpmlegal.com
tprevost@cpmlegal.com

Class Counsel for Indirect Purchaser Plaintiffs