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12  
13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN FRANCISCO DIVISION

16 IN RE OPTICAL DISK DRIVE PRODUCTS  
ANTITRUST LITIGATION

No. 3:10-md-2143 RS (JCS)

17  
18 INDIRECT PURCHASER PLAINTIFFS'  
SECOND MOTION FOR ATTORNEYS'  
19 FEES, EXPENSES, AND SERVICE  
AWARDS

20 Date: September 7, 2017  
Time: 1:30 p.m.  
21 Dept: Courtroom 3, 17th Floor  
22 Judge: Hon. Richard Seeborg

23 DATE ACTION FILED: Oct. 27, 2009

24 This Document Relates to:  
25 ALL INDIRECT PURCHASER ACTIONS  
26  
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**NOTICE OF MOTION AND MOTION**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on September 7, 2017 at 1:30 p.m., or as soon thereafter as this matter may be heard, before the Honorable Richard Seeborg, United States District Judge of the Northern District of California, located in Courtroom 3, 17th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102, indirect purchaser plaintiffs and class counsel will, and hereby do, move for an award of attorneys' fees, expenses, and service awards to the named plaintiffs. This motion is based on this notice of motion and motion, the accompanying memorandum of points and authorities, the declarations in support of the 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 motion, and all papers and records on file in this matter.

**STATEMENT OF ISSUES**

1  
2           1)       Hagens Berman Sobol Shapiro LLP (Hagens Berman) has dedicated nearly \$28  
3 million in attorney and professional time to this matter – over a seven year period. Hagens  
4 Berman is now proposing \$55.5 million in settlements, reaching \$180 million in total recovery  
5 for the indirect purchaser class to date. Hagens Berman seeks an attorney award in the amount  
6 of \$11,655,000, which represents 21 percent of the settlements, and a multiplier of 1.53. Should  
7 the Court approve Hagens Berman’s fee request in its discretion as fair and reasonable?

8           2)       Hagens Berman advanced \$1,368,718.95 additional out-of-pocket expenses in  
9 this litigation between the months of September 2016 and May 2017, mainly attributable to the  
10 costs of experts. Should the Court approve reimbursement of this amount as fair and reasonable?

11           3)       Whether the class representatives, each of whom supports the proposed  
12 settlements, and each of whom has actively participated in this litigation, should be recognized  
13 with \$1,500 in service awards, in addition to the \$4,500 service award already awarded, for a  
14 total of \$6,000.



## I. INTRODUCTION

Acting as sole lead counsel, Hagens Berman Sobol Shapiro LLP (Hagens Berman) has now reached settlements for \$55.5 million with PLDS, Pioneer, and Teac on behalf of the indirect purchaser class of optical disk drives.<sup>1</sup> These new settlements bring the total amount recovered for the class to \$180 million with claims still pending against defendants which possessed 25 percent of the total optical disk drive (ODD) market during the class period.

Hagens Berman requests 21 percent of the additional \$55.5 million in settlements – below the Ninth Circuit’s benchmark of 25 percent for attorneys’ fees. This, despite class counsel’s recovery of nearly triple the amount for indirect purchasers than recovered by the comparable class of direct purchasers. Class counsel’s fee request, if granted, would bring their total attorneys’ fee award to \$42,905,000, equating to a modest 1.53 multiplier of Hagens Berman’s lodestar of \$27,977,437.70, accumulated over seven years of hard-fought litigation.

Since this Court granted approval of the initial four settlements between IPPs and the Panasonic, Sony, NEC and HLDS defendant families, Hagens Berman has continued to vigorously litigate this case. Hagens Berman has concluded fact discovery, taking first chair at 25 depositions of defendant fact witnesses, including ten depositions for the settling defendant fact witnesses here. Hagens Berman has also supervised the preparation of two merits experts’ reports, defended the depositions of its two experts, and attended eight depositions of the experts of other plaintiffs in this litigation.

Throughout this entire litigation, all of the work for indirect purchasers has been done by a dedicated team at Hagens Berman who have lived and breathed this case for more than seven years. This approach has maximized efficiencies – Hagens Berman’s lodestar has only now reached the lodestar of the direct purchasers even though direct purchasers settled all claims over two years ago and did not participate in the second motion for class certification, the numerous fact depositions, or the expert discovery.

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<sup>1</sup> “PLDS” refers to Koninklijke Philips Electronics N.V., Lite-On It Corp., Philips & Lite-On Digital Solutions Corp., Philips & Lite-On Digital Solutions USA, Inc. “Pioneer” refers to Pioneer North America, Inc. and Pioneer Electronics (USA) Inc. “Teac” refers to Teac Corporation and Teac America, Inc.

1           Respectfully, Hagens Berman requests an attorneys' fee award of \$11,655,000 which is 21  
2 percent of the proposed \$55.5 million settlements, bringing Hagens Berman's total fees to a modest  
3 1.53 multiplier of Hagens Berman's lodestar of \$27,977,437.70. Hagens Berman requests  
4 reimbursement of \$1,368,718.95 in out-of-pocket expenses incurred so far in this litigation – the  
5 significant majority of which is expert fees. And IPPs request \$1,500 in service awards for each of  
6 the class representatives who has spent time and energy on behalf of consumers across the country.

## 7                           **II. THE WORK UNDERTAKEN BY INDIRECT PURCHASERS**

8           Hagens Berman has spent over seven years vigorously advocating on behalf of the class and,  
9 even for a period of time, on behalf of individual consumers (when the first motion for class  
10 certification had been denied).

### 11           **A. A Summary of Work Performed by Hagens Berman Prior to the First Motion for** 12           **Attorneys' Fees**

13           Hagens Berman's work on behalf of the class from the filing of its complaint to the initial  
14 round of settlements is discussed in detail in the prior motion to the Court for attorney fees.<sup>2</sup> This  
15 same work was necessary to reach the \$55.5 million in settlements that Hagens Berman has now  
16 achieved and is thus briefly summarized with an emphasis on the work applicable to the three  
17 settling defendants here.

18           The IPPs filed their first consolidated complaint on August 26, 2010. Defendants filed seven  
19 separate motions to dismiss on a wide variety of grounds. On August 3, 2011, this Court granted the  
20 motions to dismiss with leave to amend, ruling that plaintiffs had not alleged a plausible factual basis  
21 for inferring the existence of a conspiracy of the scope and nature alleged in the complaints.  
22 Friedman Decl., ¶ 2.<sup>3</sup>

23           During the pendency of the motions to dismiss, IPPs successfully compelled the production  
24 of documents that defendants had produced to the grand jury and used those documents to file a

25           <sup>2</sup> See Indirect Purchaser Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards  
26 ("First Fees Mot."), Oct. 5, 2016, ECF No. 1963; Declaration of Jeff D. Friedman in Support of  
27 Indirect Purchaser Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards, Oct. 5,  
28 2016, ECF No. 1963-1.

<sup>3</sup> Declaration of Jeff D. Friedman in Support of Indirect Purchaser Plaintiffs' Second Motion for  
Attorneys' Fees, Expenses, and Service Awards ("Friedman Decl."), concurrently filed herewith.

1 second amended complaint, which also added the Panasonic defendants and Quanta Storage America  
2 as defendants. In April 2012, the Court denied defendants' second set of eight motions to dismiss,  
3 ruling that the amended complaint alleged a plausible conspiracy. *Id.*, ¶ 3.

4 IPPs took the lead on behalf of plaintiffs negotiating the bulk of the discovery protocols  
5 governing this case, including an ESI protocol, custodians, a search term protocol, the search terms  
6 themselves, multiple deposition protocols, protective orders, and case management statements filed  
7 before Magistrate Judge Spero. Defendants have bitterly fought IPPs at every step, including  
8 threatening IPPs' counsel with Rule 11 sanctions and moving to compel all communications between  
9 IPPs' counsel and the ACPERA applicant who provided some cooperation to IPPs. *Id.*, ¶ 4.

10 IPPs have served and enforced written discovery from defendants, including serving  
11 71 interrogatories and 125 requests for production of documents during this early period in the case.  
12 Prior to the ruling on the first motion for class certification, IPPs also deposed a number of critical  
13 merits witnesses. *Id.*, ¶ 5.

14 IPPs engaged in significant third-party discovery that was essential to their class certification  
15 motion. IPPs subpoenaed 100 separate third parties pursuing purchase and cost data to use for their  
16 pass-through analysis. In connection with the first motion for class certification, IPPs performed  
17 pass-through estimates based on \$58 billion in commerce involving the exchange of 194 million  
18 ODD products. Dr. Flamm estimated 95 pass-through rates for 49 company-product categories over  
19 19 different companies. During this period, IPPs also deposed ten third parties regarding their pricing  
20 and procurement practices relating to pass-through, including: Best Buy, Newegg, TigerDirect,  
21 Microsoft, Amazon, Fry's, Shuttle Computer, ASI, Wal-Mart, and Sears. *Id.*, ¶ 6.

22 Prior to the first motion for class certification, class representatives engaged in extensive  
23 discovery – responding to over 40 interrogatories and 31 document requests. Class representatives  
24 were deposed at length, with depositions ranging between two to six hours simply for the purchase of  
25 electronic devices.<sup>4</sup> Hagens Berman spent significant time with each class representative preparing  
26  
27

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28 <sup>4</sup> First Fees Mot. at 5-6.

1 them for these depositions and, with rare exception, defended each class representative's deposition.  
2 Friedman Decl., ¶ 7.

3 On May 29, 2013, IPPs filed their first motion for class certification. The initial round of  
4 class certification took 17 months from the first filing until the Court's denial of certification on  
5 October 3, 2014. The parties presented large amounts of argument and evidence to the Court,  
6 including 250 pages of legal briefs, 4,347 pages of exhibits, and 1,029 pages of expert declarations.  
7 Defendants filed a motion to exclude all testimony from IPPs' expert, Dr. Kenneth Flamm. *Id.*, ¶ 8.

8 The IPPs faced a period of extreme risk after the denial of their first motion. Hagens Berman,  
9 at this point litigating on behalf of only a small handful of individuals with only a minimal amount in  
10 damages, engaged in extensive work to file a revised motion for class certification. Hagens Berman  
11 supervised the inclusion of new work regarding the overcharge multi-variate regression model, co-  
12 integration analysis, a Granger analysis, and also many additional pass-through studies. IPPs' revised  
13 motion for class certification involved, again, a large written record, including an additional 111  
14 pages of briefing, 1,500 pages of exhibits and 683 pages of expert declarations. In support of the  
15 renewed motion, IPPs submitted additional expert reports, deposed defendants' experts for a second  
16 time, and defended the third deposition of Dr. Flamm. *Id.*, ¶ 9. On February 8, 2016, this Court  
17 granted the renewed motion for class certification.

18 At the same time that it was preparing a second motion for class certification, IPPs doggedly  
19 pursued the production of recordings made of phone calls between co-conspirators to the Ninth  
20 Circuit Court of Appeals. IPPs eventually litigated this issue to the Ninth Circuit Court of Appeals,  
21 including taking the lead at oral argument, which eventually resulted in a published opinion.<sup>5</sup> The  
22 recordings will be critical evidence against the remaining defendants. But in addition, Hagens  
23 Berman's litigation of this issue will have significant public benefit as it will make it easier for civil  
24 antitrust litigants to obtain evidentiary materials after the conclusion of parallel criminal proceedings.  
25 *Id.*, ¶ 10.

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28 <sup>5</sup> *In re Optical Disk Drive Antitrust Litig.*, 801 F.3d 1072 (9th Cir. 2015).

1           IPPs reached settlements with two defendant families (Panasonic and NEC) prior to this  
2 Court's granting of class certification on February 8, 2016. IPPs reached settlements with two more  
3 (Sony and HLDS) after the Court granted certification. This Court finally approved all four  
4 settlements on December 19, 2016. Objectors have filed appeals regarding all four of these  
5 settlements. IPPs moved for attorneys' fees to be paid from this first set of settlements, a request  
6 which this Court also granted, awarding fees in the amount of \$31,125,000 – a 1.29 multiplier from  
7 their lodestar of \$24,199,800.20 as of August 31, 2016.<sup>6</sup> Friedman Decl., ¶ 11.

8 **B.     Hagens Berman Has Continued to Work Tirelessly on Behalf of the Class Over the Past**  
9 **Year**

10           The fall of 2016 through present day have consisted of four months of frenzied discovery  
11 until the close of fact discovery on December 9, 2016 – and even then 19 depositions of fact  
12 witnesses have occurred after the close of fact discovery by stipulation and Court order. Expert  
13 discovery closed on June 9, 2016.

14           Between September 1, 2016 and May 31, 2017, 38 depositions of current and former  
15 employees of the co-conspirators occurred, with the IPPs taking the lead questioning on 25 of the  
16 witnesses. Of these, Hagens Berman deposed seven Pioneer witnesses, four Teac witnesses, and two  
17 PLDS witnesses. (In total, IPPs deposed 11 PLDS witnesses.) Each of the depositions of the current  
18 and former employees of the co-conspirators will be the trial testimony in this case, as only one of  
19 these witnesses resides within 100 miles of the courthouse. Hagens Berman also attended the  
20 deposition of 14 employees of other plaintiffs in this case, many times questioning the witnesses  
21 where issues touched upon the IPP case. *Id.*, ¶ 12.

22           IPPs have also spent many hours pursuing foundational testimony for their trial exhibits. IPPs  
23 have served 168 requests for admission on the defendants, largely seeking admissions on authenticity  
24 and hearsay to lay foundational records for the admission of documents at trial. *Id.*, ¶ 13. Similarly,  
25 IPPs have pursued testimony for the telephone records IPPs intend to use at trial. IPPs have deposed  
26 five telephone companies regarding both mobile and landline records which contain some of the

27 <sup>6</sup> See Order Granting Final Approval of Indirect Purchaser Plaintiffs' Settlements with Panasonic,  
28 NEC, Sony and HLDS Defendant Families, Granting Motion for Attorney Fees, Expenses and  
Service Awards, and Overruling Objections, Dec. 19, 2016, ECF No. 2133.

1 thousands of telephone calls placed between the conspirators in this case, and subpoenaed production  
2 of documents from four telephone companies for historic phone records between the co-conspirators.  
3 *Id.*, ¶ 14.

4 Expert discovery has also continued throughout this period. Hagens Berman supervised the  
5 preparation of Rule 26 expert reports from Dr. Kenneth Flamm and Dr. Luis Cabral. Dr. Flamm's  
6 expert work continues with the work that he performed at the class certification stage, including  
7 measurements of the overcharge due to the cartel, and the pass-through to the indirect purchaser  
8 class. Dr. Cabral, an economist specializing in the dynamics of firm competition, has prepared a  
9 detailed analysis of the economic meaning of collusion, the structure of the ODD industry and the  
10 existence of factors that are consistent with the existence of a successful cartel, whether the ODD  
11 defendants' behavior was consistent with collusion, and likely to be successful in resulting in  
12 market-wide impact. IPPs have attended the depositions of 13 experts, including the depositions of  
13 Dr. Cabral and Dr. Flamm. IPPs have deposed three of defendants' expert economists, Drs. Snyder,  
14 Murphy and Lerner. *Id.*, ¶ 15.

15 From August 31, 2016 (the time of the filing of IPPs' first request for attorneys' fees) to May  
16 31, 2017, Hagens Berman has incurred an additional \$3,778,315.00 in attorneys' fees and an  
17 additional \$1,368,718.95 in expenses.

### 18 III. ARGUMENT

19 Hagens Berman requests 21 percent of the common fund – \$11,655,000. Applying a lodestar  
20 cross-check, this would bring Hagens Berman's total fees to a 1.53 multiplier of Hagens Berman's  
21 lodestar of \$27,977,437.70. Hagens Berman requests reimbursement of \$1,368,718.95 in expenses  
22 incurred in this litigation between September 1, 2016 and May 31, 2017 – the vast majority of which  
23 are fees paid to IPPs' experts.

1 **A. Hagens Berman’s Fee Request Is Based on Well-Established Precedent and Supported**  
 2 **by Empirical Surveys of Awards in Similarly Sized Cases**

3 Hagens Berman requests 21 percent of the common fund – \$2.2 million under the 25 percent  
 4 benchmark established by the Ninth Circuit.<sup>7</sup> It is notable that class counsel is below the 25 percent  
 5 benchmark award because “while the benchmark is not per se valid,” the Ninth Circuit has  
 6 recognized that requesting “the 25% benchmark award only” demonstrates the reasonableness of a  
 7 fee request.<sup>8</sup>

8 Courts in this District have correctly recognized that “‘in most common fund cases, the award  
 9 exceeds the benchmark.’”<sup>9</sup> Indeed, “*federal district courts across the country have, in the class  
 10 action settlement context, routinely awarded class counsel fees in excess of the 25% ‘benchmark,’  
 11 even in so-called ‘mega-fund’ cases.*”<sup>10</sup> Consistent with this trend, courts in this district have  
 12 generally awarded fees between 25 to 30 percent in large electronic antitrust class actions.<sup>11</sup>

13 <sup>7</sup> *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998) (“This circuit has established  
 14 25% of the common fund as a benchmark award for attorney fees.”).

15 <sup>8</sup> *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 955 (9th Cir. 2015).

16 <sup>9</sup> *de Mira v. Heartland Emp’t Serv., LLC*, No. 12-CV-04092 LHK, 2014 WL 1026282, at \*1  
 (N.D. Cal. Mar. 13, 2014).

17 <sup>10</sup> *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1210 (S.D. Fla. 2006) (emphasis  
 18 added) (awarding 31.33% fee on \$1.075 billion settlement fund); *accord In re Urethane Antitrust  
 19 Litig.*, No. 04-1616-JWL, 2016 WL 4060156 (D. Kan. July 29, 2016) (awarding 33.33% fee on \$835  
 20 million settlement; “Counsel’s expert has identified 34 megafund cases with settlements of at least  
 21 \$100 million in which the court awarded fees of 30 percent or higher.”). *See also, e.g., In re Cathode  
 22 Ray Tube (CRT) Antitrust Litig.*, No. C-07-5944 JST, 2016 WL 4126533, at \*1 (N.D. Cal. Aug. 3,  
 23 2016) (awarding 27.5% fee on \$576.75 million settlement fund); *In re Polyurethane Foam Antitrust  
 24 Litig.*, No. 10 MD 2196, 2015 WL 1639269, at \*7 (N.D. Ohio Feb. 26, 2015) (awarding 30% fee on  
 25 \$147.8 million settlement fund); *In re Neurontin Mktg. & Sales Practices Litig.*, 58 F. Supp. 3d 167,  
 26 170 (D. Mass. 2014) (awarding 28% fee on \$325 million settlement fund); *In re TFT-LCD (Flat  
 27 Panel) Antitrust Litig. (LCD I)*, No. 07-md-1827, 2013 WL 1365900, at \*3 (N.D. Cal. Apr. 3, 2013)  
 28 (awarding 28.6% fee on \$571 million settlement fund); *In re Checking Account Overdraft Litig.*, 830  
 F. Supp. 2d 1330, 1366 (S.D. Fla. 2011) (awarding 33.3% fee on \$510 million settlement fund); *In re  
 Comverse Tech., Inc. Secs. Litig.*, No. 06-CV-1825 (NGG), 2010 WL 2653354, at \*6 (E.D.N.Y. June  
 24, 2010) (awarding 25% fee on \$225 million settlement fund); *In re Rite Aid Corp. Secs. Litig.*, 362  
 F. Supp. 2d 587, 589 (E.D. Pa. 2005) (awarding 25% fee on \$126 million settlement fund, resulting  
 in multiplier of 6.96); *In re Linerboard Antitrust Litig.*, MDL No. 1261, 2004 WL 1221350, at \*1  
 (E.D. Pa. 2004) (awarding 30% fee on \$202.5 million settlement fund); *In re Cardizem CD Antitrust  
 Litig.*, No. 99-md-1278 (E.D.Mich. Nov. 26, 2002), at 18-20 (awarding 30% of a \$110 million dollar  
 fund, which produced a multiplier of 3.7); *In re Vitamins Antitrust Litig.*, No. MDL 1285, 2001 WL  
 34312839, at \*9 (D.D.C. July 16, 2001) (awarding 34.6% fee on \$365 million settlement fund); *In re  
 Ikon Office Sols., Inc., Secs. Litig.*, 194 F.R.D. 166, 170 (E.D. Pa. 2000) (awarding 30% fee on \$111  
 million settlement fund); *In re Brand Name Prescription Drugs Antitrust Litig.*, No. 94 C 897, 2000  
 WL 204112, at \*2 (N.D. Ill. Feb. 10, 2000) (awarding 25.4% fee on \$696 million settlement fund);

1 Empirical evidence supports the reasonableness of Hagens Berman’s fee request. One study  
 2 of attorneys’ fees looked at awards in 458 class actions between 2009 to 2013 and found 21 percent  
 3 is the midpoint for percent recoveries exceeding \$100 million. Friedman Decl., Ex. 2 at 1. The  
 4 largest recoveries in the study, above \$100 million, had mean and median fee percentages that  
 5 ranged from 16.6 percent to 25.5 percent, depending on the year. *Id.* at 8. Twenty-one percent is in  
 6 the mid-point of that range and below the average percentage award of 22.3 percent for the highest  
 7 decile of recoveries, above \$67.5 million. *Id.* at 9-10. Across all settlements in the study, the report  
 8 finds that “[o]n average, fees were 27% of gross recovery during the 2009-2013 period, which is  
 9 higher than the average fee percentage of 23% that we reported in our analyses of the 1993-2008  
 10 period.” *Id.* at 8. The study further reports that, of the 53 settlements in the Northern District of  
 11 California, the mean and median percentages awarded were 26 percent and 25 percent respectively,  
 12 matching the mean and median percentages found more broadly in the 144 settlements surveyed in  
 13 the Ninth Circuit. *Id.* at 11, 12. Looking at case subject matter, the study further reports that of the 19  
 14 antitrust settlements between 2009 to 2013, with a mean recovery of \$501.09 million and a median  
 15 recovery of \$37.3 million, the mean and median percentages awarded were 27 percent and 30  
 16 percent.

17 Similarly, Hagens Berman’s lodestar multiplier of 1.53 is at the low end of the range of  
 18 multipliers surveyed by the Ninth Circuit in *Vizcaino* of common fund settlements between \$50-200  
 19 million. *Vizcaino* found that in 20 of the 24 cases it surveyed, the multiplier was between 1.0 and  
 20 4.0.<sup>12</sup> Significantly, the cases *Vizcaino* surveyed involved common funds of \$50-200 million.<sup>13</sup> The  
 21 settlements in this case so far are near the high end of the range but Hagens Berman has requested a

22 *In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 395 (S.D.N.Y. 1999) (awarding 27.5% fee on  
 23 \$116 million settlement fund).

24 <sup>11</sup> See, e.g., *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. C-07-5944 JST, 2016 WL  
 25 183285, at \*2-3 (N.D. Cal. Jan. 14, 2016) (30%); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No.  
 26 07-md-1827 SI, 2011 WL 7575003 (N.D. Cal. Dec. 27, 2011) (30%); *In re TFT-LCD (Flat Panel)*  
 27 *Antitrust Litig.*, No. 07-md-1827 SI, 2013 WL 149692 (N.D. Cal. Jan. 14, 2013) (30%); *LCD I*, 2013  
 28 WL 1365900 (28.6%); *In re Static Random Access Memory (SRAM) Antitrust Litig.*, No. 07-md-  
 1819-CW (N.D. Cal. June 30, 2011), ECF No. 1370 (30%); *In re Dynamic Random Access Memory*  
 (*DRAM*) *Antitrust Litig.*, No. 02-md-1486, 2007 WL 2416513 (N. D. Cal. Aug. 16, 2007) (25%).

<sup>12</sup> See *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 n.6 (9th Cir. 2002).

<sup>13</sup> *Id.* at 1052- 54.



1 fee award that would result in a lodestar multiplier near the very bottom of the range even though the  
 2 EMG Study shows that *multipliers increase as the size of the recovery increases*. Friedman Decl.,  
 3 Ex. 2 at 1. The empirical study of class action recoveries also found that the mean lodestar multiplier  
 4 for recoveries above \$75 million was 2.72 – Hagens Berman’s lodestar multiplier of 1.53 is  
 5 significantly *below* the average.

6 **B. Applicable Factors Confirm that a Twenty-One Percent Award Is a Reasonable**  
 7 **Percentage**

8 Although well within the assumed benchmark, when considering the reasonableness of a fee  
 9 request under the percentage-of-recovery method, the Ninth Circuit instructs courts to consider the  
 10 following factors: (1) whether counsel “achieved exceptional results for the class;” (2) whether the  
 11 case was risky for class counsel; (3) whether counsel’s performance “generated benefits beyond the  
 12 cash settlement fund;” (4) the market rate for the particular field of law; (5) the burdens class counsel  
 13 experienced while litigating the case (e.g., cost, duration, foregoing other work); and (6) whether the  
 14 case was handled on a contingency basis.<sup>14</sup> Each of these factors supports IPPs’ request for  
 15 attorneys’ fees of 21 percent.

16 **1. Hagens Berman Has Achieved Exceptional Results for the Class**

17 Recovery of \$55.5 million for the indirect purchaser class from these three defendants, two of  
 18 whom were peripheral to the conspiracy, is an exceptional result. Considering each of these  
 19 defendants’ market share, the percent of recovery is as follows for all settlements achieved so far:

Defendant Family	Contribution to Settlement Fund	Percent Share of ODD Market	Damages Attributed to Defendant Family	Percent Recovery for IPPs
HLDS	\$73,000,000.00	26%	283,483,200	26%
NEC/Sony	35,000,000	10%	107,380,000	33%
Panasonic	16,500,000	12%	128,856,000	13%
PLDS	\$40,000,000	18%	\$193,284,000.00	21%
Pioneer	\$10,500,000	6%	\$64,428,000.00	16%
TEAC	\$5,000,000	2.5%	26,800,000	19%
<b>Total</b>	<b>\$180,000,000</b>	<b>75%</b>	<b>804,231,200</b>	<b>22%</b>

26  
 27  
 28 <sup>14</sup> *Online DVD*, 779 F.3d at 954-55.

1           These settlements represent recovery of **22 percent** of the estimated damages attributable to  
 2 the market share of these defendants, and **16 percent of total estimated damages** (\$1.074 billion)  
 3 suffered by indirect purchasers. Of course, when considering this recovery against total estimated  
 4 damages, one must also consider that six defendant families remain in this case from which IPPs  
 5 believe they will recover either further settlements or an award after trial.

6           Measured against the most direct benchmark, the direct purchaser settlements in the case, the  
 7 IPP settlements are clearly superior. The IPP settlements almost triple the direct purchaser  
 8 settlements with these same defendants:<sup>15</sup>

Defendant Family	IPP Settlement	DPP Settlement	Percentage (Multiplier) of IPP Compared to DPP
Pioneer	\$10,500,000	\$4,200,000	250% (2.5x)
PLDS	\$40,000,000	\$15,000,000	267% (2.67x)
Teac	\$5,000,000	\$1,325,000	377% (3.77x)
<b>Total</b>	<b>\$55,500,000</b>	<b>\$20,525,000</b>	<b>270% (2.7x)</b>

9           The total IPP settlements to date of \$180 million are now more than two times higher the  
 10 total settlements (\$74.9 million) recovered by direct purchasers, and IPPs still have claims pending  
 11 against 25 percent of the market. Despite superior results, the IPPs are requesting only 21 percent of  
 12 the fees requested in these settlements, versus the 30 percent requested by the direct purchasers in  
 13 both of their fee motions.

14           A comparison of the results obtained by Hagens Berman against the directly comparable  
 15 benchmark provided by the DPP settlements shows that these settlements represent an exceptional  
 16 return for the IPP class.

## 17           **2. This Case Posed an Enormous Risk for Class Counsel**

18           The risk associated with this case plays an important role in determining a fair fee award.<sup>16</sup> A  
 19 number of risks made this case unique – and made the actions of class counsel unique.

20  
 21  
 22  
 23  
 24  
 25  
 26 <sup>15</sup> See Direct Purchaser Plaintiffs' Motion for 1) Certification of Classes; 2) Preliminary  
 27 Approval of Class Action Settlements with BenQ, Pioneer, PLDS, QSI, Sony, TEAC, and  
 28 Toshiba/Samsung; 3) Directing Notice to Class; and 4) Memorandum in Support Thereof at 3, 4,  
 Nov. 3, 2015, ECF No. 1724.

<sup>16</sup> *Online DVD*, 779 F.3d at 955.

1           *First*, cases against these particular defendants have unique weaknesses that made litigation  
2 against them risky. PLDS was the ACPERA cooperator in this case and thus potentially not eligible  
3 for treble damages – making their position in litigating the case far stronger than other defendants  
4 with comparable roles in the conspiracy. Pioneer was not named at any point during the DOJ  
5 investigation – and indeed, IPPs did not name Pioneer as a defendant until the second amended  
6 complaint. Teac, as it repeatedly represented during settlement discussions, is in financial peril and  
7 potentially judgment proof against a verdict for full damages.

8           *Second*, this case itself had unique risks both substantively and tactically. Substantively, there  
9 was a true risk that this class would never be certified and, in fact, this Court denied the IPPs’ initial  
10 motion for class certification. Only after three years of briefing and argument, did IPPs present  
11 evidence sufficient to satisfy this Court that a class could be certified based both on an overcharge  
12 from the actions of the cartel and that this overcharge was passed-through to class members. By  
13 contrast, the DPPs settled against all defendants after this Court denied the initial motion for class  
14 certification.

15           Tactically, these defendants are serial cartel participants and have brought almost limitless  
16 resources to this litigation, including some of the most sophisticated defense counsel available for  
17 purchase. The number of defense counsel at every discovery conference, hearing, and deposition has  
18 dwarfed IPPs. The resources available to opposing parties are an important factor to be considered in  
19 the analysis of attorneys’ fees.<sup>17</sup>

20           Risk still remains as two defendants from the three remaining defendant families, have  
21 declared bankruptcy – Quanta Storage America, Inc. and TSST-Korea.<sup>18</sup> Defendants will shortly be  
22 filing summary judgment motions against the indirect purchasers, in addition to a motion for  
23 decertification. A high amount of risk regarding the outcome of the litigation against the remaining  
24 defendants remains.

25 \_\_\_\_\_  
26 <sup>17</sup> *Vizcaino v. Microsoft Corp.*, 142 F. Supp. 2d 1299, 1303-04 (W.D. Wash. 2001).

27 <sup>18</sup> Defendant Quanta Storage America, Inc.’s Suggestion of Bankruptcy Filing, June 4, 2015,  
28 ECF No. 1643; Notice of Bankruptcy Proceedings of Toshiba Samsung Storage Technology Korea  
Corp., July 7, 2016, ECF No. 1906. The Seoul Central District Court dismissed TSST-Korea’s  
restructuring proceeding in September 2016.

1 Hagens Berman's unique perseverance, on its own, in the face of enormous risk deserves  
2 recognition.

3 **3. The Settlements Generate Benefits for the Class Beyond Cash**

4 These three settlements offer the class benefits – and have realized benefits – beyond just  
5 cash. Each settlement agreement provides for certain cooperation provisions that will help the class  
6 in its litigation against the remaining defendants. Particularly valuable to the class, the settlement  
7 agreement with PLDS requires them to make five witnesses available for testimony at trial. PLDS  
8 played a critical role in the conspiracy and these witnesses, without PLDS' cooperation, would be  
9 outside of the subpoena power of this Court.

10 **4. The Market Rate for Antitrust Lawyers with the Experience of IPP Counsel  
11 Supports the Request**

12 Hagens Berman's hourly rates are in line with market rates in this district, and have been  
13 approved by this Court already. The most senior attorney on the case, Steve Berman, bills at an  
14 hourly rate of \$950. This is well within the range of \$200 to \$1,080 charged by partners in  
15 California. Friedman Decl., Ex. 3. Other partners at Hagens Berman have hourly rates ranging  
16 between \$525 to \$735. Associates at Hagens Berman have hourly rates ranging from \$250 to \$605.  
17 Staff and contract attorneys have hourly rates ranging from between \$300 to \$350. A number of  
18 these staff and contract attorneys were specifically hired because of their unique language skills  
19 (Korean, Japanese and Chinese) which have proved invaluable on this case. Finally, translators,  
20 paralegals, and paralegal assistants have rates ranging between \$125 to \$265. All of these ranges are  
21 within the ranges accepted by other Courts in this District and supported by market surveys.

22 **5. The Burdens on Class Counsel Support the Request for Attorneys' Fees**

23 The Ninth Circuit instructs district courts to consider the burdens class counsel experienced  
24 while litigating the case (e.g., cost, duration, foregoing other work). Here, this litigation has been  
25 pending for over seven years – and trial is not scheduled until February 2018. Since the prior  
26 settlements, Hagens Berman has advanced \$1,368,718.95 in out-of-pocket expenses, including the  
27 preparation of two merits expert reports. Team members have continued to work on this litigation,  
28

1 including beginning preparation for the trial set for February 2018. This factor further supports the  
2 requested fee award.

### 3 **6. Class Counsel’s Litigation on a Contingency Basis**

4 As this Court is aware, Hagens Berman accepted this case on a contingency basis. In  
5 negotiating the guilty pleas, the DOJ pointed to this civil litigation as the place where consumers  
6 would recover from their financial injury<sup>19</sup> – emphasizing the importance of private litigation within  
7 the larger context of the enforcement of the antitrust laws. The contingent nature of this case means  
8 that Hagens Berman has a balanced set of interests – both to achieve excellent results for the class,  
9 and to achieve those results in as efficient manner as possible.

10 As Judge Walker recognized at the outset of this case, “potential recovery by indirect  
11 purchaser plaintiffs in this litigation is subject to a greater variety of imponderables” than other  
12 pieces of litigation such as securities litigation under the PSLRA.<sup>20</sup> And this case has been subject to  
13 twists and turns – including the initial denial of the motion for class certification and litigation of a  
14 discovery dispute to the Ninth Circuit.

15 A 21 percent fee award reasonably compensates Hagens Berman for the financial burden of  
16 this risky case.<sup>21</sup> Indeed, a 21 percent fee award is below the 33 percent market rate standard usually  
17 charged for contingent representation.<sup>22</sup>

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18  
19 <sup>19</sup> United States’ and Defendant HLDS’s Joint Sentencing Memorandum and United States’  
20 Motion for Departure at 4, *United States v. Hitachi-LG Data Storage, Inc.*, No. 3:11-cr-00724-RS,  
Oct. 28, 2011, ECF No. 5.

21 <sup>20</sup> Order at 8, June 4, 2010, ECF No. 96.

22 <sup>21</sup> See *Torrison v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1377 (9th Cir. 1993) (“The 25%  
23 contingent fee rewarded class counsel not only for the hours they had in the case to the date of the  
24 settlement, but for carrying the financial burden of the case, effectively prosecuting it and, by reason  
of their expert handling of the case, achieving a just settlement for the class.”); accord, e.g., *Hopkins*  
*v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at \*3 (N. D. Cal. Feb. 6, 2013)  
(awarding 30 % fee in part because “case was conducted on an entirely contingent fee basis against a  
well-represented Defendant”).

25 <sup>22</sup> See, e.g., Lester Brickman, *ABA Regulation of Contingency Fees: Money Talks, Ethics Walks*,  
26 65 Fordham L. Rev. 247, 248 (1996) (noting that “standard contingency fees” are “usually thirty  
27 three percent to forty percent of gross recoveries” (emphasis omitted)); F. Patrick Hubbard,  
*Substantive Due Process Limits on Punitive Damages Awards: “Morals Without Technique”?*, 60  
28 Fla. L. Rev. 349, 383 (2008) (mentioning “the usual 33-40 percent contingent fee” (quoting *Mathias*  
*v. Accor Econ. Lodging, Inc.*, 347 F.3d 672, 677 (7th Cir. 2003))); Herbert M. Kritzer, *The Wages of*  
*Risk: The Returns of Contingency Fee Legal Practice*, 47 DePaul L. Rev. 267, 286 (1998) (reporting  
IPPS’ 2ND MOT. FOR ATTYS’ FEES, EXPENSES, AND  
SERVICE AWARDS – Case No.: 3:10-md-2143 RS

1 **C. Using Lodestar As a Cross-Check Further Supports the Requested Fees**

2 In the Ninth Circuit, the district court has discretion in a common fund case to choose either  
3 the “percentage-of-the-fund” or the “lodestar” method in calculating fees.<sup>23</sup> Regardless of what  
4 method is chosen as the primary method to calculate attorneys’ fees, the Ninth Circuit encourages  
5 district courts to conduct “a cross-check using the other method.”<sup>24</sup> Here, indirect purchaser counsel  
6 have invested \$27,977,437.70 in attorneys’ fees in this litigation. IPPs request a modest 1.53  
7 multiplier which is well within the range of multipliers awarded in other, similar litigation.

8 Lodestar is calculated “by multiplying the number of hours the prevailing party reasonably  
9 expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate for  
10 the region and for the experience of the lawyer.”<sup>25</sup> A court may give an upwards adjustment to a  
11 lodestar (though a positive multiplier) to reflect a host of “reasonableness” factors, including: (1) the  
12 amount involved and the results obtained, (2) the time and labor required, (3) the novelty and  
13 difficulty of the questions involved, (4) the skill requisite to perform the legal service properly,  
14 (5) the preclusion of other employment by the attorney due to acceptance of the case, (6) the  
15 customary fee, (7) the experience, reputation, and ability of the attorneys, and (8) awards in similar  
16 cases.<sup>26</sup> These are referred to as the *Kerr* “reasonableness” factors after the Ninth Circuit’s opinion in  
17 *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975). Foremost among these  
18 considerations, however, is the “benefit obtained for the class.”<sup>27</sup> Here, there can be no dispute  
19 regarding the exceptional results achieved for the class to date. But each of the factors likewise

20 \_\_\_\_\_  
21 the results of a survey of Wisconsin lawyers, which found that “[o]f the cases with a [fee calculated  
22 as a] fixed percentage [of the recovery], a contingency fee of 33% was by far the most common,  
23 accounting for 92% of those cases”).

24 <sup>23</sup> *Online DVD-Rental*, 779 F.3d at 949.

25 <sup>24</sup> *Id.*

26 <sup>25</sup> *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011).

27 <sup>26</sup> *Id.* at 941-42. The Supreme Court has since called into question the relevance of two of the  
28 original *Kerr* factors: the contingent nature of the fee, and the “desirability” of the case. *See*  
*Resurrection Bay Conserv. All. v. City of Seward*, 640 F.3d 1087, 1095 n.5 (9th Cir. 2011). Other  
factors such as “time limitations imposed by the client or the circumstances” and “the nature and  
length of the professional relationship with the client” do not readily apply here. IPPs, thus, do not  
address these questionable or irrelevant factors.

<sup>27</sup> *Bluetooth*, 654 F.3d at 942.

1 supports the positive multiplier requested by IPPs' counsel which is well-within the range applied in  
2 other cases.

3 **1. Class Counsel Has Achieved Exceptional Results for the IPP Class When**  
4 **Compared to Awards in Similar Cases**

5 The first factor, the results for the class, strongly supports an upwards adjustment from  
6 Iodestar. As outlined above (*see* section III.C.1), the results achieved on behalf of the class dwarf  
7 those of the direct purchasers and are on par with other similar pieces of litigation.

8 **2. IPPs' Counsel Have Expended Significant Resources on Behalf of the Class**

9 Hagens Berman was appointed as sole lead counsel on behalf of the IPP class. As a result,  
10 Hagens Berman has staffed this case entirely with its own resources during the pendency of the  
11 seven years of litigation. In total, two partners at Hagens Berman have taken the lead questioning of  
12 the 50 current and former employees of the co-conspirators deposed in this case. A team of staff and  
13 contract attorneys at Hagens Berman with language expertise in Chinese, Korean and Japanese – as  
14 well as extensive training in the antitrust laws – have reviewed the 2.9 million documents produced  
15 by the defendants in this case. This same dedicated team prepared the deposition exhibits and  
16 chronologies used by senior attorneys at depositions.

17 As of the end of May 2017, attorneys and professionals at Hagens Berman have spent  
18 10,472.20 hours working on this case. Since September 2016, Hagens Berman has also spent  
19 \$1,368,718.95 in expenses (in addition to the \$3,704,323.97 in expenses previously awarded by this  
20 Court in December 2016). Friedman Decl., ¶¶ 20, 22. This commitment of time, personnel, and  
21 money to the indirect purchaser class supports the requested award.

22 **3. This Case Has Presented Novel and Difficult Questions, Requiring**  
23 **Extraordinary Skill by IPPs' Counsel**

24 The third and fourth *Kerr* factors – the novelty of the questions presented by the litigation and  
25 the skill required to perform the legal services properly – both support the requested award. IPPs  
26 have faced a parade of novel legal arguments from the defendants. Defendants have claimed that “no  
27 case has certified a class” on the same basis and record as this case.<sup>28</sup> Regarding this Court's choice-

28 <sup>28</sup> Petition for Permission to Appeal the District Court's Order Granting Class Certification at 1,  
*Wagner, et al. v. Hitachi Ltd., et al.*, No. 16-80026 (9th Cir. Feb. 22, 2016), ECF No. 1.

1 of-law analysis, defendants argued to the Ninth Circuit that “[n]either this Court nor the California  
 2 Supreme Court has ever addressed whether the Cartwright Act can be applied across-the-board to all  
 3 jurisdictions with ‘*Illinois Brick* repealer’ statutes.”<sup>29</sup> In litigating against TSST-Korea and the  
 4 TSST-Korea employee “John Doe,” IPPs addressed the unique issue of whether the DOJ recordings  
 5 were “grand jury” materials. All of these issues have required advocacy and skill beyond routine  
 6 litigation.

7 **4. Hagens Berman Has Foregone Other Employment Due to Their Commitment to**  
 8 **This Case**

9 Hagens Berman has dedicated a core team of individuals to the litigation of this action.  
 10 Rather than the sprawling involvement of many firms (for example, 25 firms submitted attorneys’  
 11 fees declarations in the direct purchaser action), from the beginning of the case, Hagens Berman has  
 12 dedicated an efficient and streamlined team to this litigation. The consequence of dedicating a team  
 13 of experienced antitrust attorneys has meant that many of these professionals worked nearly  
 14 exclusively on this case for some number of years. Nine attorneys have dedicated over a thousand  
 15 hours each to this litigation, and many of those attorneys have devoted many thousands of hours.  
 16 Friedman Decl., ¶ 20. Hagens Berman’s choice to commit the resources of its firm, forgoing other  
 17 cases and other projects, supports the request for fees.

18 **5. The Requested Fee Is Reasonable When Compared to Fees in Similar Litigation**

19 The sixth and eighth *Kerr* factors – the customary fee and awards in similar cases – both  
 20 support Hagens Berman’s fee request. IPPs request a multiplier of 1.53, which is well within the  
 21 range of other similar cases.<sup>30</sup>

22 <sup>29</sup> *Id.* at 20.

23 <sup>30</sup> *See, e.g., Vizcaino*, 290 F.3d at 1050-51 (upholding a 28% fee award that constituted a 3.65  
 24 multiple of lodestar); *id.* at 1052-54 (noting district court cases in the Ninth Circuit approving  
 25 multipliers as high as 6.2, and citing only 3 of 24 decisions with approved multipliers below 1.4);  
 26 *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 96 (2d Cir. 2005) (finding 3.5 multiplier  
 27 reasonable); *CRT*, 2016 WL 4126533, at \*10 (finding that a multiplier of 1.96 was well within the  
 28 range of acceptable multipliers); *Noll v. eBay, Inc.*, 309 F.R.D. 593, 610 (N.D. Cal. 2015) (finding  
 that the lodestar cross check, with a 1.6 multiplier, confirmed the reasonableness of the percentage-  
 based calculation); *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (finding a  
 2.83 multiplier appropriate); *In re Netflix Privacy Litig.*, No. 5:11-CV-00379 EJD, 2013 U.S. Dist.  
 LEXIS 37286, at \*31 (N.D. Cal. Mar. 18, 2013) (finding that a lodestar multiplier of 1.66 confirms  
 the reasonableness of the percentage-based attorneys’ fees calculation, 25% of the settlement fund);



1           **6. The Reputation and Ability of Hagens Berman Supports the Requested Fee**

2           Hagens Berman is one of the most well-respected class action litigation firms in the country  
3 and has litigated some of the largest class actions in history, including the tobacco litigation,<sup>31</sup> *In re*  
4 *Visa MasterCard Litigation*,<sup>32</sup> and the *In re Toyota Motor Corp. Unintended Acceleration*  
5 *Litigation*.<sup>33</sup> Hagens Berman has over 65 lawyers in offices across the country. Since its founding in  
6 1993, the firm has been recognized in courts throughout the United States for its ability and  
7 experience in handling major class litigation efficiently and obtaining outstanding results for its  
8 clients. Hagens Berman includes a short biography of those professionals who have billed the  
9 majority of time in the case, in addition to submitting the firm resumé which includes additional  
10 detail. Friedman Decl., ¶¶ 25-43; Ex. 1.

11           **D. Hagens Berman Requests Reimbursement of Additional Expenses Incurred Since**  
12           **September 2016**

13           Attorneys who create a common fund for the benefit of a class are entitled to be reimbursed  
14 for their out-of-pocket expenses incurred in creating the fund so long as the submitted expenses are  
15 reasonable, necessary and directly related to the prosecution of the action.<sup>34</sup> Reasonable reimbursable  
16 litigation expenses include: those for document production, experts and consultants, depositions,  
17 translation services, travel, mail and postage costs.<sup>35</sup> Here, Hagens Berman requests reimbursement  
18 for \$1,368,718.95 in expenses, incurred between September 2016 and May 2017. Previously, this

19 

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*Lane v. Facebook, Inc.*, No. C 08-3845 RS, 2010 U.S. Dist. LEXIS 57765, at \*10 (N.D. Cal. May 24,  
2010) (finding that a multiplier of 2 should be applied).

20           <sup>31</sup> In the historic litigation against Big Tobacco, Hagens Berman represented 13 states and  
21 advanced groundbreaking legal claims to secure a global settlement worth \$260 billion, the largest  
22 recovery in history. Only two firms went to trial, and Hagens Berman served as co-lead trial counsel.

23           <sup>32</sup> *In re Visa-MasterCard Litig.*, No. CV-96-5238 (E.D.N.Y.). Hagens Berman was co-lead  
24 counsel in a case alleging antitrust violations by Visa and MasterCard. The case settled for \$3 billion  
25 in cash and changes in practices valued at \$20 billion.

26           <sup>33</sup> *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices & Prods. Liab.*  
27 *Litig.*, No. 8:10ML2151 JVS (C.D. Cal.). Hagens Berman recovered \$1.6 billion for the class.

28           <sup>34</sup> *Vincent v. Hughes Air W., Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *In re OmniVision Techs.,*  
*Inc.*, 559 F. Supp. 2d 1036, 1048 (N.D. Cal. 2008) (“Attorneys may recover their reasonable  
expenses that would typically be billed to paying clients in non-contingency matters.”).

<sup>35</sup> *See In re Media Vision Tech. Secs. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1995) (Court  
fees, experts/consultants, service of process, court reporters, transcripts, deposition costs, computer  
research, photocopies, postage, telephone/fax); *Thornberry v. Delta Air Lines*, 676 F.2d 1240, 1244  
(9th Cir. 1982), *remanded on other grounds*, 461 U.S. 952 (1983) (travel, meals and lodging).

1 Court approved an award of \$3,704,323.97 in expenses in December 2016. Unlike in IPPs' prior  
2 motion, IPPs have no additional costs that would be recoverable after trial.

3 The additional \$1,368,718.95 in expenses is largely due to three expenses – expert costs for  
4 the preparation of the Rule 26 expert reports (\$1,154,207.83), online document databases  
5 (\$96,768.00), and certified translations of documents for use at deposition (\$70,403.70). Given that  
6 these expenses are routine – and necessary – for the prosecution of the IPP case, IPPs respectfully  
7 request that they be awarded their expenses. Friedman Decl., ¶ 22.

8 **E. Plaintiffs Request Service Awards on Behalf of the Class Representatives**

9 Plaintiffs also request that the Court approve the service awards in the amount of \$1,500 each  
10 for the twenty-two class representatives, to be deducted from the settlement funds with PLDS.<sup>36</sup>  
11 Service awards for class representatives are routinely provided to encourage individuals to undertake  
12 the responsibilities and risks of representing the class and to recognize the time and effort spent in  
13 the case. “Incentive *awards* are fairly typical in class action cases.”<sup>37</sup> In the Ninth Circuit, service  
14 awards “compensate class representatives for work done on behalf of the class, to make up for  
15 financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their  
16 willingness to act as a private attorney general.”<sup>38</sup> Courts have discretion to approve service awards  
17 based on, *inter alia*, the amount of time and effort spent, the duration of the litigation, and the  
18 personal benefit (or lack thereof) as a result of the litigation.<sup>39</sup>

19 Here, the twenty-two representatives have spent a significant amount of time assisting in the  
20 litigation of this case. The requested awards recognize not only the large amount of time each  
21 plaintiff has already invested in this litigation, but the additional time spent over the last nine  
22 months.<sup>40</sup> The requested awards of \$1,500 are consistent with service awards in other cases.<sup>41</sup> Thus,

24 <sup>36</sup> IPP-PLDS Settlement Agreement, Mar. 13, 2017, ECF No. 2246-3.

25 <sup>37</sup> *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (emphasis in original).

26 <sup>38</sup> *Id.* at 958-59.

27 <sup>39</sup> *See Van Vracken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995).

28 <sup>40</sup> Friedman Decl., Exs. 4-25.

<sup>41</sup> Order Granting Direct Purchaser Plaintiffs' Motion for an Award of Attorneys' Fees,  
Reimbursement of Expenses, and Class Representative Awards, July 23, 2015, ECF No. 1658  
IPPS' 2ND MOT. FOR ATTYS' FEES, EXPENSES, AND  
SERVICE AWARDS – Case No.: 3:10-md-2143 RS

1 respectfully, plaintiffs and class counsel respectfully request that the Court approve the modest  
2 service awards for each of the class representatives.

3 **IV. CONCLUSION**

4 For the foregoing reasons, plaintiffs respectfully request an award of \$11,655,000 in  
5 attorneys' fees, \$1,368,718.95 in expenses, and a \$1,500 service award for each of the class  
6 representatives.

7 DATED: June 30, 2017

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27 (awarding \$10,000); Order Granting Direct Purchaser Plaintiffs' Second Motion for an Award of  
28 Attorneys' Fees, Reimbursement of Expenses, and Class Representative Incentive Awards, Apr. 14,  
2016, ECF No. 1851 (awarding \$5,000); *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 253 (3d  
Cir. 2009) (approving service award of \$10,000).