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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

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

19 Date: December 8, 2016
20 Time: 1:30 p.m.
21 Dept: Courtroom 3, 17th Floor
Judge: Hon. Richard Seeborg

22
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 December 8, 2016 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, 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.

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STATEMENT OF ISSUES

1
2 1) Hagens Berman Sobol Shapiro LLP (HB) has dedicated more than \$24 million in
3 attorney time and advanced over \$3 million in expenses and costs to this matter – over a six year
4 period, without any compensation to date. HB is now proposing \$124.5 million in settlements, while
5 continuing to pursue other defendants. HB is seeking a 1.29 multiplier (the 25% benchmark), in
6 asking for fees of \$31,250,000. If the Court grants HB’s request, the class would receive far more
7 than the direct purchaser class received that the Court deemed fair and reasonable. Should the Court
8 approve HB’s fee request in its discretion as fair and reasonable?

9 2) HB advanced \$3,704,323.97 in out-of-pocket expenses in this litigation. HB is not
10 seeking to recover \$39,295.01 in taxable costs which may be recovered after a successful trial
11 against the remaining defendants. Should the Court approve reimbursement of this amount as fair
12 and reasonable?

13 3) Whether the class representatives, each of whom supports the proposed settlements,
14 and each of whom has actively participated in this litigation, should be recognized with a \$4,500
15 service award.

I. INTRODUCTION

Hagens Berman Sobol Shapiro LLP (Hagens Berman or HB) has litigated this case as the sole lead counsel on behalf of the indirect purchaser class for six years. Over the past six years, Hagens Berman has dedicated significant resources fighting dozens of attorneys with tremendous resources, taken on extraordinary risk on behalf of the class and has refused to blink, even when odds of success seemed at their longest. Rather than spread work (and risk) across dozens of lawyers at different plaintiffs' firms, Hagens Berman has dedicated a single core team of lawyers specializing in antitrust class actions to maximize efficiencies and ensure the key litigating team operated on a single, cohesive page. This high risk structure has led to great results for the class.

The Court well knows how hard fought this case has been. The defendants in this case are some of the most sophisticated corporate entities in the world. These defendants are repeat cartelists, playing a major role in a litany of price-fixing MDLs in this district. And this group of defendants is represented by sophisticated antitrust defense counsel, many of whom have spent the last decade defending these very companies against similar antitrust claims. Beyond this vast trove of experience, these companies when considered as a joint defense group have near limitless assets which they have demonstrated they are willing to devote to this litigation. No motion has been too small for this group to oppose, including even at one point opposing indirect purchaser plaintiffs' (IPPs) request for an additional two pages in a brief.¹

In the face of this formidable opposition, Hagens Berman has achieved an extraordinary set of settlements on behalf of the indirect purchaser class. With the current four settlements (with the NEC, Panasonic, Sony and HLDS defendant families), the indirect purchaser class will recover \$124.5 million. And even then, this is only 50 percent of the ODD market. Many defendants still remain.

Respectfully, Hagens Berman requests an attorneys' fee aware of \$31,125,000 which is 25 percent of the proposed \$124.5 million settlements, equating to a modest 1.29 multiplier (even less if time-value of money is considered) from Hagens Berman's lodestar of \$24,199,800.20. Hagens

¹ Order Granting Indirect Purchaser Plaintiffs' Administrative Motion for an Extension of Page Limits, Sept. 8, 2015, ECF No. 1672.

1 Berman requests reimbursement of \$3,704,323.97 in out-of-pocket expenses incurred so far in this
 2 litigation – the vast majority of which is expert fees. And IPPs request \$4,500 in service awards for
 3 each of the class representatives who has spent time and energy on behalf of consumers across the
 4 country.

5 **II. THE WORK UNDERTAKEN BY INDIRECT PURCHASERS**

6 Hagens Berman has spent six years vigorously advocating on behalf of the class and, even for
 7 a period of time, on behalf of individual consumers (when the first motion for class certification had
 8 been denied). The summary below reflects just a narrow window into the effort and attention paid by
 9 a dedicated team of HB attorneys and their professional staff.

10 **A. Pleadings, Motions to Dismiss and the First Motion for Class Certification**

11 **1. Motions to Dismiss and Production of the Grand Jury Documents**

12 Even before its appointment as lead counsel, Hagens Berman worked on behalf of the class,
 13 including opposing the U.S. Department of Justice’s (DOJ) request for a limited stay of discovery.²
 14 On June 4, 2010, Judge Walker appointed Hagens Berman as sole lead counsel on behalf of the
 15 indirect purchaser class in a contested leadership fight.³ Even before its appointment as lead counsel,
 16 however, Hagens Berman retained and worked with economists to research the ODD market,
 17 analyze ODD price trends, research market concentration, and determine the distribution channels
 18 for ODDs to consumers. Friedman Decl., ¶ 3.⁴

19 On August 26, 2010, IPPs filed their consolidated amended complaint. A first amended
 20 complaint was filed on October 1, 2010, to clarify two allegations. Defendants filed seven separate
 21 motions to dismiss the consolidated pleading, arguing that IPPs had failed to state any claim under
 22 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), that class representatives lacked standing to
 23 pursue claims under the District of Columbia, Hawaii, Nebraska, New Hampshire, and North
 24 Dakota, that IPPs did not have standing to assert claims of antitrust standing given the “seminal”

25 ² Plaintiff Wagner’s Response to Motion by the United States for a Limited Stay of Discovery,
 26 June 3, 2010, ECF No. 88.

27 ³ Order, June 4, 2010, ECF No. 96.

28 ⁴ “Friedman Decl.” refers to the Declaration of Jeff D. Friedman in Support of Indirect Purchaser
 Plaintiffs’ Motion for Attorneys’ Fees, Expenses and Service Awards, filed concurrently herewith.

1 case of *Associated General Contractors of California, Inc. v. California State Council of Carpenters*,
2 459 U.S. 519 (1983), that the Foreign Trade Antitrust Improvement Act, 15 U.S.C. § 6a (“FTAIA”)
3 precluded IPP claims, and that the Supreme Court’s decision in *Phillips Petroleum Co. v. Shutts*, 472
4 U.S. 797 (1985) prevented the extra-territorial application of California’s laws. Defendants also
5 challenged a host of individual state law claims, whether the allegations of the complaint were
6 sufficient to state a claim against many of the individual defendants, and whether IPPs had alleged
7 vicarious liability for actions of certain joint ventures. On August 3, 2011, this Court granted the
8 motions to dismiss with leave to amend, ruling that plaintiffs had not alleged a plausible factual basis
9 for inferring the existence of a conspiracy of the scope and nature alleged in the complaints.
10 Friedman Decl., ¶ 4.

11 During the pendency of the motions to dismiss, IPPs moved to compel production of the
12 documents defendants had produced to the grand jury. On April 7, 2011, Chief Magistrate Judge
13 Spero granted plaintiffs’ motion to compel. *Id.*, ¶ 5.

14 On September 23, 2011, IPPs filed their second amended complaint, adding the Panasonic
15 defendants and Quanta Storage America as defendants. Defendants filed eight motions to dismiss,
16 again challenging nearly every facet of the IPP complaint. In April 2012, the Court denied
17 defendants’ second set of motions to dismiss, ruling that the amended complaint alleged a plausible
18 conspiracy. *Id.*, ¶ 6.

19 IPPs took the lead on behalf of plaintiffs negotiating the bulk of the discovery protocols
20 governing this case, including an ESI protocol, custodians, a search term protocol, the search terms
21 themselves, multiple deposition protocols, protective orders, and case management statements filed
22 before Magistrate Judge Spero. In addition, IPPs took the lead on the vast majority of discovery
23 motions filed before Magistrate Judge Spero, including: motions to compel additional custodians,
24 and a motion to compel defendants to produce witnesses in the United States for deposition.
25 Defendants have fought nearly every request by the plaintiffs in this case, including a request to
26 depose a particular witness while he was in the United States serving a prison sentence, have refused
27 to produce witnesses according to the deposition protocols, and opposed nearly every scheduling
28 request made by IPPs. TSST-Korea (unsuccessfully) moved to stay production of all foreign-located

1 documents to keep these documents out of the hands of the U.S. Department of Justice. When the
2 large direct action plaintiffs Dell and HP joined this MDL, defendants refused to allow these
3 plaintiffs additional time at deposition, resulting in further motion practice. *Id.*, ¶ 7.

4 Defendants threatened IPPs' counsel with Rule 11 sanctions, including (unsuccessfully)
5 moving to compel all communications between IPPs' counsel and the ACPERA applicant who
6 provided some cooperation to IPPs (whether it was timely and a full accounting, however, is to be
7 determined after trial). Defendants also (unsuccessfully) moved to compel IPPs to "identify in detail
8 every past or present relationship or acquaintance, including those of a business, personal, or familial
9 nature, between potential class representatives and any person affiliated with a law firm representing
10 plaintiffs in this matter" – suggesting some impropriety between class counsel and the named class
11 representatives where none existed. And as this Court is also aware, these defendants rarely passed
12 up the opportunity to object to the orders of the Magistrate Judge and request that this Court
13 intervene in the ongoing discovery disputes. *Id.*, ¶ 8.

14 **2. Early Written Discovery and Depositions of Defense Witnesses**

15 IPPs have served and enforced written discovery from defendants, including serving 29
16 interrogatories and 34 requests for production of documents during this early period in the case. Prior
17 to the ruling on the first motion for class certification, IPPs also deposed a number of critical merits
18 witnesses, including an HLDS Acer account representative (Bruce Jeong), an HLDS HP account
19 manager (Eugene Yang), and a PLDS account manager (JC Lim). Five other depositions where the
20 witnesses invoked their Fifth Amendment right not to testify also occurred during this period: the
21 depositions of two TSST-Korea witnesses (Kenny Lee and Matthew Lee), and three Quanta Storage
22 witnesses (Haw Chen, Shu-Ming Tzeng, and Sally Huang). *Id.*, ¶ 9.

23 **3. Third-Party Discovery Related to IPPs' Pass-Through Analysis**

24 To demonstrate pass-through, IPPs subpoenaed 100 separate third parties pursuing purchase
25 and cost data to use for their pass-through analysis. In connection with the first motion for class
26 certification, IPPs performed pass-through estimates based on \$58 billion in commerce involving the
27 exchange of 194 million ODD products. Dr. Flamm estimated 95 pass-through rates for 49 company-
28 product categories over 19 different companies. During this period, IPPs also deposed ten third

1 parties regarding their pricing and procurement practices relating to pass-through, including: Best
 2 Buy, Newegg, TigerDirect, Microsoft, Amazon, Fry's, Shuttle Computer, ASI, Wal-Mart, and Sears.
 3 *Id.*, ¶ 10.

4 **4. Discovery and Defendants' Depositions of Class Representatives**

5 The class representatives have been actively involved in the litigation of this case. With the
 6 exception of the four newly added representatives on whom defendants have not served discovery
 7 (Ms. Duryea, Ms. Tecce, Mr. Tufa and Mr. Tindall), each representative has responded to over 42
 8 interrogatories and 45 document requests. Defendants have deposed each representative (including
 9 the newly added representatives) at length – sometimes by the most senior attorney representing the
 10 defendant. The depositions of the class representatives have been long and tedious – defendants have
 11 done everything possible to make the service of these class representatives very time consuming (and
 12 at times bordering on harassing), with some depositions lasting over four hours for the simple
 13 purchase of a computer. One deposition transcript – the deposition of Minnesota representative
 14 Anbessa Tufa – was only 16 pages less in length than the 2015 deposition transcript of plaintiffs'
 15 economist, Dr. Kenneth Flamm. The following chart details the amount of time of each deposition
 16 and the number (and graduation years) of the defense counsel attending these depositions:

17 Class Representative	Deposition Time	Name of Attending Defense Counsel and Level of Seniority
18 Bishop, Michael	3:58	Campbell, Christopher (JD 2007)
19 Bissen, Alex	3:07	Kaas, Lisa (JD 2004)
20 Booze, Cindy	3:20	Biagioli, Kimberley (Admitted 2009)
Cooper, Gregg	3:06	Aragona, Arin (JD 2007)
21 Duryea, Wanda	5:08	Curt Lambert (JD 2006)
Ence, Matthew	3:36	Pellegrini, John (JD 2008)
22 Faber, Benjamin	2:22	Pearl, James (JD 1998) Ghafary, Oais (JD 2011)
23 Gooman, Barney	3:34	Wong, Alvina (JD 2009)
24 Hatfield, Douglas	4:24	Ghafary, Qais (JD 2011) McCarthy, Michael (JD 2009) Wong, Christine (JD 2000)
25 Hosking, Matthew	6:14	Nardi, Marissa (JD 2012) Reblitz-Richardson, Beko (JD 2005)
26 Ito-Adler, James	2:00	Visser, Michelle (JD 2005) Graber, Lauren (JD 2010)
27 Jacobson, Evan	1:59	Cheolas, Nick (JD 2010)
28 Johnson, Christopher	4:04	Meenan, Sean (JD 2008)

Class Representative	Deposition Time	Name of Attending Defense Counsel and Level of Seniority
		Kaas, Lisa (JD 2004) Visser, Michelle (JD 2005)
Lim, Susie	3:08	Lanski, Kelley (JD 2009)
McKee, John	2:19	Wong, Christine (JD 2000) Wong, Alvina (JD 2009) Ghafary, Qais (JD 2011) Pearl, James (JD 1998) Van Panhuys, Vincent (JD 2006) Cate, Elizabeth (JD 2008)
Melegari, Lisa	2:27	Wilson, Hannah (Admitted 2011)
Murphy, Gail	2:29	Ambar, Daniel (Admitted 2011) Bogaciu, Corina (JD 2009) Wilson, Hannah (Admitted 2011)
Murray, Benjamin	2:09	Aragona, Arin (JD 2007)
Porter, Benjamin	3:32	Reblitz-Richardson, Beko (JD 2005) Loeb, Alexis (Admitted 2008) Wong, Christine (JD 2009) Pearl, James (JD 1998)
Pritchard, Angela	2:13	Kessler, Jeffrey (JD 1977) Foltz, Stacey (JD 2012)
Ravenelle, Evan	3:17	Ghafary, Qais (JD 2011)
Reilly, Michael	2:17	Kaas, Lisa (JD 2004)
Steffen, Sandra	3:50	McShane, Brendan (JD 2003)
Stenger, Thomas	4:04	Graber, Lauren (JD 2010) Biagioli, Anthony (JD 2009)
Tecce, Kristina	4:00	Nardi, Marissa (JD 2012) Parsigian, Jeanifer (JD 2012)
Tindall, Brian	1:24	LeVee, Jeffrey (JD 1984)
Tufa, Anbessa	5:12	Ribner, David (Admitted 2013)
Wagner, Aaron	4:22	Walter, Keith (JD 1998)
Wood, Kimberly	3:19	Reblitz-Richardson, Beko (JD 2005) Cate, Elizabeth (JD 2008)

Hagens Berman spent time with each class representative preparing them for these depositions and, with rare exception, defended each class representative's deposition. *Id.*, ¶¶ 11-12.

5. IPPs' First Motion for Class Certification and Rule 23(f) Petition

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

1 denial of class certification, IPPs filed a petition for permission to appeal the denial to the Ninth
2 Circuit Court of Appeals – a request that was denied on January 14, 2015. *Id.*, ¶ 13.

3 IPPs' lodestar through the denial of the petition for permission to appeal the denial of class
4 certification pursuant to Rule 23(f) was \$17,763,454.70 (48,601.36 hours). *Id.*, ¶ 14.

5 **B. IPPs' Second Motion for Class Certification, Pursuit of Recordings of Cartel Members
6 and Trial Depositions of Defense Witnesses**

7 For nearly two years, between the dates of October 3, 2014 (when this Court denied the first
8 motion for class certification) and June 10, 2016 (when the Ninth Circuit denied defendants' petition
9 to appeal the granting of class certification), the IPPs faced a period of extreme risk. As
10 demonstrated by the outcome of the DPP action, nearly every participant in this MDL (with the
11 exception of Hagens Berman), believed that the risk to the class action was extraordinarily high. To
12 be blunt, many thought continuing to pursue the case as a class was a long shot at best. *Id.*, ¶ 15.

13 Despite this, Hagens Berman filed a revised motion for class certification with extensive
14 additional work regarding the overcharge multi-variate regression model, co-integration analysis, a
15 Granger analysis, and also many additional pass-through studies. At the same time, IPPs doggedly
16 pursued the production of recordings made of phone calls between co-conspirators to the Ninth
17 Circuit Court of Appeals (resulting in the production of these recordings). And even in the face of the
18 very serious prospect that the case would not be certified even on the second attempt, Hagens
19 Berman *took the lead on every single deposition* of defense witnesses during this period. *Id.*, ¶ 16.

20 **1. Renewed Motion for Class Certification and Second Rule 23(f) Petition**

21 At a January 29, 2015 case management conference, IPPs requested leave to file a renewed
22 motion for class certification, which this Court allowed. IPPs' revised motion for class certification
23 involved, again, a large written record, including an additional 111 pages of briefing, 1,500 pages of
24 exhibits and 683 pages of expert declarations. In support of the renewed motion, IPPs submitted
25 additional expert reports, deposed defendants' experts for a second time, and defended the third
26 deposition of Dr. Flamm. *Id.*, ¶ 17.

27 During this period, IPPs sought the production of additional data, including moving to
28 compel additional data from Toshiba for use in the revised class certification motion, and pursued

1 additional data from HP and other third parties related to pass-through. In presenting their renewed
2 motion for class certification, IPPs included a pass-through analysis on 273 million ODD products,
3 including companies responsible for approximately 80 percent of personal computer retail sales, and
4 45 percent of top distributor sales. *Id.*, ¶ 18.

5 On February 8, 2016, this Court granted the renewed motion for class certification.
6 Defendants filed a petition for permission to appeal the granting of class certification with the Ninth
7 Circuit Court of Appeals – a request which was denied on June 10, 2016. *Id.*, ¶ 19.

8 **2. IPPs’ Pursuit of DOJ Recordings**

9 With their opposition to the first motion for class certification, defendants informed the Court
10 that the U.S. DOJ’s criminal investigation into the ODD cartel had ended. Upon learning of this, the
11 DPPs and IPPs jointly subpoenaed the DOJ for production of certain recordings between a
12 cooperating entity and several co-conspirators. TSST-Korea moved to quash the subpoena, as did
13 one individual on the recordings who requested to be called “John Doe.” TSST-Korea filed its
14 original motion to quash the subpoena in September 2014. Despite this Court’s denial of class
15 certification, for over a year, IPPs fought for the production of these recordings, including multiple
16 sets of motions before Magistrate Judge Spero, objections to this Court, disputes over the governing
17 protective order, “emergency” motions by John Doe filed with the Ninth Circuit Court of Appeals, a
18 decision on the merits from the Ninth Circuit Court of Appeals denying John Doe’s motion to quash,
19 a petition for rehearing before a panel of the Ninth Circuit Court of Appeals, and disputes regarding
20 the timing of the production. IPPs took the lead on the vast majority of the briefs, and took the lead
21 in arguing this issue before the Ninth Circuit Court of Appeals. All of this occurred at the same time
22 IPPs were briefing the revised motion for class certification, and were unsure whether a class would
23 ever be certified. *Id.*, ¶ 20.

24 **3. Hagens Berman’s Depositions of Co-Conspirators**

25 During this twenty-month period between the Court’s denial of the first motion for class
26 certification and the date when the Ninth Circuit denied defendants’ Rule 23(f) petition, Hagens
27 Berman took the first chair in questioning on **all fourteen depositions** of the conspiracy participants
28 at the same time as briefing the renewed motion for class certification. Because many of these

1 depositions lasted for multiple days as they were fully translated from a foreign language into
2 English, these fourteen depositions lasted for a total of **forty-six days**. Beyond the mere time spent
3 questioning these witnesses, however, nearly all of these witnesses spoke or wrote in a foreign
4 language, meaning Hagens Berman attorneys with foreign language skills spent hundreds of hours
5 reviewing and selecting documents for translation and use as exhibits. HB had to pay for the
6 documents to be translated for review by the English-speaking trial team. Many of these witnesses
7 were some of the most critical witnesses whose depositions will be used at trial, including the high-
8 level executives of PBDS and TSST-Korea. IPPs also deposed the team leaders – those who reported
9 to the chief-level officers and who also met with competitors. And IPPs deposed the account-level
10 managers whose communications with competitors took place on an almost daily basis. All of this
11 work took place at a time when Hagens Berman did not know if it was litigating on behalf of twenty-
12 nine individual consumers, or on behalf of a certified class of indirect purchasers. *Id.*, ¶ 21.

13 Despite this period of heightened risk, IPPs continued to pursue discovery against the
14 remaining defendants. This included moving to compel additional testimony from critical TSST-
15 Korea witness Kenny Lee – a participant in the conspiracy who spent days preparing for his
16 deposition with counsel, and met again with his counsel *during the break* between plaintiffs’
17 questioning and TSST’s own direct examining of Mr. Lee. Magistrate Judge Spero ordered that Mr.
18 Lee respond to a set of interrogatories regarding his preparation with counsel. *Id.*, ¶ 22.

19 IPPs’ lodestar from the denial of the first motion for class certification to the denial of
20 defendants’ petition for permission to appeal the denial of class certification pursuant to Rule 23(f)
21 was \$5,601,103.00 (15,205.40 hours). *Id.*, ¶ 23.

22 **C. Discovery After the Granting of Class Certification**

23 After the granting of class certification and the Ninth Circuit’s denial of defendants’ Rule
24 23(f) appeal, Hagens Berman has continued to work tirelessly on behalf of the class. In July and
25 August alone, IPPs have taken the lead chair in deposing an additional five defense witnesses.⁵ IPPs
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28 ⁵ IPPs do not include any time or activities for September 2016.

1 have participated in, although not taken the lead chair, in three other depositions during this period.
2 *Id.*, ¶ 24.

3 On July 19, 2016, IPPs moved to amend their complaint to conform with the class
4 certification ruling, among other things. Defendants opposed even this most mundane of motions –
5 requesting that they not be required to provide answers to the IPP complaint. That motion is still
6 pending before the Court. In the meantime, IPPs served interrogatories on most of the remaining
7 defendants requesting that they provide some statement of facts regarding the affirmative defenses
8 they intend to assert at trial. IPPs’ lodestar for the period between June 11, 2016 (the denial of
9 defendants’ petition for appeal by the Ninth Circuit Court of Appeals) and August 31, 2016, is
10 \$835,242.50 (2,493.40 hours). *Id.*, ¶ 25.

11 III. ARGUMENT

12 IPPs request: (1) an award of attorneys’ fees in the amount of 25 percent of the \$124.5
13 million settlement fund; (2) reimbursement of expenses IPPs’ counsel have advanced to date on
14 behalf of the class; and (3) service awards for the twenty-three class representatives.

15 In the Ninth Circuit, the district court has discretion in a common fund case to choose either
16 the “percentage-of-the-fund” or the “lodestar” method in calculating fees.⁶ Regardless of what
17 method is chosen as the primary method to calculate attorneys’ fees, the Ninth Circuit encourages
18 district courts to conduct “a cross-check using the other method.”⁷

19 Hagens Berman requests 25 percent of the common fund – \$31,125,000. Applying a lodestar
20 cross-check, this would be a 1.29 multiplier from Hagens Berman’s lodestar of \$24,199,800.20.
21 Under either method, these fees are reasonable and fair. In addition, Hagens Berman requests
22 reimbursement of \$3,704,323.97 in out-of-pocket expenses.

23 A. Application of the Twenty-Five Percent Benchmark Is Appropriate

24 When considering a request for attorneys’ fees that is calculated using the percentage-of-
25 recovery method, the Ninth Circuit instructs courts to consider the following factors: (1) whether
26 counsel “achieved exceptional results for the class;” (2) whether the case was risky for class counsel;

27 ⁶ *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir. 2015).

28 ⁷ *Id.*

(3) whether counsel’s performance “generated benefits beyond the cash settlement fund;” (4) the market rate for the particular field of law; (5) the burdens class counsel experienced while litigating the case (e.g., cost, duration, foregoing other work); and (6) whether the case was handled on a contingency basis.⁸ Each of these factors supports IPPs’ request for attorneys’ fees of 25 percent. The Ninth Circuit has instructed that although the benchmark of 25 percent “is not per se valid, it is a helpful ‘starting point.’”⁹

1. Hagens Berman Has Achieved Exceptional Results for the Class

Recovery of \$124.5 million for the indirect purchaser class – with only 50 percent of the ODD defendants – is an exceptional result. At class certification, plaintiffs’ damages expert estimated that nationwide, indirect purchaser damages totaled \$1.67 billion for the period of April 2003 through December 2008.¹⁰ This Court certified 24 jurisdictions under California law (which are the same jurisdictions covered by each of the four settlements), representing approximately 50 percent of the population, the best estimate of damages is approximately \$840 million.¹¹ Considering each of these defendants’ market share, the percent of recovery is as follows:

Defendant Family	Contribution to Settlement Fund	Percent Share of ODD Market	Damages Attributed to Defendant Family	Percent Recovery for IPPs
Panasonic	\$16,500,000	12%	\$100,784,612.82	16%
NEC/Sony (Joint Venture)	\$35,000,000	10%	\$83,987,177.35	42%
HLDS	\$73,000,000	26%	\$218,366,661.11	33%
Total	\$124,500,000	48%	\$403,138,451.28	31%

These settlements represent recovery of **31 percent** of the estimated damages attributable to the market share of these defendants, and **15 percent of total estimated damages** (\$840 million)

⁸ *Online DVD*, 779 F.3d at 954-55.

⁹ *Id.* at 955.

¹⁰ See Declaration of Dr. Kenneth Flamm in Support of Indirect Purchaser Plaintiffs’ Revised Motion for Class Certification at 133, ECF No. 1808-4.

¹¹ These population estimates are based on the United State Census Bureau’s Annual Estimates of the Resident Population for the United States, Regions, States and Puerto Rico, April 1, 2000 to July 1, 2006, available at: http://www.census.gov/popest/data/historical/2000s/vintage_2006/index.html (last visited Oct. 5, 2016).

1 suffered by indirect purchasers. Of course, when considering this recovery against total estimated
 2 damages, one must also consider that six defendant families remain in this case from which IPPs
 3 believe they will recover either further settlements or an award after trial.

4 Measured against the most direct benchmark, the direct purchaser settlements in the case, the
 5 IPP settlements stand in stark contrast. The IPP settlements exceed each individual DPP settlement
 6 with these defendants and equal just under three times what the DPPs recovered:¹²

Defendant Family	IPP Settlement	DPP Settlement	Percentage (Multiplier) of IPP Compared to DPP
Panasonic	\$16,500,000	\$5,750,000	287% (2.87x)
NEC	\$6,500,000	\$6,150,000	106% (1.06x)
Sony	\$28,500,000	\$6,000,000	475% (4.75x)
HLDS	\$73,000,000	\$26,000,000	281% (2.81x)
Total	\$124,500,000	\$43,900,000	284% (2.84x)

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 15 Not only the IPP settlements with these four defendants almost triple the DPP settlements
 16 with these four defendants, the IPP settlements to date exceed the total settlements (\$74.9 million)
 17 recovered by DPPs in the case. Once fees paid to the DPP counsel are considered, the direct
 18 purchaser class recovered only \$52.4 million.¹³ In contrast, even if this Court awards IPPs' counsel
 19 the requested \$31.1 million fee, the IPP class will recover \$93.4 million from just these four
 20 settlements.

21
 22
 23
 24 ¹² See Direct Purchaser Plaintiffs' Motion for 1) Certification of Classes; 2) Preliminary
 25 Approval of Class Action Settlements with BenQ, Pioneer, PLDS, QSI, Sony, TEAC, and
 Toshiba/Samsung; 3) Directing Notice to Class; and 4) Memorandum in Support Thereof at 3, 4,
 Nov. 3, 2015, ECF No. 1724.

26 ¹³ See Order Granting Direct Purchaser Plaintiffs' Motion for an Award of Attorneys' Fees,
 27 Reimbursement of Expenses, and Class Representative Incentive Awards, ¶ 2, July 23, 2015, ECF
 28 No. 1658; Order Granting Direct Purchaser Plaintiffs' Second Motion for an Award of Attorneys'
 Fees, Reimbursement of Expenses, and Class Representative Awards, ¶ 2, April 14, 2016, ECF No.
 1851.

1 Compared more generally against other similar litigation, in *LCD*, after settlements with all
 2 defendants, the indirect purchasers recovered approximately 50 percent of potential damages.¹⁴ In
 3 *CRT*, the indirect purchasers recovered 20 percent of potential single damages after settlements with
 4 all defendants.¹⁵ Indirect purchasers' settlements here certainly represent exceptional results.

5 2. This Case Posed an Enormous Risk for Class Counsel

6 The risk associated with this case plays an important role in determining a fair fee award.¹⁶ A
 7 number of risks made this case unique – and made the actions of class counsel unique.

8 *First*, defendants have used the very factor which some might point to as a strength in
 9 plaintiffs' case – the criminal guilty pleas of HLDS and its executives – as an affirmative tactical
 10 weapon. From the very first hearing on the motion to dismiss, defendants have aggressively pursued
 11 the narrative that this case is limited to certain specific instances of bid-rigging of Dell and HP
 12 auction – that is, that this is a conspiracy whose outer-limits are formed by the guilty pleas
 13 themselves. This narrative fed into this Court's skepticism in its first order denying the motion for
 14 class certification of the direct purchaser class.¹⁷ In addition to spending countless hours developing
 15 evidence of collusion outside of the guilty pleas, IPPs have also demonstrated that *even if* no
 16 evidence existed outside of Dell/HP collusion, fixing prices to Dell and HP would move the entire
 17 market because Dell and HP formed the price floor. Regardless, what many might have seen as a
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19
 20 ¹⁴ *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827, 2013 U.S. Dist. LEXIS 49885, at
 21 *70 (N.D. Cal. Apr. 1, 2013). *See also In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 538 (3d
 22 Cir. 2004) (approving \$44.5 million settlement, recovery of **33%** of single damages); *In re Currency*
 23 *Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 124 (S.D.N.Y. 2009), (approving \$336 million
 24 settlement, recovery of **31%** of single damages), *aff'd*, *Priceline.com, Inc. v. Silberman*, 405 Fed.
 25 Appx. 532 (2d Cir. 2010); *In re Linerboard Antitrust Litig.*, 321 F. Supp. 2d 619, 633 (E.D. Pa.
 26 2004) (approving \$202.5 million in settlements, recovery of **55%** of single damages); *In re*
 27 *NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 478 (S.D.N.Y. 1998) (approving
 28 settlements of \$1.027 billion, recovery of **33%-41%** of single damages).

¹⁵ *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. C-07-5944 (JST), 2016 U.S. Dist. LEXIS
 88665, at *185 (N.D. Cal. July 7, 2016).

¹⁶ *Online DVD*, 779 F.3d at 955.

¹⁷ Order Denying Motions for Class Certification at 9, Oct. 3, 2014, ECF No. 1444 (“even though
 the named plaintiffs have strong evidence of bid-rigging involving some of the largest purchasers,
 they are struggling to find a way to prove that list prices paid by ordinary purchasers such as
 themselves were fixed”).

1 discounted risk, in this case it forms one of the greatest risks – that a judge or jury might find
2 plaintiffs’ case to begin and end with the criminal guilty pleas.

3 *Second*, the very real risk existed that no class would ever be certified. Not only did IPPs
4 need to convince this Court that a measureable overcharge existed due to the actions of the cartel, but
5 IPPs also needed to demonstrate that this overcharge was passed-through to class members. IPPs
6 failed once; but after three years of briefing and argument, IPPs’ determination was rewarded.

7 *Third*, these defendants are serial cartel participants.¹⁸ They have brought almost limitless
8 resources to this litigation, including some of the most sophisticated defense counsel available for
9 purchase. Defense counsel have outnumbered IPPs’ counsel at every discovery conference, hearing,
10 and deposition. The resources available to opposing parties are an important factor to be considered
11 in the analysis of attorneys’ fees.¹⁹

12 *Fourth*, risk still remains. Two defendants have declared bankruptcy – Quanta Storage
13 America, Inc. and TSST-Korea.²⁰ Defendants have declared that they will be filing a minimum of
14 two summary judgment motions against the indirect purchasers, in addition to a motion for
15 decertification. Friedman Decl., ¶ 26. IPPs are confident that they will prevail at trial, but as in any
16 litigation, and in particular in class action litigation, a high amount of risk regarding the final
17 outcome of this case exists.

18 The enormous risk posed by this case, and Hagens Berman’s committed perseverance even in
19 the face of this risk, deserves recognition.

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

21 These four settlements offer the class benefits – and have realized benefits – beyond just
22 cash. Each settlement agreement provides for certain cooperation provisions, including producing
23
24

25 ¹⁸ Fifth Amended Class Action Complaint, Sept. 16, 2013, ECF No. 996.

26 ¹⁹ *Vizcaino v. Microsoft Corp.*, 142 F. Supp. 2d 1299, 1303-04 (W.D. Wash. 2001).

27 ²⁰ 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.

1 witnesses for deposition.²¹ Because the vast majority of witnesses are located overseas, the testimony
2 of these witnesses at deposition is the testimony that will be used at trial. Particularly as to the HLDS
3 witnesses (of which IPPs have already deposed four of the five witnesses committed to in the
4 settlement agreement), their testimony regarding the remaining co-conspirators has been of
5 significant value to the class.

6 **4. The Market Rate for Antitrust Lawyers with the Experience of IPP Counsel** 7 **Supports the Request**

8 Hagens Berman's hourly rates are in line with market rates in this district. The most senior
9 attorney on the case, Steve Berman, bills at an hourly rate of \$950. This is well within the range of
10 \$200 to \$1,080 charged by partners in California. Friedman Decl., Ex. A (market survey of attorney
11 rates). Other partners at Hagens Berman have hourly rates ranging between \$525 to \$735. Associates
12 at Hagens Berman have hourly rates ranging from \$250 to \$605. Staff and contract attorneys have
13 hourly rates ranging from between \$300 to \$350. A number of these staff and contract attorneys were
14 specifically hired because of their unique language skills (Korean, Japanese and Chinese) which have
15 proved invaluable on this case. Finally, translators, paralegals, and paralegal assistants have rates
16 ranging between \$125 to \$265. All of these ranges are within the ranges accepted by other Courts in
17 this District and market surveys. Friedman Decl., Ex. A.

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

19 The Ninth Circuit instructs district courts to consider the burdens class counsel experienced
20 while litigating the case (e.g., cost, duration, foregoing other work). Here, this litigation has been
21 pending for six years – and trial is not scheduled until February 2018. Hagens Berman has spent
22 \$3,704,323.97 in out-of-pocket expenses to date. Many team members have been almost exclusively
23 assigned to this litigation, billing thousands of hours reviewing documents, translating documents,
24 and preparing for depositions – even in the face of the denial of class certification and the prospect
25 that recovery of attorneys' fees was unlikely. This factor also supports the requested fee award.

26 ²¹ Declaration of Jeff D. Friedman in Support of Motion for Preliminary Approval of Settlements
27 with Panasonic, NEC, Sony, and HLDS Defendant Families and Dissemination of Class Notice, Ex.
28 A, ¶ 25 (IPP-Panasonic Settlement Agreement), Ex. B, ¶¶ 24, 26, 27 (IPP-NEC Settlement
Agreement), Ex. C, ¶¶ 24-26 (IPP-Sony Settlement Agreement), Ex. D, ¶ 28 (IPP-HLDS Settlement
Agreement), June 28, 2016, ECF No.1898.

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

2 As this Court is aware, Hagens Berman accepted this case on a contingency basis. In
3 negotiating the guilty pleas, the DOJ pointed to this civil litigation as the place where consumers
4 would recover from their financial injury²² – emphasizing the importance of private litigation within
5 the larger context of the enforcement of the antitrust laws. The contingent nature of this case means
6 that Hagens Berman has a balanced set of interests – both to achieve excellent results for the class,
7 and to achieve those results in as efficient manner as possible.

8 As Judge Walker recognized at the outset of this case, “potential recovery by indirect
9 purchaser plaintiffs in this litigation is subject to a greater variety of imponderables” than other
10 pieces of litigation such as securities litigation under the PSLRA.²³ This has certainly turned out to
11 be the case. Had this case been successfully certified originally according to typical proceedings
12 projected at the outset of the case, HB’s lodestar and total attorneys’ fees for resolution at that stage
13 would have been less. If IPPs settled on the same terms as the direct purchaser class with *all*
14 *defendants*, without investing any additional resources and risk, the total recovery to the indirect
15 purchaser class would have been a little more than half what they are receiving here. IPPs’
16 willingness to seek recertification, if the requested fees are granted, nearly doubles the recovery to
17 the IPP class while settling with only one half of the market in this case. Hagens Berman continued
18 to litigate this case on behalf of the class through fairly uncharted territory and heightened risk that
19 was not anticipated at the outset and warrants the consideration of these factors.

20 **B. Using Lodestar As a Cross-Check Further Supports the Requested Fees**

21 Indirect purchaser counsel have invested \$24,199,800.20 in attorneys’ fees in this litigation.
22 IPPs request a modest 1.29 multiplier which is well within the range of multipliers awarded in other,
23 similar litigation.

24 Lodestar is calculated “by multiplying the number of hours the prevailing party reasonably
25 expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate for

26 ²² United States’ and Defendant HLDS’s Joint Sentencing Memorandum and United States’
27 Motion for Departure at 4, *United States v. Hitachi-LG Data Storage, Inc.*, Case No. 3:11-cr-00724-
RS, Oct. 28, 2011, ECF No. 5.

28 ²³ Order at 8, ECF No. 96.

1 the region and for the experience of the lawyer.”²⁴ A court may give an upwards adjustment to a
 2 lodestar (though a positive multiplier) to reflect a host of “reasonableness” factors, including: (1) the
 3 amount involved and the results obtained, (2) the time and labor required, (3) the novelty and
 4 difficulty of the questions involved, (4) the skill requisite to perform the legal service properly,
 5 (5) the preclusion of other employment by the attorney due to acceptance of the case, (6) the
 6 customary fee, (7) the experience, reputation, and ability of the attorneys, and (8) awards in similar
 7 cases.²⁵ These are referred to as the *Kerr* “reasonableness” factors after the Ninth Circuit’s opinion in
 8 *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975). Foremost among these
 9 considerations, however, is the “benefit obtained for the class.”²⁶ Here, there can be no dispute
 10 regarding the exceptional results achieved for the class to date. But each of the factors likewise
 11 supports the positive multiplier requested by IPPs’ counsel which is well-within the range applied in
 12 other cases.

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

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

18 **2. IPPs’ Counsel Have Expended Significant Resources on Behalf of the Class**

19 Hagens Berman was appointed as sole lead counsel on behalf of the IPP class. As a result,
 20 Hagens Berman has staffed this case entirely with its own resources during the pendency of the six
 21 years of litigation. Hagens Berman committed the time of experienced antitrust litigators to this case,
 22 in addition to countless hours from staff attorneys to review documents and assist in the prosecution
 23 of this litigation. All of Hagens Berman’s document review – of over 2.9 million documents, many

24 ²⁴ *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011).

25 ²⁵ *Id.* at 941-42. The Supreme Court has since called into question the relevance of two of the
 26 original *Kerr* factors: the contingent nature of the fee, and the “desirability” of the case. *See*
 27 *Resurrection Bay Conserv. All. v. City of Seward*, 640 F.3d 1087, 1095 n.5 (9th Cir. 2011). Other
 28 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.

²⁶ *Bluetooth*, 654 F.3d at 942.

1 of which were produced in foreign languages such as Chinese, Korean, and Japanese – was
 2 performed by in-house staff and contract attorneys, many of whom have worked on this case since its
 3 inception. These specialized attorneys enabled Hagens Berman to identify and translate hot
 4 documents for English-speaking attorneys at a great cost savings to the class. Only documents
 5 identified as likely to be used in court filings, at deposition or at trial were sent to an outside vendor
 6 for translation. Friedman Decl., ¶ 27. As of the end of August 2016, the firm has spent 47,807 hours
 7 of attorney time and 18,492 hours of para-professional time. Hagens Berman has also spent
 8 \$3,704,323.97 in expenses and \$39,295.01 in costs to date in this litigation. *Id.*, ¶ 29. This
 9 commitment of time, personnel, and money to the indirect purchaser class supports the requested
 10 award.

11 **3. This Case Has Presented Novel and Difficult Questions, Requiring** 12 **Extraordinary Skill by IPPs’ Counsel**

13 The third and fourth *Kerr* factors – the novelty of the questions presented by the litigation and
 14 the skill required to perform the legal services properly – both support the requested award. This
 15 litigation has presented unique and challenging questions unaddressed by many other courts. Even
 16 the defendants, in their petition for permission to appeal the granting of class certification to the
 17 Ninth Circuit Court of Appeals, acknowledged the uniqueness of many of the issues faced by
 18 plaintiffs and this Court. Defendants stated that to their knowledge, “no case has certified a class” on
 19 the same basis and record as this case.²⁷ Regarding this Court’s choice-of-law analysis, defendants
 20 argued to the Ninth Circuit that “[n]either this Court nor the California Supreme Court has ever
 21 addressed whether the Cartwright Act can be applied across-the-board to all jurisdictions with
 22 ‘*Illinois Brick* repealer’ statutes.”²⁸ But class certification has not been the only “novel” and difficult
 23 question presented here. In litigating against TSST-Korea and the TSST-Korea employee “John
 24 Doe,” IPPs addressed the unique issue of whether the DOJ recordings were “grand jury” materials.
 25 IPPs have also spent a significant amount of time and resources on discovery regarding the structure

26 _____
 27 ²⁷ 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.

28 ²⁸ *Id.* at 20.

1 and liability of parent companies involved in the many joint ventures at issue in this litigation. All of
2 these issues have required advocacy and skill beyond routine litigation.

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

5 Hagens Berman has dedicated a core team of individuals to the litigation of this action.
6 Rather than the sprawling involvement of many firms (for example, twenty-five firms submitted
7 attorneys' fees declarations in the direct purchaser action), from the beginning of the case, Hagens
8 Berman has dedicated an efficient and streamlined team to this litigation. The consequence of
9 dedicating a team of experienced antitrust attorneys has meant that many of these professionals
10 worked nearly exclusively on this case for some number of years. Nine attorneys have dedicated over
11 a thousand hours each to this litigation, and many of those attorneys have devoted many thousands of
12 hours. Friedman Decl., ¶ 29. Hagens Berman's choice to commit a significant number of attorneys
13 almost exclusively to this litigation, forgoing other cases and other projects, further supports the
14 request for fees.

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

16 The sixth and eight *Kerr* factors – the customary fee and awards in similar cases – both
17 support Hagens Berman's fee request. IPPs request a multiplier of 1.29, which is well within the
18 range of other similar cases.²⁹

19
20
21 ²⁹ See, e.g., *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050-51 (9th Cir. 2002) (upholding a
22 28% fee award that constituted a 3.65 multiple of lodestar); *id.* at 1052-54 (noting district court cases
23 in the Ninth Circuit approving multipliers as high as 6.2, and citing only 3 of 24 decisions with
24 approved multipliers below 1.4); *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 96 (2d Cir.
25 2005) (finding 3.5 multiplier reasonable); *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. C-07-
26 5944 JST, 2016 U.S. Dist. LEXIS 102408, at *71 (N.D. Cal. Aug 3, 2016) (finding that a multiplier
27 of 1.96 was well within the range of acceptable multipliers); *Noll v. eBay, Inc.*, 309 F.R.D. 593, 610
28 (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); *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).

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,³⁰ *In re*
4 *Visa MasterCard Litigation*,³¹ and the *In re Toyota Motor Corp. Unintended Acceleration*
5 *Litigation*.³² 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. Further details regarding critical Hagens Berman team members are included in the
9 accompanying declaration of Jeff Friedman. Friedman Decl., ¶¶ 34-45; Ex. B.

10 **C. Hagens Berman Requests Reimbursement of \$3,704,323.97 in Expenses**

11 Attorneys who create a common fund for the benefit of a class are entitled to be reimbursed
12 for their out-of-pocket expenses incurred in creating the fund so long as the submitted expenses are
13 reasonable, necessary and directly related to the prosecution of the action.³³ Reasonable reimbursable
14 litigation expenses include: those for document production, experts and consultants, depositions,
15 translation services, travel, mail and postage costs.³⁴

16 Hagens Berman requests reimbursement of \$3,704,323.97 in expenses. Hagens Berman does
17 not request reimbursement of \$39,295.01 in costs which would be recoverable as taxable costs after a
18 successful jury verdict. In a diversity case such as this, federal law regarding recovery of costs

19 _____
20 ³⁰ 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
recovery in history. Only two firms went to trial, and Hagens Berman served as co-lead trial counsel.

22 ³¹ *In re Visa-MasterCard Litig.*, No. CV-96-5238 (E.D.N.Y.). Hagens Berman was co-lead
23 counsel in a case alleging antitrust violations by Visa and MasterCard. The case settled for \$3 billion
in cash and changes in practices valued at \$20 billion.

24 ³² *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices & Prods. Liab.*
Litig., No. 8:10ML2151 JVS (C.D. Cal.). Hagens Berman recovered \$1.6 billion for the class.

25 ³³ *Vincent v. Hughes Air W., Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *In re OmniVision Techs.,*
26 *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.”).

27 ³⁴ *See In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1995) (Court
28 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 governs.³⁵ If successful after trial, IPPs will be able to recover court reporter and docket fee costs
2 from the remaining defendants.³⁶

3 What remains is \$3,704,323.97, most of this attributable to expert fees (\$3,103,648.81),
4 translation costs (\$71,417.03) and hosting defendants' document productions in an online database
5 (\$241,160.00). Friedman Decl., ¶ 31. These expenses are reasonable and well within the limits of
6 other cases.

7 **D. Plaintiffs Request Service Awards on Behalf of the Class Representatives**

8 Plaintiffs also request that the Court approve the service awards in the amount of \$4,500 each
9 for the twenty-three class representatives, to be deducted from the settlement funds with HLDS,
10 Panasonic and Sony.³⁷ Service awards for class representatives are routinely provided to encourage
11 individuals to undertake the responsibilities and risks of representing the class and to recognize the
12 time and effort spent in the case. "Incentive *awards* are fairly typical in class action cases."³⁸ In the
13 Ninth Circuit, service awards "compensate class representatives for work done on behalf of the class,
14 to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to
15 recognize their willingness to act as a private attorney general."³⁹ Courts have discretion to approve
16 service awards based on, *inter alia*, the amount of time and effort spent, the duration of the litigation,
17 and the personal benefit (or lack thereof) as a result of the litigation.⁴⁰

18 Here, the twenty-three representatives have spent a significant amount of time assisting in the
19 litigation of this case. All but four plaintiffs has responded to written discovery and produced
20 documents. Each plaintiff was deposed by defense counsel. Each plaintiff has consulted with and
21 assisted counsel in this litigation. Each plaintiff submits a declaration detailing the time he or she

22 ³⁵ *Best Buy Co. v. AU Optronics Corp. (In re TFT-LCD Flat Panel Antitrust Litigation)*, No. 10-
23 CV-4572 SI, 2014 U.S. Dist. LEXIS 32207, at *53 (N.D. Cal. Feb. 3, 2014).

24 ³⁶ *See* 28 U.S.C. §1920 (2012).

25 ³⁷ Declaration of Jeff D. Friedman in Support of Motion for Preliminary Approval of Settlements
26 with Panasonic, NEC, Sony, and HLDS Defendant Families and Dissemination of Class Notice, Ex.
27 A, ¶ 24 (IPP-Panasonic Settlement Agreement), Ex. C, ¶ 23 (IPP-Sony Settlement Agreement), Ex.
28 D, ¶27 (IPP-HLDS Settlement Agreement), June 28, 2016, ECF No. 1898.

³⁸ *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (emphasis in original).

³⁹ *Id.* at 958-59.

⁴⁰ *See Van Vracken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995).

1 spent involved in this litigation. Friedman Decl., Exs. C-Y. The requested awards of \$4,500 are
2 consistent with service awards in other cases.⁴¹ Thus, respectfully, plaintiffs and class counsel
3 respectfully request that the Court approve the modest service awards for each of the class
4 representatives.

5 **IV. CONCLUSION**

6 For the foregoing reasons, plaintiffs respectfully request an award of \$31,250,000 in
7 attorneys' fees, \$3,704,323.97 in expenses, and a \$4,500 service award for each of the class
8 representatives.

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25 ⁴¹ Order Granting Direct Purchaser Plaintiffs' Motion for an Award of Attorneys' Fees,
26 Reimbursement of Expenses, and Class Representative Awards, July 23, 2015, ECF No. 1658
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).