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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 INDIRECT PURCHASER PLAINTIFFS'  
18 NOTICE OF MOTION AND THIRD  
MOTION FOR ATTORNEYS' FEES  
AND EXPENSES

19 Date: February 4, 2019  
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  
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**NOTICE OF MOTION AND MOTION**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on February 4, 2019, at 1:30 p.m. or as soon thereafter as the matter may be heard by the Honorable Judge Richard Seeborg of the United States District Court for the Northern District of California, San Francisco Division, located at 450 Golden Gate Avenue, San Francisco, CA 94102, Indirect Purchaser Plaintiffs (“IPPs”) will and hereby do move the Court for an award of attorneys’ fees and expenses. IPPs further move the Court for an order approving payment from the Settlement Fund of the actually-incurred and estimated notice and administrative costs associated with the Toshiba and Samsung Settlement. 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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**I. INTRODUCTION**

Hagens Berman Sobol Shapiro (“Hagens Berman”) has vigorously pursued this action – as sole lead counsel bearing all risk and costs on behalf of millions of United States consumers – for more than eight years. Even after this Court granted summary judgment against IPPs, lead counsel continued (and still continues) in its commitment to recovering against the defendants for their ODD conspiracy.

IPPs have settled for \$25 million with Samsung Electronics Co., Ltd., Toshiba Corporation, and Toshiba Samsung Storage Technology Corporation (“Samsung and Toshiba Defendants”). This settlement brings the total amount recovered for the class to \$205 million, representing 19 percent of the maximum total damages attributable to all defendants (\$1.074 billion). The latest settlement – approximately 12 percent of the damages attributable to these defendants – is an exceptional result for the class: the settlement was reached after this Court granted summary judgment against IPPs in December 2017.<sup>1</sup>

Hagens Berman requests 20 percent of the additional \$25 million settlement. This request continues to be well below the Ninth Circuit’s benchmark of 25 percent for attorneys’ fees even though a higher award would be well-justified based on the outstanding results. As the Court knows, comparatively, IPPs’ recovery is now almost *triple* the amount for indirect purchasers than the recovery by the class of direct purchasers *from these same defendants*. Class counsel’s fee request, if granted, would bring their total attorneys’ fee award to \$47,780,000, equating to a modest 1.59 multiplier of Hagens Berman’s lodestar of \$30,031,834.70, accumulated over eight years of hard-fought litigation.<sup>2</sup> This multiplier is well below many comparable awards.

In two prior orders, this Court granted final approval of settlements between IPPs and the Panasonic, Sony, NEC, HLDS, PLDS, Pioneer, and Teac defendant families.<sup>3</sup> In the orders, this

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<sup>1</sup> See Order Granting Summary Judgment Against the Indirect Purchaser Plaintiffs (“MSJ Order”), Dec. 18, 2017, ECF No. 2711.

<sup>2</sup> IPPs note that their lodestar calculation does not include the time spent moving for fees and costs or litigating objectors’ appeals of this Court’s prior rulings regarding the fairness of the settlements or the awards of attorneys’ fees, expenses, and service awards for class representatives.

<sup>3</sup> See Order Granting Final Approval of Indirect Purchaser Plaintiffs’ Settlements with Panasonic, Sony, NEC and HLDS Defendant Families, Granting Motion for Attorney Fees, Expenses and  
 IPPS’ 3RD MOT. FOR ATTYS’ FEES AND EXPENSES –  
 Case No.: 3:10-md-2143 RS



1 Court also granted IPPs' requests for attorneys' fees and expenses.<sup>4</sup> The Second Fee Motion  
2 calculated Hagens Berman's lodestar through May 31, 2017, which was the lodestar upon which this  
3 Court based its fee award.<sup>5</sup>

4 Since June 1, 2017, Hagens Berman has continued to vigorously litigate this case. In summer  
5 and fall 2017, Hagens Berman opposed, among other motions: a lengthy joint motion for summary  
6 judgment on all of IPPs' claims; individual summary judgment motions filed by three defendant  
7 families; multiple *Daubert* motions seeking to strike the merits reports of IPPs' experts; and a motion  
8 for decertification of the IPP class. Defendants' multipronged assault on IPPs' claims failed on  
9 nearly all counts, except this Court's ruling that IPPs provided insufficient evidence to present to a  
10 trier of fact that defendants' price-fixing overcharges "passed-through" the market chain of  
11 distribution to injure IPPs. Hagens Berman also filed several affirmative motions before this Court,  
12 participated in settlement discussions with the Samsung and Toshiba Defendants up until the  
13 moment this Court granted summary judgment and then again while IPPs' appeal was pending,  
14 supervised the administration of the second round of settlements, and filed extensive briefs before  
15 the Ninth Circuit Court of Appeals, including an appeal of this Court's summary judgment ruling. It  
16 was during IPPs' appeal of summary judgment on the pass-through issue that IPPs reached the  
17 settlements with the Samsung and Toshiba Defendants. IPPs continue to pursue their appeal against  
18 the BenQ and Quanta Defendants.

19 Throughout this entire litigation, all of the work for the indirect purchasers has been done by  
20 a dedicated team at Hagens Berman who has lived and breathed this case for eight years. This  
21

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22 Service Awards, and Overruling Objections ("First Final Approval Order"), Dec. 19, 2016, ECF No.  
23 2133; Order Granting Final Approval of Indirect Purchaser Plaintiffs' Settlements with PLDS,  
Pioneer, and TEAC Defendant Families, Granting Motion for Attorney Fees, Expenses and Service  
Awards, and Denying Objections ("Second Final Approval Order"), Nov. 7, 2017, ECF No. 2691.

24 <sup>4</sup> See Indirect Purchaser Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards  
25 ("First Fee Motion"), Oct. 5, 2016, ECF No. 1963; Indirect Purchaser Plaintiffs' Second Motion for  
Attorneys' Fees, Expenses, and Service Awards ("Second Fee Motion"), June 30, 2017, ECF No.  
26 2326.

27 <sup>5</sup> See Declaration of Jeff D. Friedman in Support of Indirect Purchaser Plaintiffs' Second Motion  
for Attorneys' Fees, Expenses, and Service Award ("Second Friedman Decl."), ¶¶ 19-24, June 30,  
28 2017, ECF No. 2326-1 (calculating Hagens Berman's lodestar through May 31, 2017, at  
\$27,977,437.70); Second Final Approval Order, at 9 (basing fee award on \$27,977,437.70 lodestar).

1 approach has maximized efficiencies and recovery for the class. Indeed, it is very likely that Toshiba  
 2 and Samsung agreed to the \$25 million settlement – almost triple the DPP settlement with these  
 3 defendants, after summary judgment was granted in defendants’ favor – in large part because of the  
 4 risk of future loss presented by Hagens Berman’s skill and the demonstrated commitment to  
 5 vigorously pursuing this case.

6 Respectfully, Hagens Berman requests an extremely reasonable attorneys’ fee award of  
 7 \$5,000,000, which is 20 percent of the proposed \$25 million settlement, bringing Hagens Berman’s  
 8 total fees to a 1.59 multiplier of Hagens Berman’s lodestar of \$30,031,834.70. Hagens Berman also  
 9 requests reimbursement of \$650,268.62 in expenses. IPPs further request that this Court reaffirm  
 10 approval of payment from the Settlement Fund of the actually incurred and future estimated  
 11 \$545,000 in notice and administrative costs associated with the Samsung/Toshiba settlement.

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

13 Hagens Berman has spent over eight years vigorously advocating on behalf of the class. And,  
 14 after the Court’s initial denial of class certification, Hagens Berman has litigated the case throughout  
 15 without the presence of additional class counsel representing direct purchasers. Hagens Berman has  
 16 shouldered the load of this action for nearly a decade.

### 17 **A. A Summary of Work Performed by Hagens Berman Prior to the First and Second 18 Motions for Attorneys’ Fees**

19 Hagens Berman’s work on behalf of the class from the filing of its complaint until the first  
 20 and second rounds of settlements is discussed in detail in the prior motions to the Court requesting  
 21 attorneys’ fees.<sup>6</sup> The Court is also very familiar with the history of this case. Thus, IPPs will not  
 22 repeat the full history here. However, the past work was necessary, and part and parcel, to reaching  
 23 the \$25 million in settlements that Hagens Berman achieved.

24  
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 26  
 27 <sup>6</sup> See Second Fee Motion, at 2-6; Second Friedman Decl., ¶¶ 2-15; First Fee Motion, at 2-10;  
 28 Declaration of Jeff D. Friedman in Support of Indirect Purchaser Plaintiffs’ Motion for Attorneys’  
 Fees, Expenses, and Service Awards (“First Friedman Decl.”), ¶¶ 2-26. Oct. 5, 2016, ECF No. 1963-  
 1.

1           **1.       Brief Summary of Work by Hagens Berman Prior to the First Fee Motion**

2           IPPs filed their first consolidated complaint on August 26, 2010. Defendants filed seven  
3 separate motions to dismiss on a wide variety of grounds. On August 3, 2011, this Court granted the  
4 motions to dismiss with leave to amend, ruling that plaintiffs had not alleged a plausible factual basis  
5 for inferring the existence of a conspiracy of the scope and nature alleged in the complaints.<sup>7</sup>

6           During the pendency of the motions to dismiss, IPPs successfully compelled the production  
7 of documents that defendants had produced to the grand jury and used those documents to file a  
8 second amended complaint. In April 2012, the Court denied defendants' second set of eight motions  
9 to dismiss, ruling that the amended complaint alleged a plausible conspiracy.<sup>8</sup>

10           IPPs took the lead on behalf of plaintiffs negotiating the bulk of the discovery protocols  
11 governing this case, including an ESI protocol, custodians, a search term protocol, the search terms  
12 themselves, multiple deposition protocols, protective orders, and case management statements filed  
13 before Magistrate Judge Spero. Defendants bitterly fought IPPs at every step.<sup>9</sup>

14           IPPs also served and enforced extensive written discovery from defendants, including serving  
15 71 interrogatories and 125 requests for production of documents during this early period in the case.  
16 Prior to the ruling on the first motion for class certification, IPPs also deposed a number of critical  
17 merits witnesses.<sup>10</sup>

18           IPPs engaged in significant third-party discovery that was essential to their class certification  
19 motion. IPPs subpoenaed 100 separate third parties pursuing purchase and cost data to use for their  
20 pass-through analysis. In connection with the first motion for class certification, IPPs performed  
21 pass-through estimates based on \$58 billion in commerce involving the exchange of 194 million  
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26           <sup>7</sup> Second Friedman Decl., ¶ 2.

27           <sup>8</sup> *Id.*, ¶ 3.

28           <sup>9</sup> *Id.*, ¶ 4.

<sup>10</sup> *Id.*, ¶ 5.

1 ODD products. Dr. Kenneth Flamm estimated 95 pass-through rates for 49 company-product  
2 categories over 19 different companies.<sup>11</sup>

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. Flamm.<sup>12</sup>

8 IPPs faced a period of extreme risk after the denial of their first motion. Hagens Berman, at  
9 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.<sup>13</sup> On February 8, 2016, this Court granted  
17 IPPs' renewed motion for class certification.

18 IPPs reached settlements with two defendant families (Panasonic and NEC) prior to this  
19 Court's granting of class certification on February 8, 2016. IPPs reached settlements with two more  
20 (Sony and HLDS) after the Court granted certification. This Court finally approved all four  
21 settlements on December 19, 2016. Objectors filed appeals regarding all four of these settlements.  
22 IPPs moved for attorneys' fees to be paid from this first set of settlements, a request which this Court  
23  
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25 <sup>11</sup> *Id.*, ¶ 6 (During this period, IPPs also deposed ten third parties regarding their pricing and  
26 procurement practices relating to pass-through, including: Best Buy, Newegg, TigerDirect,  
Microsoft, Amazon, Fry's, Shuttle Computer, ASI, Wal-Mart, and Sears.).

27 <sup>12</sup> *Id.*, ¶ 8.

28 <sup>13</sup> *Id.*, ¶ 9.

1 also granted, awarding fees in the amount of \$31,125,000 – a 1.29 multiplier from their lodestar of  
2 \$24,199,800.20 as of August 31, 2016.<sup>14</sup>

3 **2. Brief Summary of Work by Hagens Berman Between the First and Second Fee**  
4 **Motions**

5 From the fall of 2016 through spring 2017, IPPs engaged in intense discovery. Between  
6 September 1, 2016 and May 31, 2017, 38 depositions of current and former employees of the co-  
7 conspirators occurred, with the IPPs taking the lead questioning on 25 of the witnesses, including  
8 several Samsung and Toshiba witnesses. Hagens Berman also attended the deposition of 14  
9 employees of other plaintiffs in this case, many times questioning the witnesses where issues touched  
10 upon the IPP case.<sup>15</sup> IPPs also spent many hours pursuing foundational testimony for their trial  
11 exhibits. IPPs served 168 requests for admission on the defendants, largely seeking admissions on  
12 authenticity and hearsay to lay foundational records for the admission of documents at trial.<sup>16</sup>

13 There also was significant expert discovery throughout this period. Hagens Berman  
14 supervised the preparation of Rule 26 expert reports from Dr. Kenneth Flamm and Dr. Luis Cabral.  
15 IPPs attended the depositions of 13 experts, including the depositions of Dr. Cabral and Dr. Flamm.  
16 IPPs deposed three of defendants' expert economists, Drs. Snyder, Murphy, and Lerner.<sup>17</sup>

17 During this period, IPPs reached settlements with three additional defendant families (PLDS,  
18 Panasonic, and Teac). This Court finally approved all three settlements on November 7, 2017.  
19 Objectors filed appeals regarding these settlements. IPPs moved for attorneys' fees to be paid from  
20 the second set of settlements, a request which this Court granted, awarding fees in the amount of  
21 \$11,655,000 – a 1.53 multiplier from their lodestar of \$27,977,437.70 as of May 31, 2017.<sup>18</sup>

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25 <sup>14</sup> See First Final Approval Order, at 10; *see also* Second Friedman Decl., ¶ 11.

26 <sup>15</sup> Second Friedman Decl., ¶ 12.

27 <sup>16</sup> *Id.*, ¶ 13.

28 <sup>17</sup> *Id.*, ¶ 15.

<sup>18</sup> Second Final Approval Order, at 9; Second Friedman Decl., ¶¶ 19-21.

1 **B. Hagens Berman Has Continued Its Commitment to this Case and Dedicated Extensive**  
2 **Resources Since June 1, 2017**

3 June 2017 commenced one of the most intense periods of legal briefing in the entire case. In  
4 the beginning of summer 2017, defendants filed several motions that were potentially dispositive of  
5 IPPs' claims, or effectively so, including: a lengthy joint motion for summary judgment (filed by  
6 counsel for Samsung); a motion for decertification of the IPP class (filed by counsel for Toshiba);  
7 three individual motions for summary judgment against IPPs (including a motion each by Samsung  
8 and Toshiba); and *Daubert* motions against IPPs' two merits experts. IPPs submitted lengthy  
9 briefing in opposition to all of these motions. IPPs also filed a motion to strike and supplemental  
10 briefing on the FTAIA arguments included in defendants' joint summary judgment motion that, if  
11 successful, would have significantly reduced IPPs' potential damages. In addition, IPPs filed several  
12 affirmative motions, including a motion for summary judgment against the Quanta defendants, and a  
13 *Daubert* motion against one of defendants' experts.<sup>19</sup>

14 On September 19, 2017, this Court held a lengthy hearing on the motions pertaining to the  
15 IPPs' case, motions pertaining to the actions brought by individual plaintiffs, and motions that  
16 impacted all cases. Counsel for IPPs not only conducted oral argument on the IPP-related motions,  
17 but also led oral argument for all plaintiffs on several cross-cutting issues.<sup>20</sup> On December 18, 2017,  
18 this Court issued rulings which held that defendants' multipronged assault on IPPs' claims failed on  
19 nearly all counts, except that this Court granted summary judgment by concluding IPPs did not  
20 present sufficient evidence of "pass-through" to permit a jury trial on the issue.

21 IPPs appealed this Court's summary judgment decision. While that decision was on appeal,  
22 on March 27, 2018 IPPs reached an agreement in principle to settle the claims against the Samsung  
23 and Toshiba Defendants; the parties executed the agreement on May 23, 2018.<sup>21</sup> IPPs are continuing  
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25  
26 <sup>19</sup> Declaration of Jeff D. Friedman in Support of Indirect Purchaser Plaintiffs' Third Motion for  
Attorneys' Fees and Expenses ("Third Friedman Decl."), ¶ 4, concurrently filed herewith.

27 <sup>20</sup> *Id.*, ¶ 5.

28 <sup>21</sup> *Id.*, ¶ 6.

1 their appeal against the BenQ and Quanta Defendants, and have filed lengthy opening and reply  
2 briefs in support of their appeal.

3 In addition to the above work, IPP counsel since June 1, 2017 filed a motion for final  
4 approval of the second round of settlements (filed on July 28, 2017), participated in a hearing on  
5 these settlements, supervised the administration of the notice of settlements, and filed a motion for  
6 preliminary approval of this third round of settlements. IPPs also opposed defendants' efforts to tax  
7 costs. IPP counsel engaged in settlement negotiations with Samsung and Toshiba with the assistance  
8 of Eric Green, a nationally renowned, neutral mediator.<sup>22</sup>

9 From June 1, 2017 (the date through which IPPs calculated their lodestar for IPPs' second  
10 request for attorneys' fees) to October 31, 2018, Hagens Berman has incurred an additional  
11 \$2,054,397 in attorneys' fees. IPPs have \$650,268.62 in unreimbursed expenses.

### 12 **C. Notice and Administrative Costs Summary**

13 The seven previously approved settlements provided for a combined budget for notice and  
14 administrative costs in the amount of \$2,650,000. Following actual and incurred costs associated  
15 with the two previous rounds of notice to the class, as well as over two years of claims  
16 administration, validation, project management fees, quality control, website and call center support  
17 – *and anticipating estimated future costs of distribution to the Class* – Class Counsel projects that the  
18 notice and administrative costs will exhaust the originally allocated \$2,650,000 from these seven  
19 previously-approved settlements.<sup>23</sup>

20 The current settlement with Samsung and Toshiba allows for a budget for notice and  
21 administrative costs up to the amount of \$700,000. Working with the current notice and claims  
22 administrator on actual and incurred costs to date, as well as estimated future costs associated with  
23 this settlement, Class Counsel currently projects total administrative costs in the amount of  
24 approximately \$545,000. These costs encompass the recently completed third round of notice to the  
25 class, as well as continued claims administration, validation, project management fees, quality  
26

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27 <sup>22</sup> *Id.*, ¶ 7.

28 <sup>23</sup> *Id.*, ¶ 36.

1 control, website, and call center support through the current claims filing deadline of June 28,  
2 2019.<sup>24</sup>

### 3 III. ARGUMENT

4 Hagens Berman requests 20 percent of the common fund – \$5,000,000. Applying a lodestar  
5 crosscheck, this would bring Hagens Berman’s total fees awarded to a 1.59 multiplier of Hagens  
6 Berman’s current lodestar of \$30,031,834.70, which will continue to increase through the final  
7 approval hearing. Hagens Berman also requests reimbursement of \$650,268.62 in unreimbursed  
8 expenses. Finally, IPPs request that this Court approve payment from the Settlement Fund of the  
9 actually-incurred and future estimated \$545,000 in notice and administrative costs associated with  
10 the current settlement.

#### 11 A. Hagens Berman’s Fee Request Is Based on Well-Established Precedent and Supported 12 by Empirical Surveys of Awards in Similarly Sized Cases

13 Hagens Berman requests 20 percent of the common fund – a significant discount below the  
14 25 percent benchmark established by the Ninth Circuit.<sup>25</sup>

15 Courts in this District have correctly recognized that “in most common fund cases, the award  
16 exceeds the benchmark.”<sup>26</sup> Indeed, “*federal district courts across the country have, in the class  
17 action settlement context, routinely awarded class counsel fees in excess of the 25% ‘benchmark,’  
18 even in so-called ‘mega-fund’ cases.*”<sup>27</sup> Courts in this district have generally awarded fees between

19 <sup>24</sup> *Id.*, ¶ 37.

20 <sup>25</sup> *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998) (“This circuit has established  
21 25% of the common fund as a benchmark award for attorney fees.”).

22 <sup>26</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) (internal citation omitted).

23 <sup>27</sup> *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1210 (S.D. Fla. 2006) (emphasis  
24 added) (awarding 31.33% fee on \$1.075 billion settlement fund); *accord In re Urethane Antitrust  
25 Litig.*, No. 04-1616-JWL, 2016 WL 4060156, at \*6 (D. Kan. July 29, 2016) (awarding 33.33% fee  
26 on \$835 million settlement; “Counsel’s expert has identified 34 megafund cases with settlements of  
27 at least \$100 million in which the court awarded fees of 30 percent or higher.”). *See also, e.g., In re  
28 Cathode Ray Tube (CRT) Antitrust Litig.*, No. C-07-5944 JST, 2016 WL 4126533, at \*1 (N.D. Cal.  
Aug. 3, 2016) (awarding 27.5% fee on \$576.75 million settlement fund); *In re Polyurethane Foam  
Antitrust Litig.*, No. 10 MD 2196, 2015 WL 1639269, at \*7 (N.D. Ohio Feb. 26, 2015) (awarding  
30% fee on \$147.8 million settlement fund); *In re Neurontin Mktg. & Sales Practices Litig.*, 58 F.  
Supp. 3d 167, 170 (D. Mass. 2014) (awarding 28% fee on \$325 million settlement fund); *In re TFT-  
LCD (Flat Panel) Antitrust Litig. (LCD I)*, No. 07-md-1827, 2013 WL 1365900, at \*3 (N.D. Cal.  
Apr. 3, 2013) (awarding 28.6% fee on \$571 million settlement fund); *In re Checking Account*



1 25 to 30 percent in large electronic antitrust class actions.<sup>28</sup>

2 Empirical evidence supports the reasonableness of Hagens Berman’s fee request. One study  
 3 of attorneys’ fees looked at awards in 458 class actions between 2009 to 2013 and found 21 percent  
 4 is the midpoint for percent recoveries exceeding \$100 million.<sup>29</sup> The largest recoveries in the study,  
 5 above \$100 million, had mean and median fee percentages that ranged from 16.6 percent to 25.5  
 6 percent, depending on the year.<sup>30</sup> Twenty percent is below the mid-point of 21 percent for that range  
 7 and below the average percentage award of 22.3 percent for the highest decile of recoveries, above  
 8 \$67.5 million.<sup>31</sup> Across all settlements in the study, the report finds that “[o]n average, fees were  
 9 27% of gross recovery during the 2009-2013 period, which is higher than the average fee percentage  
 10 of 23% that we reported in our analyses of the 1993-2008 period.”<sup>32</sup> The study further reports that,  
 11 of the 53 settlements in the Northern District of California, the mean and median percentages  
 12 awarded were 26 percent and 25 percent respectively, matching the mean and median percentages  
 13

14  
 15 *Overdraft Litig.*, 830 F. Supp. 2d 1330, 1366 (S.D. Fla. 2011) (awarding 33.3% fee on \$510 million  
 16 settlement fund); *In re Comverse Tech., Inc. Secs. Litig.*, No. 06-CV-1825 (NGG), 2010 WL  
 17 2653354, at \*6 (E.D.N.Y. June 24, 2010) (awarding 25% fee on \$225 million settlement fund); *In re*  
 18 *Rite Aid Corp. Secs. Litig.*, 362 F. Supp. 2d 587, 589 (E.D. Pa. 2005) (awarding 25% fee on \$126  
 19 million settlement fund, resulting in multiplier of 6.96); *In re Linerboard Antitrust Litig.*, MDL No.  
 20 1261, 2004 WL 1221350, at \*1 (E.D. Pa. June 2, 2004) (awarding 30% fee on \$202.5 million  
 21 settlement fund); *In re Cardizem CD Antitrust Litig.*, No. 99-md-1278 (E.D.Mich. Nov. 26, 2002), at  
 18-20 (awarding 30% of a \$110 million dollar fund, which produced a multiplier of 3.7); *In re*  
 19 *Vitamins Antitrust Litig.*, No. MDL 1285, 2001 WL 34312839, at \*9 (D.D.C. July 16, 2001)  
 20 (awarding 34.6% fee on \$365 million settlement fund); *In re Ikon Office Sols., Inc., Secs. Litig.*, 194  
 21 F.R.D. 166, 170 (E.D. Pa. 2000) (awarding 30% fee on \$111 million settlement fund); *In re Brand*  
 20 *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); *In re Sumitomo Copper Litig.*, 74 F.  
 21 Supp. 2d 393, 395 (S.D.N.Y. 1999) (awarding 27.5% fee on \$116 million settlement fund).

22 <sup>28</sup> See, e.g., *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. C-07-5944 JST, 2016 WL  
 23 183285, at \*2-\*3 (N.D. Cal. Jan. 14, 2016) (30%); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No.  
 24 07-md-1827 SI, 2011 WL 7575003 (N.D. Cal. Dec. 27, 2011) (30%); *In re TFT-LCD (Flat Panel)*  
 25 *Antitrust Litig.*, No. 07-md-1827 SI, 2013 WL 149692 (N.D. Cal. Jan. 14, 2013) (30%); *LCD I*, 2013  
 25 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*  
 25 *(DRAM) Antitrust Litig.*, No. 02-md-1486, 2007 WL 2416513 (N. D. Cal. Aug. 16, 2007) (25%).

26 <sup>29</sup> Third Friedman Decl., Ex. 2 at 1.

27 <sup>30</sup> *Id.* at 8.

28 <sup>31</sup> *Id.* at 9-10.

<sup>32</sup> *Id.* at 8.

1 found more broadly in the 144 settlements surveyed in the Ninth Circuit.<sup>33</sup> Looking at case subject  
2 matter, the study further reports that of the 19 antitrust settlements between 2009 to 2013, with a  
3 mean recovery of \$501.09 million and a median recovery of \$37.3 million, the mean and median  
4 percentages awarded were 27 percent and 30 percent.

5 Similarly, Hagens Berman’s lodestar multiplier of 1.59 is conservative and at the low end of  
6 the range of multipliers surveyed by the Ninth Circuit in *Vizcaino*, which looked at common fund  
7 settlements between \$50-200 million. *Vizcaino* found that in 20 of the 24 cases it surveyed, the  
8 multiplier was between 1.0 and 4.0.<sup>34</sup> The cases *Vizcaino* surveyed involved common funds of \$50-  
9 200 million.<sup>35</sup> Significantly, the settlements in this case so far equal \$205 million; nonetheless,  
10 Hagens Berman has requested a fee award that would result in a lodestar multiplier near the very  
11 bottom of the range surveyed in *Vizcaino* even though the EMG Study shows that *multipliers*  
12 *increase as the size of the recovery increases*.<sup>36</sup> The empirical study of class action recoveries also  
13 found that the mean lodestar multiplier for recoveries above \$75 million was 2.72 – Hagens  
14 Berman’s lodestar multiplier of 1.59 is significantly *below* the average.

15 **B. Applicable Factors Confirm that a Twenty Percent Award Is a Reasonable Percentage**

16 In addition to the benchmark being a guide to reasonableness (and the request here being  
17 below the benchmark), when considering the reasonableness of a fee request under the percentage-  
18 of-recovery method, the Ninth Circuit instructs courts to consider the following factors: (1) whether  
19 counsel “achieved exceptional results for the class”; (2) whether the case was risky for class counsel;  
20 (3) whether counsel’s performance “generated benefits beyond the cash settlement fund”; (4) the  
21 market rate for the particular field of law; (5) the burdens class counsel experienced while litigating  
22 the case (e.g., cost, duration, foregoing other work); and (6) whether the case was handled on a  
23 contingency basis.<sup>37</sup> Each of these factors supports IPPs’ request for attorneys’ fees of 20 percent.

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24  
25 <sup>33</sup> *Id.* at 11, 12.

26 <sup>34</sup> *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 n.6 (9th Cir. 2002).

27 <sup>35</sup> *Id.* at 1052-54.

28 <sup>36</sup> Third Friedman Decl., Ex. 2 at 1.

<sup>37</sup> *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954-55 (9th Cir. 2015).

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

2           Recovery of \$25 million for the indirect purchaser class from the Samsung and Toshiba  
3 Defendants is an exceptional result. Considering each of these defendants' market share, the percent  
4 of recovery is as follows for all settlements achieved so far:

5 <b>Defendant Family</b>	6 <b>Contribution to Settlement Fund</b>	7 <b>Percent Share of ODD Market</b>	8 <b>Damages Attributed to Defendant Family</b>	9 <b>Percent Recovery for IPPs</b>
10           HLDS	\$73,000,000.00	26%	\$283,483,200	26%
11           NEC/Sony (Joint Venture)	\$35,000,000	10%	\$107,380,000	33%
12           Panasonic	\$16,500,000	12%	\$128,856,000	13%
13           PLDS	\$40,000,000	18%	\$193,284,000.00	21%
14           Pioneer	\$10,500,000	6%	\$64,428,000.00	16%
15           TEAC	\$5,000,000	2.5%	\$26,800,000	19%
16           SEC/Toshiba Corp./TSST/TSSTK Samsung	\$25,000,000	19%	\$204,022,000	12%
17 <b>Total</b>	<b>\$205,000,000</b>	<b>93.5%</b>	<b>\$1,008,253,200</b>	<b>20%</b>

18           These settlements represent recovery of **20 percent** of the estimated damages attributable to  
19 the market share of these defendants, and more than **19 percent of total estimated damages** (\$1.074  
20 billion) suffered by indirect purchasers. IPPs are also actively litigating their appeal against the BenQ  
21 and Quanta Defendants, and if they prevail on appeal, on remand IPPs could obtain additional  
22 recoveries from BenQ or Quanta either by settlement or after trial. These defendants would be jointly  
23 and severally liable for the remainder of the damages resulting from the conspiracy.

24           Measured against the most direct benchmark, the direct purchaser settlements in the case, the  
25 IPP settlements are clearly superior. The IPP settlements almost triple the direct purchaser  
26 settlements with the Toshiba and Samsung Defendants: \$25 million for IPPs, versus \$9.2 million for  
27 DPPs (or 2.72x).<sup>38</sup>

28           The total IPP settlements to date of \$205 million are also now more than 2.7 times higher the  
total settlements (\$74.9 million) recovered by the direct purchasers. Despite superior results, the IPPs

<sup>38</sup> See Direct Purchaser Plaintiffs' Motion for 1) Certification of Classes; 2) Preliminary 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 2, 4, Nov. 3, 2015, ECF No. 1724.

1 are requesting only 20 percent of the fees requested in these settlements, versus the 30 percent  
2 requested by and awarded to the direct purchasers in both of their fee motions. A comparison of the  
3 results obtained by Hagens Berman against the directly comparable benchmark provided by the DPP  
4 settlements shows that these settlements represent an exceptional return for the IPP class.

5 Moreover, there is little doubt that IPPs' ability to withstand defendants' numerous  
6 challenges to their case in summer 2017 – the summary judgment motions, *Daubert* motions, FTAIA  
7 arguments, and the decertification motion – except for the narrow pass-through ground on which this  
8 Court granted summary judgment, incentivized Samsung and Toshiba to settle for several times what  
9 DPPs recovered. Samsung and Toshiba could very well expect that if IPPs achieved a favorable  
10 result in the Ninth Circuit on the narrow, sole appellate issue, IPPs would be committed to trying the  
11 case to a potentially successful conclusion.

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

13 The risk associated with this case plays an important role in determining a fair fee award.<sup>39</sup> A  
14 number of risks made this case unique – and made the actions of class counsel unique.

15 *First and foremost*, this Court is aware of the risk of no recovery by the class. This Court  
16 denied IPPs' initial motion for class certification and granted defendants' motion for summary  
17 judgment. Thus, recovery of an estimated 12 percent of damages attributable to the Samsung and  
18 Toshiba Defendants at this stage is outstanding given the real risk that the class faces the possibility  
19 of no recovery should the Ninth Circuit uphold the Court's summary judgment ruling.

20 *Second*, this case always has had unique risks. For example, the evidence was not neatly  
21 compartmentalized, such as capturing defendants in a room agreeing to fix prices for all ODD sales.  
22 The evidence of the scope of the conspiracy had to be assembled brick-by-brick, showing a more  
23 sophisticated scheme of how to fix a market dominated by two large buyers. As such, the evidence  
24 fell more easily into defendants' narrative limiting the scope of the conspiracy to Dell and HP. And  
25 the Department of Justice ultimately secured only one set of guilty pleas before deciding to not  
26 prosecute the remainder of the defendants in the case.

27  
28 <sup>39</sup> *Online DVD-Rental*, 779 F.3d at 955.

1            *Third*, these defendants are serial cartel participants and have brought almost limitless  
 2 resources to this litigation, including some of the most sophisticated defense counsel available for  
 3 purchase. The number of defense counsel at every discovery conference, hearing, and deposition has  
 4 dwarfed IPPs. The resources available to opposing parties are an important factor to be considered in  
 5 the analysis of attorneys' fees.<sup>40</sup>

6            Hagens Berman's unique perseverance, on its own, in the face of these enormous risks  
 7 deserves recognition.

### 8            **3. Counsel's Performance Generated Benefits Beyond The Cash Settlement Fund**

9            Counsel's performance has generated benefits beyond the cash settlement fund. The Samsung  
 10 and Toshiba Settlement Agreement does not settle or compromise any of the IPPs' claims against  
 11 any remaining defendant or co-conspirator. The settlement agreement specifically states that  
 12 Samsung and Toshiba's sales should not be removed from the case, which is important because it  
 13 preserves IPPs' claims for the remaining damages from the BenQ and Quanta Defendants, who are  
 14 jointly and severally liable for the damages caused by the conspiracy.

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

16            Hagens Berman's hourly rates are in line with market rates in this district, and have been  
 17 approved by this Court twice already. The most senior attorney on the case, Steve Berman, bills at an  
 18 hourly rate of \$975. This is well within the range of \$200 to \$1,080 charged by partners in  
 19 California.<sup>41</sup> Other partners at Hagens Berman have hourly rates ranging between \$550 to \$950.  
 20 Associates at Hagens Berman have hourly rates ranging from \$300 to \$825. Staff and contract  
 21 attorneys have hourly rates ranging from between \$300 to \$600. A number of these staff and contract  
 22 attorneys were specifically hired because of their unique language skills (Korean, Japanese, and  
 23 Chinese), which have proved invaluable on this case. Finally, translators, paralegals, and paralegal  
 24 assistants have rates ranging between \$125 to \$325. All of these ranges are within the ranges  
 25 accepted by other Courts in this District and supported by market surveys.  
 26

27            <sup>40</sup> *Vizcaino v. Microsoft Corp.*, 142 F. Supp. 2d 1299, 1303-04 (W.D. Wash. 2001).

28            <sup>41</sup> Third Friedman Decl., Ex. 3.

1           **5.       The Burdens on Class Counsel Support the Request for Attorneys’ Fees**

2           The Ninth Circuit instructs district courts to consider the burdens class counsel experienced  
3 while litigating the case (e.g., cost, duration, foregoing other work). Here, this litigation has been  
4 pending for over eight years. In addition to the expenses reimbursed from the prior settlements,  
5 Hagens Berman has continued to advance costs. Team members continued to work on this litigation,  
6 including preparation of several complex and lengthy briefs in the summer and fall of 2017. This  
7 factor further supports the requested fee award.

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

9           As this Court is aware, Hagens Berman accepted this case on a contingency basis. In  
10 negotiating the guilty pleas, the DOJ pointed to this civil litigation as the place where consumers  
11 would recover from their financial injury<sup>42</sup> – emphasizing the importance of private litigation within  
12 the larger context of the enforcement of the antitrust laws. The contingent nature of this case means  
13 that Hagens Berman has a balanced set of interests – both to achieve excellent results for the class,  
14 and to achieve those results in as efficient a manner as possible.

15           As Judge Walker recognized at the outset of this case, “potential recovery by indirect  
16 purchaser plaintiffs in this litigation is subject to a greater variety of imponderables” than other  
17 pieces of litigation such as securities litigation under the PSLRA.<sup>43</sup> And this case has been subject to  
18 twists and turns – including the initial denial of the motion for class certification before the renewed  
19 motion was granted, litigation of a discovery dispute to the Ninth Circuit, the granting of summary  
20 judgment on a single, narrow ground, and now pending appeals before the Ninth Circuit.

21           A 20 percent fee award reasonably compensates Hagens Berman for the financial burden of  
22 this risky case.<sup>44</sup> Indeed, a 20 percent fee award is below the 33 percent market rate standard usually

23  
24 <sup>42</sup> United States’ and Defendant HLDS’s Joint Sentencing Memorandum and United States’  
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.

25 <sup>43</sup> Order at 8, June 4, 2010, ECF No. 96.

26 <sup>44</sup> See *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1377 (9th Cir. 1993) (“The 25%  
27 contingent fee rewarded class counsel not only for the hours they had in the case to the date of the  
settlement, but for carrying the financial burden of the case, effectively prosecuting it and, by reason  
28 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)

1 charged for contingent representation.<sup>45</sup>

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

3 Here, indirect purchaser counsel have invested \$30,031,834.70 in attorneys' fees in this  
4 litigation. IPPs' request for a twenty percent fee on the current settlement equates to a modest 1.59  
5 multiplier for the case overall, which is well within the range of multipliers awarded in other, similar  
6 litigation.

7 Lodestar is calculated "by multiplying the number of hours the prevailing party reasonably  
8 expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate for  
9 the region and for the experience of the lawyer."<sup>46</sup> A court may give an upwards adjustment to a  
10 lodestar (though a positive multiplier) to reflect a host of "reasonableness" factors, including: (1) the  
11 amount involved and the results obtained, (2) the time and labor required, (3) the novelty and  
12 difficulty of the questions involved, (4) the skill requisite to perform the legal service properly,  
13 (5) the preclusion of other employment by the attorney due to acceptance of the case, (6) the  
14 customary fee, (7) the experience, reputation, and ability of the attorneys, and (8) awards in similar  
15 cases.<sup>47</sup> These are referred to as the *Kerr* "reasonableness" factors after the Ninth Circuit's opinion in  
16 *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975). Foremost among these

17  
18 (awarding 30 % fee in part because "case was conducted on an entirely contingent fee basis against a  
19 well-represented Defendant").

20 <sup>45</sup> See, e.g., Lester Brickman, *ABA Regulation of Contingency Fees: Money Talks, Ethics Walks*,  
21 65 *Fordham L. Rev.* 247, 248 (1996) (noting that "standard contingency fees" are "usually thirty  
22 three percent to forty percent of gross recoveries" (emphasis omitted)); F. Patrick Hubbard,  
23 *Substantive Due Process Limits on Punitive Damages Awards: "Morals Without Technique"?*, 60  
24 *Fla. L. Rev.* 349, 383 (2008) (discussing "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  
the results of a survey of Wisconsin lawyers, which found that "[o]f the cases with a [fee calculated  
as a] fixed percentage [of the recovery], a contingency fee of 33% was by far the most common,  
accounting for 92% of those cases").

25 <sup>46</sup> *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011).

26 <sup>47</sup> *Id.* at 941-42. The Supreme Court has since called into question the relevance of two of the  
27 original *Kerr* factors: the contingent nature of the fee, and the "desirability" of the case. See  
28 *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.

1 considerations, however, is the “benefit obtained for the class.”<sup>48</sup> Here, there can be no dispute  
 2 regarding the exceptional results achieved for the class. But each of the factors likewise supports the  
 3 positive multiplier requested by IPPs’ counsel which is well-within the range applied in other cases.

4 **1. Class Counsel Has Achieved Exceptional Results for the IPP Class**

5 The first factor, the results for the class, strongly supports an upwards adjustment from  
 6 lodestar. 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 excellent by any measure.

8 **2. Class Counsel Has 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 eight  
 11 years of litigation. In total, two partners at Hagens Berman have taken the lead questioning of the 50  
 12 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 Between June 1, 2017 and the end of October 31, 2018, attorneys and professionals at Hagens  
 18 Berman have spent 5,322.30 hours working on this case. Hagens Berman also has \$650,268.62 in  
 19 unreimbursed expenses (in addition to the \$5,073,042.92 in expenses previously awarded by this  
 20 Court).<sup>49</sup> This commitment of time, personnel, and money to the indirect purchaser class supports the  
 21 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 \_\_\_\_\_  
 27 <sup>48</sup> *Bluetooth*, 654 F.3d at 942.

28 <sup>49</sup> *See* Third Friedman Decl., ¶¶ 12, 14; Second Friedman Decl., ¶¶ 20, 22; Second Final  
 Approval Award, at 16.



1 have faced a parade of novel legal arguments from the defendants. Defendants have claimed that “no  
2 case has certified a class” on the same basis and record as this case.<sup>50</sup> Regarding this Court’s choice-  
3 of-law analysis, defendants argued to the Ninth Circuit that “[n]either this Court nor the California  
4 Supreme Court has ever addressed whether the Cartwright Act can be applied across-the-board to all  
5 jurisdictions with ‘*Illinois Brick* repealer’ statutes.”<sup>51</sup> In litigating against TSST-Korea and the  
6 TSST-Korea employee “John Doe,” IPPs addressed the unique issue of whether the DOJ recordings  
7 were “grand jury” materials.

8 IPPs also faced a parade of complex, challenging, and novel issues in opposing defendants’  
9 summary judgment motions, *Daubert* motions, and motion for decertification in the summer and fall  
10 of 2017. These issues included defending against myriad challenges to the methods and conclusions  
11 of IPPs’ experts, demonstrating that fact disputes precluded summary judgment on the issue of the  
12 existence of the alleged conspiracy, fending off the decertification motion, and showing that proper  
13 application of the FTAIA would not reduce the amount of IPPs’ damages should they succeed on the  
14 merits. All of these issues have required advocacy and skill beyond routine litigation.

#### 15 **4. Hagens Berman Has Foregone Other Employment Due to Their Commitment to** 16 **This Case**

17 Hagens Berman has dedicated a core team of individuals to the litigation of this action.  
18 Rather than the sprawling involvement of many firms, from the beginning of the case Hagens  
19 Berman has dedicated an efficient and streamlined team to this litigation. The consequence of  
20 dedicating a team of experienced antitrust attorneys has meant that many of these professionals  
21 worked nearly exclusively on this case for some number of years. Ten attorneys have dedicated over  
22 a thousand hours each to this litigation, and many of those attorneys have devoted many thousands of  
23 hours.<sup>52</sup> Hagens Berman’s choice to commit the resources of its firm, forgoing other cases and other  
24 projects, supports the request for fees.

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25  
26 <sup>50</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.

27 <sup>51</sup> *Id.* at 20.

28 <sup>52</sup> Third Friedman Decl., ¶ 8.

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

2           The sixth and eighth *Kerr* factors – the customary fee and awards in similar cases – both  
3 support Hagens Berman’s fee request. IPPs request a multiplier of 1.59, which is well within the  
4 range of other similar cases.<sup>53</sup>

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

6           Hagens Berman is one of the most well-respected class action litigation firms in the country  
7 and has litigated some of the largest class actions in history, including the tobacco litigation,<sup>54</sup> *In re*  
8 *Visa MasterCard Litigation*,<sup>55</sup> and the *In re Toyota Motor Corp. Unintended Acceleration*  
9 *Litigation*.<sup>56</sup> Hagens Berman has over 70 lawyers in offices across the country. Since its founding in  
10 1993, the firm has been recognized in courts throughout the United States for its ability and  
11 experience in handling major class litigation efficiently and obtaining outstanding results for its  
12 clients. Hagens Berman includes a short biography of those professionals who have billed the  
13 majority of time in the case, in addition to submitting the firm resumé which includes additional  
14 detail.<sup>57</sup>

16 \_\_\_\_\_  
17           <sup>53</sup> See, e.g., *Vizcaino*, 290 F.3d at 1050-51 (upholding a 28% fee award that constituted a 3.65  
18 multiple of lodestar); *id.* at 1052-54 (noting district court cases in the Ninth Circuit approving  
19 multipliers as high as 6.2, and citing only 3 of 24 decisions with approved multipliers below 1.4);  
20 *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 96 (2d Cir. 2005) (finding 3.5 multiplier  
21 reasonable); *CRT*, 2016 WL 4126533, at \*10 (finding that a multiplier of 1.96 was well within the  
22 range of acceptable multipliers); *Noll v. eBay, Inc.*, 309 F.R.D. 593, 610 (N.D. Cal. 2015) (finding  
23 that the lodestar cross check, with a 1.6 multiplier, confirmed the reasonableness of the percentage-  
24 based calculation); *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (finding a  
25 2.83 multiplier appropriate); *In re Netflix Privacy Litig.*, No. 5:11-CV-00379 EJD, 2013 U.S. Dist.  
26 LEXIS 37286, at \*31 (N.D. Cal. Mar. 18, 2013) (finding that a lodestar multiplier of 1.66 confirms  
27 the reasonableness of the percentage-based attorneys’ fees calculation, 25% of the settlement fund);  
28 *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).

23           <sup>54</sup> In the historic litigation against Big Tobacco, Hagens Berman represented 13 states and  
24 advanced groundbreaking legal claims to secure a global settlement worth \$260 billion, the largest  
25 recovery in history. Only two firms went to trial, and Hagens Berman served as co-lead trial counsel.

25           <sup>55</sup> *In re Visa-MasterCard Litig.*, No. CV-96-5238 (E.D.N.Y.). Hagens Berman was co-lead  
26 counsel in a case alleging antitrust violations by Visa and MasterCard. The case settled for \$3 billion  
27 in cash and changes in practices valued at \$20 billion.

27           <sup>56</sup> *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices & Prods. Liab.*  
28 *Litig.*, No. 8:10ML2151 JVS (C.D. Cal.). Hagens Berman recovered \$1.6 billion for the class.

28           <sup>57</sup> Third Friedman Decl., ¶¶ 17-35; Ex. 1.

1 **D. Hagens Berman Requests Reimbursement of Additional Expenses**

2 Attorneys who create a common fund for the benefit of a class are entitled to be reimbursed  
3 for their out-of-pocket expenses incurred in creating the fund so long as the submitted expenses are  
4 reasonable, necessary, and directly related to the prosecution of the action.<sup>58</sup> Reasonable  
5 reimbursable litigation expenses include: those for document production, experts and consultants,  
6 depositions, translation services, travel, mail, and postage costs.<sup>59</sup> Here, Hagens Berman requests  
7 reimbursement for \$650,268.62 in expenses. Previously, this Court approved an award of  
8 \$5,073,042.92 in expenses.

9 The additional total of \$650,268.62 in unreimbursed expenses is largely due to two types of  
10 expenses – online document databases (\$547,404.21), and payment of economic experts  
11 (\$62,532.60). Given that these expenses are routine – and necessary – for the prosecution of the IPP  
12 case, IPPs respectfully request that they be awarded their expenses.<sup>60</sup>

13 **E. Hagens Berman Requests That This Court Reaffirm That Reasonable Administrative  
14 Expenses Shall Be Paid from the Settlement Fund**

15 In this Court’s Order preliminarily approving the Toshiba/Samsung Settlement and  
16 dissemination of class notice, the Court held that “[a]ll reasonable expenses incurred in identifying  
17 and notifying members of the Settlement Classes, as well as administering the Settlement Fund, shall  
18 be paid as set forth in the Settlement Agreement.”<sup>61</sup> The Toshiba/Samsung Settlement Agreement  
19 permits use of a maximum of \$700,000 of the Settlement Fund towards the costs of administration.  
20

21 <sup>58</sup> *Vincent v. Hughes Air W., Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *In re OmniVision Techs.,*  
22 *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.”).

23 <sup>59</sup> *See In re Media Vision Tech. Secs. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1995) (Court  
24 fees, experts/consultants, service of process, court reporters, transcripts, deposition costs, computer  
25 research, photocopies, postage, telephone/fax); *Thornberry v. Delta Air Lines*, 676 F.2d 1240, 1244  
(9th Cir. 1982), *judgment vacated and remanded on other grounds*, 461 U.S. 952 (1983) (travel,  
meals and lodging).

26 <sup>60</sup> Third Friedman Decl., ¶ 14.

27 <sup>61</sup> *See* Order Granting Indirect Purchaser Plaintiffs’ Motion for Preliminary Approval of Class  
28 Action Settlement with Defendants Samsung Electronics Co., Ltd., Toshiba Corporation and Toshiba  
Samsung Storage Technology Corporation and Dissemination of Class Notice, ¶ 16, Sept. 18, 2018,  
ECF No. 2860.

1 As explained in Section II.C, *supra*, working with the current notice and claims administrator  
 2 on actual and incurred costs to date, as well as estimated future costs associated with this settlement,  
 3 Class Counsel projects total administrative costs here in the amount of approximately  
 4 \$545,000. Class Counsel requests approval of the actually-incurred and future estimated \$545,000  
 5 in notice and administrative costs associated with the current settlement.<sup>62</sup>

6 This would leave a remaining amount of \$155,000 in reserve from the \$700,000 originally  
 7 allocated for notice and administrative costs in this settlement. Class Counsel requests that this  
 8 amount remain available for administrative contingencies going forward, which Class Counsel will  
 9 report to the Court for approval at the appropriate time should such contingencies arise. If not  
 10 needed, this amount will be included in the net Settlement fund to be distributed to the Class. In sum,  
 11 and depending on the exact administrative contingencies going forward, the total costs to the Class  
 12 for notice and administration associated with the *current settlement* is projected to be no more than  
 13 the originally-budgeted \$700,000.

#### 14 IV. CONCLUSION

15 For the foregoing reasons, IPPs respectfully request an award of \$5,000,000 in attorneys' fees  
 16 and \$650,268.62 in expenses. Additionally, IPPs request that this Court approve payment from the  
 17 Settlement Fund of the actually incurred and future estimated \$545,000 in notice and administrative  
 18 costs associated with the current settlement.

19 DATED: December 3, 2018

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26 <sup>62</sup> See *Online DVD-Rental*, 779 F.3d at 940, 949-56 (approving of settlement and settlement  
 27 administration and award procedure where money from settlement fund paid for costs of notice and  
 28 administration and "attorneys' fees award [was] calculate[ed] as a percentage of the total settlement  
 fund, including notice and administrative costs, and litigation expenses").

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