UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE OPTICAL DISK DRIVE PRODUCTS ANTITRUST LITIGATION	No. 3:10-md-2143 RS (JCS)
	[~~PROPOSED~~] 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 AS MODIFIED BY COURT
This Document Relates to: ALL INDIRECT PURCHASER ACTIONS	DATE ACTION FILED: Oct. 27, 2009

This matter comes before the Court on indirect purchaser plaintiffs' motion for final approval of settlements (filed July 28, 2017) and motion for payment of attorney fees, reimbursement of expenses, and payment of service awards to the named representatives (ECF No. 2326). A hearing was held on September 7, 2017.

The Court has carefully reviewed and considered the record in this matter, including the memoranda and supporting declarations submitted in support of the motion for preliminary approval and the exhibits attached thereto, including the proposed settlement agreements and each of the class notices; indirect purchaser plaintiffs' (IPPs) motion for final approval of the Settlement Agreement; the memoranda in support of the motion for final approval submitted by IPPs; the memoranda and declarations submitted in support of the fee petition; all objections submitted to the Court and IPPs' responses to those objections.

Good cause appearing, the Court orders as follows:

I. BACKGROUND

Indirect purchaser plaintiffs (IPPs) move for final approval of their settlements with the PLDS, Pioneer, and Teac defendant families.[1] On April 18, 2017, this Court granted preliminary approval of these settlements, provisionally certifying the settlement class, preliminarily approving the settlements, and ordering dissemination of notice to class members (ECF Nos. 2284, 2285).

Two notice administrators provided notice in accordance with this Court's order. Out of the millions of class members, only nine class members requested exclusion from the class, and a total of two objections were filed. These three settlements will result in recovery of $55.5 million for the indirect purchaser class. Under the proposed schedule, the class is able to make claims until October 30, 2017, at which point IPPs propose a well-accepted distribution plan – a pro-rata calculation taking into account how many ODDs were purchased by each class member.

[1] "PLDS" refers to Koninklijke Philips Electronics N.V., Lite-On It Corp., Philips & Lite-On Digital Solutions Corp., Philips & Lite-On Digital Solutions USA, Inc. "Pioneer" refers to Pioneer North America, Inc. and Pioneer Electronics (USA) Inc. "Teac" refers to Teac Corporation and Teac America, Inc.

II. SUMMARY OF SETTLEMENTS

A. Settlement Terms

The proposed settlements resolve all claims against these three defendant families stemming from the conspiracy to restrain competition for ODDs. The settlement classes are defined as follows (ECF Nos. 2246-3, ¶ A(1); 2246-4, ¶ A(1); 2260-3, ¶ A(1)):

> All persons and entities who, as residents of Arizona, California, District of Columbia, Florida, Hawaii, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, Oregon, Tennessee, Utah, Vermont, West Virginia and Wisconsin and during the period April 2003 to December 2008, purchased new for their own use and not for resale: (i) a computer with an internal ODD; (ii) a stand-alone ODD designed for internal use in computers; or (iii) an ODD designed to be attached externally to a computer. ODD refers to a DVD-RW, DVD-ROM, or COMBO drive manufactured by one or more Defendants or their coconspirators. Excluded from the class are any purchases of Panasonic-branded computers.

The proposed settlement classes mirror the class certified by this Court on February 8, 2016 (ECF No. 1783).

B. The Settlement Consideration

Under the proposed settlements, defendants will pay a total of $55.5 million in cash. The PLDS defendants will contribute $40 million; the Pioneer defendants will contribute $10.5 million, and the Teac defendants will contribute $5 million. In addition, each of the settlement agreements provides for cooperation from these defendants to assist in the prosecution of claims against the remaining defendants and at trial.

C. Release of Claims

Plaintiffs and class members will release all federal and state-law claims against the PLDS, Pioneer, and Teac defendants if the settlements become final, relating to the conduct alleged in plaintiffs' complaint, including "claims under foreign antitrust or competition laws . . . that relate to or arise out of the sale of any of the ODDs or any of the products containing ODDs" (ECF Nos. 2246-3, ¶ 13; 2246-4, ¶ 12; 2260-3, ¶ 12) that are the subject of the complaint. The release does not preclude plaintiffs from pursuing their claims against the other defendants (ECF Nos. 2246-3, ¶ 14;

2246-4, ¶ 12; 2260-3, ¶ 13). The settlements release only those claims of class members who will recover under the terms of the settlement.

III. THE SETTLEMENTS ARE FAIR, REASONABLE AND ADEQUATE

In order to approve a settlement in a class action, the court must conduct a three-step inquiry. *First*, it must assess whether defendants have met the notice requirements under the Class Action Fairness Act (CAFA). *See* 28 U.S.C. § 1715(d). *Second*, it must determine whether the notice requirements of Federal Rule of Civil Procedure 23(c)(2)(B) have been satisfied. *Finally*, it must conduct a hearing to determine whether the settlement agreement is "fair, reasonable, and adequate." *See* Fed. R. Civ. P. 23(e)(2); *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003) (discussing the Rule 23(e)(2) standard); *Adoma v. Univ. of Phoenix. Inc.*, 913 F.Supp.2d. 964, 972 (E.D. Cal. 2012) (conducting three-step inquiry). Each of these requirements are met here.

A. The Parties Have Complied with the Class Action Fairness Act

CAFA requires that "[n]ot later than 10 days after a proposed settlement of a class action is filed in court, each defendant that is participating in the proposed settlement shall serve [notice of the proposed settlement] upon the appropriate State official of each State in which a class member resides and the appropriate Federal official[.]" *See* 28 U.S.C. § 1715(b).The court may not grant final approval of a class action settlement until the CAFA notice requirement is met. *See* 28 U.S.C. § 1715(d). Here, the PLDS, Pioneer, and Teac defendants provided the required CAFA notice (ECF Nos. 2429; 2430; 2431). No Attorneys General have submitted statements of interest or objections in response to these notices.

B. The Settlement Class Meets All Requirements of Rule 23(e)

In its order granting preliminary approval, and its order certifying the class on February 8, 2016 (ECF No. 1783), the Court certified the class pursuant to Rule 23(b)(3) (ECF Nos. 2284; 2285). The same analyses apply here, and the Court affirms its order certifying the class for settlement purposes under Rule 23(e).

C. The Parties Have Complied with Rule 23(c) Notice Requirements

Class actions brought under Rule 23(b)(3) must satisfy the notice provisions of Rule 23(c)(2), and upon settlement of a class action, "[t]he court must direct notice in a reasonable manner

to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(l). Rule 23(c)(2) prescribes the "best notice that is practicable under the circumstances, including individual notice" of particular information. Fed. R. Civ. P. 23(c)(2)(B).

The proposed notice plan was undertaken and carried out pursuant to this Court's preliminary approval order. The notice administrators provided direct notice via e-mail (obtained from retailers of the products at issue in this case) to approximately 12.8 million consumers. On August 20, 2016, the notice administrators made a case website publicly available which contained the full settlement agreements, the Court's order granting preliminary approval to these settlements, the long form notice, and the claims form (in both electronic and PDF version). A toll-free automated telephone support line was activated to provide answers to frequently asked questions by class members. On May 18, 2017, the website was updated to include information and new deadlines for the PLDS, Pioneer, and TEAC settlements. The website includes IPPs' motion for attorney fees, expenses, and service awards for class representatives, as well as the accompanying declaration of Jeff D. Friedman. The notice administrators engaged in an extensive public notice campaign, including:

a. Publishing summary notice in the national edition of *USA Today* on May 18, 2017;

b. Publishing summary notice in the national edition of *People* magazine in the June 5th nationwide edition;

c. Text link search advertising on Google, which served 7,324,730 impressions with 6,175 clicks through to the case website;

d. Banner advertising that utilizes behavioral audience targeting, which served 172,441,000 impressions with 293,624 clicks through to the case website;

e. Banner and text link advertising on Facebook, which served 720,478 impressions with 40,120 clicks through to the case website;

f. Promoted tweet advertising through Twitter, which served 1,947,503 impressions with 107,465 clicks through to the case website;

g. Case-write up and inclusion in the Top Class action website;

h. A party-neutral, national press release that was issued in June of 2017; and

i. Toll-free telephone support services.

In total, the notice efforts for this round of settlements generated over 182,433,711 impressions, directing over 447,384 clicks through to the case website. Combined, the notice programs have served a total of 389,963,756 impressions and has generated over 719,558 clicks through to the case website. The notice administrator confirms that at least 70 percent of the class has received notice of these settlements.

The Court previously found that the notice itself informed class members of the nature of the action, the terms of the proposed settlements, the effect of the action and the release of claims, as well as class members' right to exclude themselves from the action and their right to object to the proposed settlements (ECF Nos. 2284; 2285). The Court finds that plaintiffs have complied with all of the requirements of Rule 23.

D. The Proposed PLDS, Pioneer, and Teac Settlements Are Fair, Adequate and Reasonable

This Court is entitled to exercise its "sound discretion" when deciding whether to grant final approval. *See Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661 F.2d 939 (9th Cir. 1981) ("Dismissal or compromise of a class action is left to the sound discretion of the trial judge."). It is also well established in the Ninth Circuit that "voluntary conciliation and settlement are the preferred means of dispute resolution." *Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). "[T]here is an overriding public interest in settling and quieting litigation" and this is "particularly true in class action suits." *Van Bronkhorst v. Safeco Corp*., 529 F.2d 943, 950 (9th Cir. 1976). A "presumption in favor of voluntary settlement agreements" exists, and "'this presumption is especially strong in class actions and other complex cases . . . because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the federal courts.'" *Sullivan v. DB Invs.*, 667 F.3d 273, 311 (3d Cir. 2011) (internal citation omitted; ellipsis in original).

The settlements reached between IPPs and three defendant families – PLDS, Pioneer, and Teac – satisfy all criteria for a fair, adequate, and reasonable settlement. In determining whether a settlement agreement is fair, adequate, and reasonable, the Court must weigh some or all of the following factors: (1) the strength of the plaintiffs case; (2) the risk, expense, complexity, and likely

duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members of the proposed settlement. *In re Bluetooth Headset Prod. Liab. Litig*., 654 F.3d 935, 946 (9th Cir. 2011).

1. Strength of Plaintiffs' Case

The Court finds that the "strength of the plaintiffs' case" weighs in favor of approving the settlement. *Bluetooth*, 654 F.3d at 946. Plaintiffs' claims implicate legal and factual issues that are vigorously disputed, including the scope of the conspiracy, the impact from the conspiracy, whether the overcharge due to the conspiracy was passed-through, and whether IPPs will prove a conspiracy that is larger than the one outlined in the criminal guilty pleas by HLDS. The novelty of these issues created uncertainty as to IPPs' likelihood of success on their claims, as well as to defendants' defenses to those claims.

2. Risk, Expense, Complexity, and Likely Duration of Further Litigation

The Court finds that the "risk, expense, complexity, and likely duration of further litigation" supports final approval of these settlements. *See Bluetooth*, 654 F.3d at 946. "'An antitrust class action is arguably the most complex action to prosecute. . . . The legal and factual issues involved are always numerous and uncertain in outcome.'" *In re Linerboard Antitrust Litig*., MDL No. 1261, 2004 U.S. Dist. LEXIS 10532, at *34 (E.D. Pa. June 2, 2004) (citations omitted). IPPs took on substantial risk in bringing this case. Antitrust class actions are one of the most complex types of litigation – a conspiracy spanning eleven defendant families, multiple continents, four languages, alleging a global conspiracy that started over a decade ago. The risk inherent in this litigation was evidenced by this Court's denial of the IPPs' first motion for class certification (ECF No. 1444).

But the continued litigation against the remaining defendants underscores that allowing some recovery for the IPP class brings certain value to these claims. The remaining defendants have moved for summary judgment and to decertify the class. In the face of both the historic risk faced by the IPPs, as well as the future risk to the class, this factor certainly supports final approval of these settlements.

3. The Risk of Maintaining Class Action Status Throughout the Trial

The Court finds that the "risk of maintaining class action status throughout the trial," (*Bluetooth*, 654 F.3d at 946) weighs in favor of approving the settlements. The defendants have brought a motion to decertify the class. Although this Court has already found that the class met the requirements of Rule 23, a court may decertify a class at any time. *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 966 (9th Cir. 2009) (citing *General Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 160, 102 S. Ct. 2364, 72 L. Ed. 2d 740 (1982)).

4. The Amount Offered in Settlement

"[T]he very essence of a settlement is compromise, a yielding of absolutes and an abandoning of highest hopes." *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) (internal quotation marks omitted). Here, recovery from these three defendants represents 22 percent of the damages attributable to the market share of these defendants, and 16 percent of the total damages ($1.074 billion) suffered by the indirect purchaser class. And defendants responsible for 25 percent of the commerce at issue remain. This factor strongly weighs in favor of granting final approval.

5. The Extent of Discovery Completed and Stage of Proceedings

The extent of the discovery conducted to date and the stage of the litigation are both indicators of counsel's familiarity with the case and of plaintiffs having enough information to make informed decisions. *See, e.g.*, *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000). "A settlement following sufficient discovery and genuine arms-length negotiation is presumed fair." *See Knight v. Red Door Salons, Inc.*, No. 08-01520 SC, 2009 U.S. Dist. LEXIS 11149, at *10 (N.D. Cal. Feb. 2, 2009).

The parties here conducted extensive discovery, thoroughly testing the claims and defenses available in this case. Discovery included dozens of depositions, hundreds of written interrogatories, and the production and review of millions of pages of documents. Each of these three settlements was reached with the assistance of Magistrate Judge Corley, further supporting the presumption that they were genuine, arms-length settlements. Given that the parties entered into these settlements with a substantial understanding of the strengths and weaknesses of their case, this factor further supports final approval here.

6. The Experience and Views of Class Counsel Support Approval

"The recommendations of plaintiffs' counsel should be given a presumption of reasonableness." *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2007) (internal quotation marks and citation omitted). Here, counsel for IPPs – experienced antitrust lawyers with many years of experience – support the settlement. This factor weighs in support of final approval.

7. The Presence of a Government Participant

The Class Action Fairness Act requires notice of a settlement be given to the Department of Justice and affected states with time to comment prior to final approval of the settlement. *See* 28 U.S.C. § 1715(b). This allows the appropriate state or federal official the chance to voice concerns if they believe that the class action is not in the best interest of their citizens. *See* S. REP. 109-14, 5, 2005 U.S.C.C.A.N. 3, 6. Here, no government participant has raised an objection or concern regarding the settlements. This fact supports final approval of the settlement.

8. The Reaction of Class Members

IPPs' notice program reached millions of consumers who purchased the computers and ODDs involved in this case. Only two objections and nine requests for exclusion were received out of the millions of class members. The reaction of the class thus strongly favors approval of the settlement. *See, e.g., Churchill Village L.L.C. v. Gen. Elec.*, 361 F.3d 566, 577 (9th Cir. 2004) (affirming settlement with 45 objections out of 90,000 notices sent); *In re Linkedin User Privacy Litig.*, 309 F.R.D. 573, 589 (N.D. Cal. 2015) (finding "an overall positive reaction" by the class where only 57 class members opted out and six objected out of a class of 798,000).

9. Whether the Settlement Was the Product of Collusion

The Ninth Circuit recently identified three factors that may indicate a disregard for the interests of the class: (1) when counsel receive a disproportionate distribution of the settlement, or when the class receives no monetary distribution but class counsel are amply rewarded; (2) when the parties negotiate a "clear sailing" arrangement providing for payment of attorneys' fees separate and apart from class funds, which carries the potential of enabling a defendant to pay class counsel excessive fees and costs in exchange for counsel accepting an unfair settlement on behalf of the

class; and (3) when the parties arrange for sums not awarded to the Class to revert to defendants rather than be added to the class fund. *Bluetooth*, 654 F.3d at 947. None of these factors are present here.

* * *

In summary, the Court finds that the three proposed settlements are fair, reasonable and adequate and gives these settlements final approval. The Court will enter the final proposed judgments provided by the settling parties.

IV. IPPS' REQUEST FOR ATTORNEY FEES OF 21 PERCENT OF THE COMMON FUND IS FAIR AND REASONABLE

IPPs request: (1) an award of attorney fees in the amount of 21 percent of the $55.5 million settlement fund; (2) reimbursement of expenses IPPs' counsel have advanced to date on behalf of the class; and (3) service awards for the twenty-three class representatives.

In the Ninth Circuit, the district court has discretion in a common fund case to choose either the "percentage-of-the-fund" or the "lodestar" method in calculating fees. *In re Online DVD-Rental Antitrust Litig*., 779 F.3d 934, 949 (9th Cir. 2015). Regardless of what method is chosen as the primary method to calculate attorney fees, the Ninth Circuit encourages district courts to conduct "a cross-check using the other method." *Id.*

Hagens Berman requests 21 percent of the common fund – $11,655,000. Applying a lodestar cross-check, this would be a 1.53 multiplier from Hagens Berman's lodestar of $27,977,437.70. The Court finds these fees to be fair and reasonable under either method.

A. The Request for Twenty-One Percent Is Appropriate

The Ninth Circuit instructs courts to consider the following factors when considering a request for attorney fees that is calculated using the percentage-of-recovery method: (1) whether counsel "achieved exceptional results for the class;" (2) whether the case was risky for class counsel; (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. *Online DVD*, 779 F.3d at 954-55. The Ninth Circuit has instructed that although the benchmark of 25 percent "is not per se valid, it is a helpful 'starting point.'" *Id.*at 955.

1. Hagens Berman Has Achieved Exceptional Results for the Class

Recovery of $55.5 million for the indirect purchaser class – with approximately 25 percent of the ODD defendants – is an exceptional result. At class certification, plaintiffs' damages expert estimated that nationwide, indirect purchaser damages totaled $2.501 billion for the period of April 2003 through December 2008 (ECF No. 2403-2, Ex. 56, ¶ 415). This Court certified 24 jurisdictions under California law (which are the same jurisdictions covered by each of the three settlements), representing approximately 50 percent of the population, the best estimate of damages is approximately $1.074 billion. 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
PLDS	$40,000,000	18%	$193,284,000.00	21%
Pioneer	$10,500,000	6%	$64,428,000,00	16%
TEAC	$5,000,000	2.5%	26,800,000	19%
Total	**$55,500,00**	**26.5%**	**$284,512,000**	**20%**

These settlements represent recovery of 20 percent of the estimated alleged damages attributable to the market share of these defendants, and bring the total recovery to 16 percent of total estimated damages ($1.074 billion) allegedly suffered by indirect purchasers with claims remaining against defendants representing 25 percent of the market. Compared more generally against other similar litigation, in *LCD*, after settlements with all defendants, the indirect purchasers recovered approximately 50 percent of potential damages. *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827, 2013 U.S. Dist. LEXIS 49885, at *70 (N.D. Cal. Apr. 1, 2013). In *CRT*, the indirect purchasers recovered 20 percent of potential single damages after settlements with all defendants. *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). This Court finds the results here to be exceptional on behalf of the IPP class.

2. This Case Posed a Substantial Risk for Class Counsel

The risk associated with this case plays an important role in determining a fair fee award. *Online DVD*, 779 F.3d at 955. A number of unusual risks were presented here. *First*, defendants have used the very factor which some might point to as a strength in plaintiffs' case – the criminal guilty pleas of HLDS and its executives – as an affirmative argument against the existence of the broad conspiracy alleged. IPPs have devoted many hours both to developing evidence outside of the guilty pleas, as well as economic evidence designed to demonstrate that HP and Dell form the floor of the ODD market. IPPs' theory is that even if the conspiracy targeted only HP and Dell, it would still have the effect of moving the entire market. *Second*, the very real risk existed that no class would ever be certified. Not only did IPPs need to convince this Court that a measureable overcharge existed due to the actions of the cartel, but IPPs also needed to demonstrate that this overcharge was passed-through to class members. *Third*, collectively, these defendants have very large resources to devote to this litigation. *Fourth*, risk still remains. Two defendants have declared bankruptcy – Quanta Storage America, Inc. and TSST-Korea (ECF Nos. 1643, 1906). Even if the IPPs prevail at trial, they may not be able to collect the full amount of their damages. The enormous risk posed by this case, and Hagens Berman's perseverance in the face of this risk, deserves recognition.

3. The Settlements Generate Benefits for the Class Beyond Cash

These three settlements offer the class benefits – and have realized benefits – beyond just cash. Both PLDS and Teac have agreed to certain cooperation provisions, including producing witnesses at trial (ECF Nos. 2246-3, ¶¶ 25-26; 2260-3, ¶¶ 23-24). Because the vast majority of witnesses are located overseas, these factors provide significant benefit to the class.

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

Hagens Berman's hourly rates are in line with market rates in this district. The most senior attorney on the case, Steve Berman, bills at an hourly rate of $950. This is within the range of $200 to $1,080 charged by partners in California (ECF No. 2326-2). Other partners at Hagens Berman have hourly rates ranging between $525 to $735. Associates at Hagens Berman have hourly rates ranging from $250 to $605. Staff and contract attorneys have hourly rates ranging from between

$300 to $350. A number of these staff and contract attorneys were specifically hired because of their unique language skills (Korean, Japanese and Chinese). Finally, translators, paralegals, and paralegal assistants have rates ranging between $125 to $265. All of these ranges are within the ranges accepted by other Courts in this District and market surveys (ECF No. 2326-2).

5. The Burdens on Class Counsel Support the Request for Attorney Fees

The Ninth Circuit instructs district courts to consider the burdens class counsel experienced while litigating the case (e.g., cost, duration, foregoing other work). Here, this litigation has been pending for six years – and trial will not commence until sometime in 2018. Hagens Berman claims $1,368,718.95 in out-of-pocket expenses incurred since the prior round of settlements. Many team members have been almost exclusively assigned to this litigation, billing thousands of hours reviewing documents, translating documents, and preparing for depositions – even in the face of the denial of class certification and the prospect that recovery of attorney fees was unlikely. This factor also supports the requested fee award.

6. Class Counsel's Litigation on a Contingency Basis

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

As Judge Walker recognized at the outset of this case, "potential recovery by indirect purchaser plaintiffs in this litigation is subject to a greater variety of imponderables" than other pieces of litigation such as securities litigation under the PSLRA.[2] And this case has been subject to twists and turns – including the initial denial of the motion for class certification and litigation of a discovery dispute to the Ninth Circuit.

[2] Order at 8, June 4, 2010, ECF No. 96.

A 21 percent fee award reasonably compensates Hagens Berman for the financial burden of this risky case.

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

Indirect purchaser counsel have invested $27,977,437.70 in total attorney fees in this litigation. IPPs request for fees here would give them a 1.53 multiplier which is within the range of multipliers awarded in other, similar litigation.

Lodestar is calculated "by multiplying the number of hours the prevailing party reasonably expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate for the region and for the experience of the lawyer." *Bluetooth*, 654 F.3d at 941. A court may give an upwards adjustment to a lodestar (through a positive multiplier) to reflect a host of "reasonableness" factors, including: (1) the amount involved and the results obtained, (2) the time and labor required, (3) the novelty and difficulty of the questions involved, (4) the skill requisite to perform the legal service properly, (5) the preclusion of other employment by the attorney due to acceptance of the case, (6) the customary fee, (7) the experience, reputation, and ability of the attorneys, and (8) awards in similar cases. *Id.* at 941-42. These are referred to as the *Kerr* "reasonableness" factors after the Ninth Circuit's opinion in *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975). Each of the factors supports the positive multiplier requested by IPPs' counsel.

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

The first factor, the results for the class, strongly supports an upwards adjustment from the lodestar. As outlined above, the results achieved on behalf of the class are exceptional and are on par with other similar pieces of litigation.

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

Hagens Berman was appointed as sole lead counsel on behalf of the IPP class. As a result, Hagens Berman has staffed this case entirely with its own resources during the pendency of the six years of litigation. Hagens Berman committed the time of experienced antitrust litigators to this case, in addition to countless hours from staff attorneys to review documents and assist in the prosecution

of this litigation. Hagens Berman attests that it committed internal resources to the document review in this case – over 2.9 million documents, many of which were produced in foreign languages such as Chinese, Korean, and Japanese. As of the end of May 2017, attorneys and professionals at Hagens Berman have spent 10,472.20 hours working on this case. Since September 2016, Hagens Berman has also spent $1,368,718.95 in expenses (in addition to the $3,704,323.97 in expenses previously awarded by this Court in December 2016). ECF No. 2326-1, ¶¶ 20, 22. This commitment of time, personnel, and money to the indirect purchaser class supports the requested award.

3. This Case Has Presented Novel and Difficult Questions, Requiring Significant Skill by IPPs' Counsel

The third and fourth *Kerr* factors – the novelty of the questions presented by the litigation and the skill required to perform the legal services properly – both support the requested award. IPPs have encountered numerous novel legal arguments. Indeed, defendants have suggested that "no case has certified a class" on the same basis and record as this case.[3] Regarding this Court's choice-of-law analysis, defendants argued to the Ninth Circuit that "[n]either this Court nor the California Supreme Court has ever addressed whether the Cartwright Act can be applied across-the-board to all jurisdictions with '*Illinois Brick* repealer' statutes."[4] In litigating against TSST-Korea and the TSST-Korea employee "John Doe," IPPs addressed the unique issue of whether the DOJ recordings were "grand jury" materials. All of these issues have required advocacy and skill beyond routine litigation.

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

Hagens Berman represents it has dedicated a core team of individuals to the litigation of this action. Rather than involving many firms as is common in this type of litigation, from the outset Hagens Berman has dedicated an efficient and streamlined team to this litigation. The consequence of dedicating a team of experienced antitrust attorneys has meant that many of these professionals worked nearly exclusively on this case for some number of years. Nine attorneys have dedicated over a thousand hours each to this litigation, and many of those attorneys have devoted many thousands of

[3] 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.

[4] *Id.* at 20.

hours. ECF No. 2326-1, ¶ 20. Hagens Berman's choice to commit the resources of its firm, thereby forgoing other cases and other projects, supports the request for fees.

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

The sixth and eighth *Kerr* factors – the customary fee and awards in similar cases – both support Hagens Berman's fee request. IPPs request a multiplier of 1.53, which is within the range of other similar cases. *See, e.g.*, *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050-51 (9th Cir. 2002) (upholding a 28 percent fee award that constituted a 3.65 multiple of lodestar); *id*. at 1052-54 (noting district court cases in the Ninth Circuit approving multipliers as high as 6.2, and citing only 3 of 24 decisions with approved multipliers below 1.4); *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 96 (2d Cir. 2005) (finding 3.5 multiplier reasonable); *In re Cathode Ray Tube (CRT) Antitrust Litig*., No. C-07-5944 JST, 2016 U.S. Dist. LEXIS 102408, at *71 (N.D. Cal. Aug 3, 2016) (finding that a multiplier of 1.96 was well within the range of acceptable multipliers); *Noll v. eBay, Inc*., 309 F.R.D. 593, 610 (N.D. Cal. 2015) (finding that the lodestar cross check, with a 1.6 multiplier, confirmed the reasonableness of the percentage-based calculation); *Dyer v. Wells Fargo Bank, N.A*., 303 F.R.D. 326, 334 (N.D. Cal. 2014) (finding a 2.83 multiplier appropriate*); In re Netflix Privacy Litig*., No. 5:11-CV-00379 EJD, 2013 U.S. Dist. LEXIS 37286, at *31 (N.D. Cal. Mar. 18, 2013) (finding that a lodestar multiplier of 1.66 confirms the reasonableness of the percentage-based attorney fees calculation, 25 percent 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).

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

Hagens Berman is a highly-respected class action litigation firm, and has litigated some of the largest class actions in history, including the tobacco litigation,[5] *In re Visa MasterCard Litigation*,[6] and the *In re Toyota Motor Corp. Unintended Acceleration Litigation*.[7]

[5] In the tobacco litigation, Hagens Berman represented 13 states and secured a global settlement worth $260 billion. Only two firms went to trial, and Hagens Berman served as co-lead trial counsel.

[6] *In re Visa-MasterCard Litig*., No. CV-96-5238 (E.D.N.Y.). Hagens Berman was co-lead 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.

* * *

In conclusion, the Court finds that under either measurement – lodestar or percentage-of-the-fund – the IPPs' request for attorney fees is fair and reasonable. The Court awards Hagens Berman the requested amount of $11,655,000 in attorney fees.

V. THE REQUESTED REIMBURSEMENT OF EXPENSES IS REASONABLE

Attorneys who create a common fund for the benefit of a class are entitled to be reimbursed for their out-of-pocket expenses incurred in creating the fund so long as the submitted expenses are reasonable, necessary and directly related to the prosecution of the action. *Vincent v. Hughes Air W., Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). Reasonable reimbursable litigation expenses include: those for document production, experts and consultants, depositions, translation services, travel, mail and postage costs. *See In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1995) (Court fees, experts/consultants, service of process, court reporters, transcripts, deposition costs, computer research, photocopies, postage, telephone/fax); *Thornberry v. Delta Air Lines*, 676 F.2d 1240, 1244 (9th Cir. 1982), *remanded on other grounds*, 461 U.S. 952 (1983) (travel, meals and lodging).

Hagens Berman requests reimbursement for $1,368,718.95 in expenses, incurred between September 2016 and May 2017. Previously, this Court approved an award of $3,704,323.97 in expenses in December 2016. Unlike in IPPs' prior motion, IPPs have no additional costs that would be recoverable after trial.

The additional $1,368,718.95 in expenses is largely due to three expenses – expert costs for the preparation of the Rule 26 expert reports ($1,154,207.83), online document databases ($96,768.00), and certified translations of documents for use at deposition ($70,403.70). ECF No. 2326-1, ¶ 22. These expenses are reasonable and within the limits of other cases.

[7] *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.

VI. THE SERVICE AWARDS FOR CLASS REPRESENTATIVES ARE JUSTIFIED GIVEN THEIR EXTENSIVE PARTICIPATION IN THIS CASE

Plaintiffs also request that the Court approve the service awards in the amount of $1,500 each for the twenty-three class representatives, to be deducted from the settlement funds with PLDS. Service awards for class representatives are routinely provided to encourage individuals to undertake the responsibilities and risks of representing the class and to recognize the time and effort spent in the case. "Incentive *awards* are fairly typical in class action cases." *Rodriguez*, 563 F.3d at 958 (emphasis in original). In the Ninth Circuit, service awards "compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Id.* at 958-59. Courts have discretion to approve service awards based on, *inter alia*, the amount of time and effort spent, the duration of the litigation, and the personal benefit (or lack thereof) as a result of the litigation. *See Van Vraken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995).

Here, the twenty-three representatives have spent a significant amount of time assisting in the litigation of this case. All but four plaintiffs have responded to written discovery and produced documents. Each plaintiff was deposed by defense counsel. Each plaintiff has consulted with and assisted counsel in this litigation. Each plaintiff submitted a declaration detailing the time he or she spent involved in this litigation (ECF No. 2326-2, Exs. 4-25). The requested awards of $1,500 are consistent with service awards in other cases and the Court approves them here.

VII. THE OBJECTIONS ARE OVERRULED

Two objectors have filed objections to the fairness of the settlements. Neither objection has merit. To the extent that an objection is not directly addressed below, this Court has considered the objection and it is overruled.

A. Objections by Erwin

One of the objections is filed by Conner Erwin (represented by Christopher Bandas) (ECF No. 2367). Plaintiffs have introduced evidence suggesting that Erwin and Bandas frequently object to class action settlements, engaging in practices like those that have been condemned by many courts. *See, e.g.*, *In re Checking Acc't Overdraft Litig.*, 830 F.Supp.2d 1330, 1361 n.30 (S.D. Fla.

2011) ("[P]rofessional objectors can levy what is effectively a tax on class action settlements, a tax that has no benefit to anyone other than to the objectors.") (alteration in original; internal citation omitted); *In re UnitedHealth Group Inc. PSLRA Litig*., 643 F.Supp.2d 1107, 1109 (D. Minn. 2009) (reprimanding professional objectors whose "goal was, and is, to hijack as many dollars for themselves as they can wrest from a negotiated settlement"); *In re Cathode Ray Tube (CRT) Antitrust Litig*., 281 F.R.D. 531, 533 (N.D. Cal. 2012) (reprimanding objector for working with attorney who "routinely represents objectors purporting to challenge class action settlements, and does not do so to effectuate changes to settlements, but does so for his own personal financial gain; he has been excoriated by Courts for this conduct") (footnote omitted).

1. Erwin's Objections Regarding Attorney Fees

The Ninth Circuit "has established 25% of the common fund as a benchmark award for attorney fees." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998). "That percentage amount can then be adjusted upward or downward depending on the circumstances of the case." *de Mira v. Heartland Emp't Serv., LLC*, No. 12-CV-04092 LHK, 2014 WL 1026282, at *1 (N.D. Cal. Mar. 13, 2014). As Courts in this district have recognized, "'in most common fund cases, the award exceeds the benchmark.'" *Id.* (alteration omitted) (quoting *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008)). And "[w]hile the benchmark is not per se valid," the Ninth Circuit has recognized that requesting "the 25% benchmark award only" demonstrates the reasonableness of a fee request. *In re Online DVD*, 779 F.3d at 955.Courts in this district have held similarly.[8]

The most comparable cases to this one are the large antitrust class actions involving cartels of electronics manufacturers (often involving many of the same defendants here) that have been litigated in this district. In those cases, courts have routinely awarded between 25-30 percent for

[8] *See Buccellato v. AT & T Operations, Inc.*, No. C10-00463-LHK, 2011 WL 3348055, at *1 (N.D. Cal. June 30, 2011) (holding that fee request was "reasonable under the percentage of the common fund method, as it is equal to this Circuit's benchmark of 25 percent.").

attorney fees in large electronic antitrust class actions: *CRT* (30 percent); *TFT-LCD* (30 percent); *TFT-LCD* (30 percent); *SRAM* (30 percent); *LCD* (28.6 percent); *DRAM* (25 percent).[9]

Hagens Berman has requested 21 percent of the total amount recovered in attorney fees. This is below the comparable benchmark (25 percent) established by the Ninth Circuit.

Erwin states that the requested fees would lead to windfall profits for Hagens Berman. But, as recognized by the court in *CRT*, "[r]ather than abandon the percentage-of-recovery method, the best way to guard against a windfall is first to examine whether a given percentage represents too high a multiplier of counsel's lodestar." *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. C-07- 5944 JST, 2016 U.S. Dist. LEXIS 102408, at *70 (N.D. Cal. Aug 3, 2016). In *CRT*, the court decided that a 2.89 multiplier for the lead counsel was reasonable and rejected objections based on the "megafund" principle. Corrected Special Master's Report & Recommendation re Allocation of IPP Class Counsel Attorneys' Fees, *In re Cathode Ray Tube (CRT) Antitrust Litig*., MDL No. 1917 (N.D. Cal. Oct. 24, 2016), ECF No. 4976. The Ninth Circuit in *Vizcaino* surveyed attorney fees in common funds between $50-200 million and found that multipliers in 20 of the 24 cases were between 1.0 to 4.0. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 n.6. Indeed, "Courts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers." *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481 (S.D.N.Y. 2013) (collecting cases); *accord, e.g., In re Aremissoft Corp. Secs. Litig.*, 210 F.R.D. 109, 134–35 (D.N.J. 2002) (awarding 28 percent of a $194 million settlement, resulting in a lodestar multiplier of 4.3).The Ninth Circuit, for example, has explicitly affirmed a multiplier of 6.85, holding that it "falls well within the range of multipliers that courts have allowed." *Steiner v. Am. Broad. Co.*, 248 F. App'x 780, 783 (9th Cir. 2007).

Hagens Berman's lodestar would be 1.53, at the very low end of the range defined by the Ninth Circuit in *Vizcaino*. Hagens Berman's fees are reasonable.

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

2. Even if This Case Were a "Megafund," No Automatic Reduction in a Fee Award Is Supported by Ninth Circuit Case law

Erwin objects that this case is a "mega-fund" case, requiring an automatic reduction in attorney fees. No rule in the Ninth Circuit requires an automatic percentage – instead, the Ninth Circuit requires a comprehensive analysis of the reasonableness of any award. *See Vizcaino*, 290 F.3d at 1047 (rejecting categorical "megafund" rule); *Online DVD-Rental* 779 F.3d at 949 (courts should avoid "mechanical or formulaic" rules in awarding fees in favor of totality of circumstances analysis); *In re TFT-LCD (Flat Panel) Antitrust Litig*., No. 07-md-1827, 2013 U.S. Dist. LEXIS 51271, at *67 (N.D. Cal. Mar. 29, 2013) (rejecting similar megafund objections). IPPs provided this Court with a detailed analysis of their lodestar, which would yield a reasonable 1.53 multiplier. As recognized by the court in *CRT*, "[r]ather than abandon the percentage-of-recovery method, the best way to guard against a windfall is first to examine whether a given percentage represents too high a multiplier of counsel's lodestar." *CRT*, 2016 U.S. Dist. LEXIS 102408, at *70. This Court has performed that analysis here.

3. Erwin's objections regarding the lodestar

Erwin argues that the Hagens Berman's fee request is too high because the firm did only $3.8 million of additional fee work since the last round of settlements but has now recovered an additional $55.5 million. The current settlements, however, necessarily depended in substantial part on the work done from the outset of the case. As long as the total fee recovery is reasonable in light of the total monetary recovery for the class and the total lodestar cross-check, it is not relevant that settlements have been reached with various groups of defendants at different points in time. Even though hours included in the lodestar at the time of earlier fee awards also underlie the cross-check lodestar in subsequent awards, no risk of double recovery exists because the original work, combined with new work, has created additional benefits to the class. Looking only to the work done between two settlements would distort the analysis and create a disincentive to settle in multi-defendant litigation, as anything less than a settlement with all defendants would penalize plaintiffs.

In other cases involving multiple defendants, courts have calculated the reasonableness of attorney fees based on a consideration of the total work that attorneys have done up to the point of

settlement. *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2013 WL 1365900, at *7 (N.D. Cal. Apr. 3, 2013) (evaluating reasonableness of fee request at end of litigation following multiple rounds of settlements and looking at cumulative lodestar as a cross-check on reasonableness). The same approach is warranted here, and the resulting lodestar of 1.53 is at the low end of the range of comparable settlements.

Furthermore, even a lodestar of 3.08 for this round of settlements would still be reasonable. The Ninth Circuit in *Vizcaino* found a lodestar multiplier between 1.0 to 4.0 for settlements between $50 to $200 million. *See Vizcaino*, 290 F.3d at 1051 n.6. The lodestar here would be within the range identified by the Ninth Circuit.

4. Erwin's Objection Regarding Hagens Berman's Lead Counsel Submission

Objector Erwin objects that Hagens Berman submitted proposed fee guidelines to Judge Walker at the beginning of the case and requests that the proposed guidelines now be made public. Judge Walker ordered that the lead counsel submissions should remain under seal "during the pendency of this litigation" (ECF No. 96 at 1). IPPs have settled with defendants representing 75 percent of the market in this litigation. Unsealing the record now would be inappropriate as it would provide the remaining defendants with work product of counsel for IPPs and insight into how Hagens Berman sees the valuation of this case at certain stages.

The original order from Judge Walker, however, revealed that the potential fee structure contemplated a "fee percentage which increases with the stages of litigation and declines as the amount of the recovery rises" (ECF No. 96). Hagens Berman has further disclosed the specific proposed fee guidelines for these settlements (as well as previous settlements) and that the proposed fee structure listed four stages: (1) From Pleading Through Decision on Motion to Dismiss; (2) After Motion to Dismiss Through Adjudication of Class Certification; (3) After Adjudication of Summary Judgment; and (4) Through Trial Verdict and Final Appellate Determination. This is sufficient information for the Class.

The court has broad discretion to determine the reasonable and fair amount of attorney fees. Great weight is accorded to a district judge's views because "he is exposed to the litigants, and their strategies, positions and proofs. He is aware of the expense and possible legal bars to success.

Simply stated, he is on the firing line and can evaluate the action accordingly." *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992) (internal quotation marks and citation omitted). The Court has now spent over six years presiding over this case and has had ample opportunity to evaluate the work of Hagens Berman in this litigation, and the results achieved. The guidelines submitted at the outset of the case, which never limited the discretion of the court, have remained relevant in that the amount of fees requested and awarded have been less than the 25 percent "benchmark" even though absent those guidelines, an argument could be made that the circumstances here might warrant an upward deviation from the benchmark.

The initial order appointing interim class noted there were many "imponderables" that might impact this litigation. The IPPs' litigation of both an original motion for class certification, as well as a renewed motion for class certification, and multiple appeals to the Ninth Circuit, certainly qualify as such "imponderables." More generally, this case has now spanned over seven years of diligent work by Hagens Berman, as is shown in their current lodestar of $27,977,437.70, yielding exceptional results for the class. The lodestar cross-check of 1.53 confirms that an upward variance from the original proposed fee guidelines is amply justified.

B. Objector Stephen Field

Stephen Field also filed objections. Field states that the ODD class notice does not provide sufficient information about the nature of ODDs. The first paragraph of the ODD summary notice, however, defines ODDs as DVD-RW, DVD-ROM, or COMBO Drives. DVDs are a well-known technological device and the notice provides class members with sufficient information to determine whether or not they are eligible for a claim. Field further argues that the settlement website should provide an estimate of the total amount that a claimant may receive before they submit a claim. It did – the website stated that class members would receive an "estimated claim amount of up to $10 per drive."[10]

[10] Declaration of Jonathan Mendelson Regarding Implementation of Notice Email Campaigns, Claims, and Opt-outs to Date, July 27, 2017, ¶ 5.

Field makes a short, generic objection to the attorney fees requested by Hagens Berman. For the reasons already discussed, the requested fees are reasonable under either the benchmark or lodestar cross-check method. Field's objections are overruled.

IT IS SO ORDERED.

DATED: November 7, 2017

HONORABLE RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE

Submitted by:

Dated: July 28, 2017

HAGENS BERMAN SOBOL SHAPIRO LLP

By /s / Jeff D. Friedman
JEFF D. FRIEDMAN

Shana E. Scarlett (217895)
715 Hearst Avenue, Suite 202
Berkeley, CA 94710
Telephone: (510) 725-3000
Facsimile: (510) 725-3001
jefff@hbsslaw.com
shanas@hbsslaw.com

Steve W. Berman (*Pro Hac Vice*)
HAGENS BERMAN SOBOL SHAPIRO LLP
1918 Eighth Avenue, Suite 3300
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594
steve@hbsslaw.com

Lead Counsel for
Indirect Purchaser Class