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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE RESISTORS ANTITRUST LITIGATION

This Documents Relates to:

DIRECT PURCHASER ACTIONS

Case No. 3:15-cv-03820-JD

DIRECT PURCHASER PLAINTIFFS' REVISED MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARD

Date: November 21, 2019
Time: 10:00 a.m.
Dept: Courtroom 11, 19th Floor
Judge: Hon. James Donato

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on November 21, 2019, at 10:00 a.m. or as soon thereafter as the matter may be heard by the Honorable Judge James Donato 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, Direct Purchaser Plaintiffs ("Plaintiffs" or "DPPs") will and hereby do move the Court for an award of attorneys' fees, expenses, and a service award for the DPP Class Representative.

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, and all papers and records on file in this matter.

GLOSSARY OF DEFINED TERMS

Term	Definition
Berman Fee Decl.	Declaration of Steve W. Berman in Support of Direct Purchaser Plaintiffs' Revised Motion for Attorneys' Fees, Expenses, and Service Award, concurrently submitted herewith
Berman Final Approval Decl.	Declaration of Steve W. Berman in Support of Direct Purchaser Plaintiffs' Revised Motion For Final Approval of Class Action Settlements With HDK, Kamaya/Walsin, Panasonic, and Rohm Defendants, concurrently submitted herewith
Class Counsel	Hagens Berman Sobol Shapiro LLP and Cohen Milstein Sellers & Toll PLLC
Class Representative	Schuten Electronics, Inc.
Defendants	KOA, Panasonic, ROHM, Kamaya-Walsin, and HDK
Plaintiffs/DPPs	Direct Purchaser Plaintiffs
ECF No.	Unless otherwise noted, all "ECF No." references are to the docket in *In re Resistors Antitrust Litig.*, No. 3:15-cv-03820-JD (N.D. Cal.)
HDK	HDK America, Inc. and Hokuriku Electric Industry Co.
In Camera Review Mot.	Direct Purchaser Plaintiffs' Administrative Motion to Submit Detailed Billing Records for *In Camera* Review
IPPs	Indirect Purchaser Plaintiffs
Kamaya-Walsin	Kamaya Electric Co., Ltd., Kamaya Inc., Walsin Technology Corporation, and Walsin Technology Corporation U.S.A. (The Kamaya-Walsin Defendants are referred to together because Kamaya Electric Co., Ltd., Kamaya Inc., and Walsin Technology Corporation U.S.A. are all subsidiaries of Walsin Technology Corporation.)
Keough Decl.	Declaration of Settlement Administrator Jennifer M. Keough in Support of final Approval, concurrently submitted herewith
KOA	KOA Corporation and KOA Speer Electronics, Inc.
Levens Fee Decl.	Declaration of Emmy L. Levens in Support of Direct Purchaser Plaintiffs' Revised Motion for Attorneys'

	Fees, Expenses, and Service Award, concurrently submitted herewith
Panasonic	Panasonic Corporation and Panasonic Corporation of Norther America
Schuten Decl.	Declaration of James Schuten, concurrently submitted herewith
ROHM	ROHM Co., Ltd. and ROHM Semiconductor U.S.A., LLC

I. INTRODUCTION

After three-and-a-half years of hard-fought litigation, Court-appointed Interim Co-Lead Counsel ("Class Counsel") for the Direct Purchaser Plaintiffs ("Plaintiffs") secured settlements totaling $50.25 million for the Settlement Class. Plaintiffs respectfully request (1) an award of $10.05 million in attorneys' fees – equal to 20 percent of the total common fund; (2) reimbursement of expenses incurred in this litigation totaling $1,889,492.86; and (3) a service award of $15,000 for the sole class representative, Schuten Electronics, Inc.

On September 6, 2019, this Court ordered that Plaintiffs submit a revised motion for attorneys' fees, expenses, and service award providing additional information regarding: (i) the number of hours spent by each biller on various categories of activities related to the action; (ii) how the time billed was used to benefit the class; and (iii) class representative Schuten's work to benefit the class.[1] Plaintiffs provide the requested information in the accompanying declarations and further describe the relevance of those submissions herein.

The additional materials further support the reasonableness of Plaintiffs' fee request in this case. An award equal to 20 percent of the common fund would be five percent below the Ninth Circuit benchmark of 25 percent (a fee reduction equal to more than $2.5 million in this case), even though application of factors considered in the Ninth Circuit would justify an award of 25 percent. Most importantly, the total settlement fund of $50.25 million constitutes between approximately 33 and 57 percent of estimated single damages; thus, even with the most bullish estimate of damages, the combined settlements exceed the average recovery in analogous cases, constituting a strong result for the Class.[2] According to the damages estimated by the expert for the indirect purchaser plaintiffs, the combined settlements by Plaintiffs equal 80 percent of the DPP Class's damages.

[1] *See* Order Denying DPPs' Mot. for Final Approval & Mot. for Attys' Fees, Expenses, & Service Award, Sept. 6, 2019, ECF 551. Additionally, Class Counsel has revised the Proposed Order for this motion and the Motion for Final Approval of the Settlements to address the Court's concerns; the revised Proposed Orders mirror those approved in the *Capacitors* matter.

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

Counsel achieved successful settlements for the Class despite facing significant risks and challenges. Unlike in other cases, such as in the *Capacitors* litigation also before this Court, Plaintiffs did not have the benefit of Department of Justice indictments or cooperating witnesses. This is also an intrinsically difficult case due to the scope and length of the conspiracy alleged, as well as the fact that the many of the key documents (and related depositions) were in Japanese.

The requested 20-percent fee award is also reasonable compared to awards in similar antitrust class actions. For example, in *Capacitors*, this Court awarded counsel for the direct purchasers 25 percent of the common fund after each of the first two rounds of settlements. In other comparable antitrust class actions in this District involving price fixing by electronics manufacturers, courts have awarded similar percentages in attorneys' fees. A recent empirical study of fees in class action settlements also shows that the 20 percent fee request is reasonable, and likely below-market.

The reasonableness of the requested award is further confirmed by a "lodestar cross-check." Based on Class Counsel's lodestar of $8,313,750.75 for the time period between December 21, 2015 (the date of the appointment of Hagens Berman and Cohen Milstein as Interim Co-Lead Class Counsel for Plaintiffs) and May 31, 2019, granting of the requested award would lead to a modest multiplier of 1.21. This multiplier would be at the low end of the range of multipliers surveyed by the Ninth Circuit in *Vizcaino v. Microsoft Corp.*,[3] and is well within the range of multipliers granted in other similar cases. Plaintiffs respectfully submit that a modest multiplier is particularly justified given the complexity of this case, which Class Counsel litigated efficiently and on a purely contingent basis, risking no fee award while investing a substantial amount of time and resources.

Beyond fees, the requested expenses were all necessary to the representation of the Class. Additionally, the requested service award to the one class representative is also reasonable given the significant commitment to the Class and investment of time provided to this case. Plaintiffs respectfully request that their revised motion be granted.

[3] *Vizcaino v. Microsoft Corp.*,290 F.3d 1043, 1050, 1051 n.6 (9th Cir. 2002).

II. THE WORK UNDERTAKEN BY THE DIRECT PURCHASERS

A. Plaintiffs alleged a decade-long price-fixing conspiracy in the resistors' industry.

Plaintiffs' class representative, Schuten Electronics, filed a complaint alleging price-fixing in the resistors' industry on October 23, 2015.[4] On December 21, 2015, Hagens Berman Sobol Shapiro LLP and Cohen Milstein Sellers & Toll PLLC were appointed as Interim Co-Lead Class Counsel.[5]

On May 27, 2016, Plaintiffs filed a detailed Consolidated Amended Class Action Complaint. Plaintiffs alleged that Defendants conspired to fix the prices of linear resistors from July 9, 2003 through August 1, 2014. Linear resistors are known as "passive electronic components" and are a fundamental part of electrical circuits. Plaintiffs alleged that the global conspiracy was carried out in Japan, the United States, and other parts of the world through agreements to fix prices and restrict output and was facilitated in a variety of ways, including via face-to-face meetings, electronic communications, phone calls, and trade associations. Defendants included five Japanese electronics companies and each of their U.S. subsidiaries.[6]

B. Class Counsel successfully litigated multiple rounds of motions to dismiss, including after discovery revealed additional participants in the conspiracy.

In response to Plaintiffs' Consolidated Amended Class Action Complaint, on August 24, 2016, Defendants filed a joint motion to dismiss on behalf of all Defendants. Defendants argued, among other things, that Plaintiffs (1) failed to plausibly allege a conspiracy under the *Twombly* standard; (2) failed to allege facts showing a conspiracy within the limitations period; and (3) failed to meet their burden to plead fraudulent concealment with the required particularity.[7] At the same time, the U.S. subsidiary defendants filed a motion to dismiss, arguing that Plaintiffs had not sufficiently alleged their participation in the conspiracy.[8] Plaintiffs opposed each motion, and in total

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[4] Class Action Complaint, *Schuten Electronics, Inc. v. AVX Corp., et al.*, No. 5:15-cv-04878 (N.D. Cal. Oct. 23, 2015), ECF No. 1.

[5] *See* Order Following Case Management Conference, *In re Resistors Antitrust Litig.*, No. 3:15-cv-03820-RNW (N.D. Cal. Dec. 21, 2015), ECF No. 89.

[6] ECF No. 126.

[7] ECF No. 204.

[8] ECF No. 202.

the briefing generated 109 pages.[9] Following oral argument, on September 5, 2017, this Court held that Plaintiffs had adequately alleged a conspiracy within the limitations period, denied the joint motion to dismiss in its entirety, but granted the U.S. subsidiary defendants' motion to dismiss, with leave to amend.[10]

Plaintiffs filed the operative Second Consolidated Amended Class Action Complaint ("Complaint") on October 26, 2017. The Complaint added numerous specific allegations regarding the U.S. subsidiary defendants. In addition, because discovery revealed participation in the conspiracy by Taiwanese corporation, Walsin Technology Corporation (parent corporation of existing Defendants Kamaya Electric Co., Ltd., and its U.S. subsidiary, Kamaya Inc.), as well as its U.S. subsidiary, Walsin Technology Corporation U.S.A., Plaintiffs added them as defendants.[11]

On November 3, 2017, the U.S. subsidiary defendants filed a motion to dismiss, arguing that Plaintiffs still had not sufficiently alleged their participation in the conspiracy.[12] Walsin Technology Corporation and Walsin USA also filed separate motions to dismiss the Complaint.[13] Following full briefing and oral argument, this Court denied all three motions.[14]

C. Class Counsel engaged in substantial discovery efforts on behalf of the Settlement Class.

From the beginning of the case, Class Counsel sought to maximize efficiency and avoid duplication by coordinating discovery efforts with the indirect purchasers. For example, direct and indirect purchasers jointly drafted proposed orders and protocols for coordinated discovery, depositions, protective orders, and discovery of electronically stored information.[15] Counsel also worked together to negotiate search terms, to ensure the completeness of discovery responses, and to

[9] Levens Fee Decl., ¶ 11.

[10] ECF No. 326.

[11] ECF No. 338.

[12] ECF No. 345.

[13] ECF Nos. 366, 395.

[14] *See* Minute Entry, Jan. 22, 2018, ECF No. 384; Minute Entry, Apr. 5, 2018, ECF No. 418.

[15] *See, e.g.*, ECF No. 122 (entering Stipulated Protective Order); ECF No. 215 (entering Stipulation and Order Concerning Expert Discovery); ECF No. 252 ("Stipulation regarding production of electronically stored information and hard copy documents (ECF No. 249) is approved"); ECF No. 308 (entering Stipulation and Order re: Discovery Limits Pursuant to Fed. R. Civ. P. 26(f)).

schedule depositions.[16] Defendants often resisted discovery, leading to early disputes, and victories, for Plaintiffs.[17] Plaintiffs successfully compelled significant early discovery and pushed hard for, and obtained, critical discovery throughout the litigation – discovery that was particularly important given the lack of related government indictments or cooperating witnesses.

Plaintiffs propounded written discovery on all Defendants, including 56 document requests and 15 interrogatories (some of which were jointly served on all Defendants). Because of the need to prove a worldwide conspiracy and gather documents from a variety of institutional (*e.g.*, trade associations) and related entities and individuals (*e.g.*, sales agents), Class Counsel also served nine subpoenas to third parties for data and documents. For example, Plaintiffs served subpoenas on trade associations for electronics' manufacturers – the Japan Electronics and Information Technology Industries Association (JEITA, a central vehicle for the conspiracy) and the Electronic Components Industry Association (ECIA) – as well as a third-party sales agent, John Manley of ADSI – that supported Plaintiffs' allegations about the conspiracy.[18]

Class Counsel spent thousands of hours reviewing and analyzing Defendants' written discovery responses and the documents produced by Defendants and third parties. In total, Plaintiffs obtained documents from 62 custodians and eight third parties, spanning over 11.8 million pages of documents, as well as voluminous electronic transactional data. Because most documents were produced in foreign languages (Japanese primarily, but also Chinese and Korean), Plaintiffs retained foreign-language reviewers or utilized staff attorneys fluent in those languages and specialists in antitrust cartels to conduct a thorough analysis. Plaintiffs contracted with Everlaw to retrieve, host, and review these documents. Plaintiffs and indirect purchasers paid for certified translations for hundreds of documents, and coordinated in an effort to reduce duplicative translations.[19]

[16] Levens Fee Decl., ¶ 16.

[17] *See, e.g.*, ECF Nos. 231, 250, 256, 257 (early discovery dispute letters); ECF Nos. 247, 267 (orders resolving these early discovery disputes, largely in Plaintiffs' favor).

[18] Levens Fee Decl., ¶ 19.

[19] *Id.*, ¶ 21.

To obtain this discovery, Plaintiffs brought and prevailed on, at least in part, several fiercely contested motions to compel. Some of the most important ones are summarized below.

Order on Motion to Compel	Date	Outcome
Minute Entry re Joint Discovery Dispute Letter Br., re defendants' search of encrypted documents (ECF No. 231), ECF No. 247	Nov. 10, 2016	Granted in part
Minute Entry re Discovery Dispute Letter Brs. re document custodians (ECF Nos. 250, 256, 257, 263), ECF No. 267	Jan 1, 2017	Granted in part[20]
Minute Entry re Discovery Dispute Letter Br., re Panasonic document custodians (ECF No. 284), ECF No. 289	Mar. 3, 2017	Granted in part
Minute Entry re Discovery Dispute Letter Br., re Proposed Discovery Order (ECF No. 293), ECF No. 299	May 3, 2017	Granted in part
Minute Entry re Discovery Dispute Letter Br., re search term dispute with HDK Defendants (ECF No. 294), ECF No. 299	May 3, 2017	Granted
Text Order re Discovery Dispute Letter Br., re KOA's foreign sales data (ECF No. 309), ECF No. 316	Aug. 1, 2017	Granted
Minute Entry re Emergency Discovery Dispute Letter Br., re Hideaki Matsushita's Deposition (ECF No. 431), ECF No. 434	May 18, 2018	Resolved favorably following Court's order

These motions necessitated a significant time investment by Counsel to meet-and-confer with Defendants, draft discovery letters to the Court, and prepare for the related hearings.[21]

Plaintiffs pursued discrete discovery aimed at resolving issues critical to the case in Plaintiffs' favor. For example, when meeting and conferring with Defendants about the identity of document custodians, Plaintiffs faced strong resistance from Defendants regarding the number of custodians, the timing of identification of custodians (with Defendants demanding that documents be produced from priority custodians before additional custodians were negotiated), and whether high-ranking employees of KOA should be custodians (including KOA Corporation CEO, Koichi Mukaiyama). Unable to reach agreement, Plaintiffs brought discovery dispute letters about these issues.[22] After hearing these disputes, the Court ordered the parties to immediately meet and confer

[20] Plaintiffs provide more specific information about these discovery disputes letters and the outcome in the text, *infra*.

[21] Levens Fee Decl., ¶ 17.

[22] *See, e.g.*, ECF Nos. 250, 256, 257, 263.

to identify all custodians (not just priority custodians), and held that a "proposed custodian's position within a company is not, on its own, a good objection – CEOs are not inherently immune from discovery."[23] Defendants shortly thereafter agreed to more custodians than they had proposed, and KOA also conceded that two high-ranking employees, including Mr. Mukaiyama, would be custodians. Unable to reach agreement with Panasonic about custodians, after discovery dispute letters, this Court ordered three of four additional custodians Plaintiffs proposed to be added to Panasonic's list.[24] These early discovery motions led to the production of some of the best documentary evidence supporting the conspiracy.

Plaintiffs also brought a discovery motion to compel the KOA Defendants to produce its foreign sales data after KOA refused to do so on relevance and burden grounds. Plaintiffs argued that such data is relevant to economic analyses at class certification and on the merits. After briefing and a telephonic hearing, this Court ordered KOA to produce the requested data, holding that the discovery "is well within acceptable parameters for antitrust discovery" and "overrul[ing] the "burden objection."[25] After this Court's Order, the other Defendants agreed to produce foreign sales data, which they had refused to do.[26] Plaintiffs brought another discovery dispute letter to compel the deposition of KOA "consultant" Hideaki Matsushita, who played an important role in the conspiracy. KOA claimed he could not be compelled to sit for deposition. After this Court heard the dispute and issued an order compelling KOA to provide further information about Mr. Matsushita, KOA and Plaintiffs agreed that he would be deposed in Japan.[27]

To adequately prosecute a case involving multiple defendants, with witnesses spread all over the world who could not be compelled to testify live at trial, Plaintiffs gathered key evidence via

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[23] Minute Entry re Discovery Dispute Letter Brs., ECF No. 267.

[24] Levens Fee Decl., ¶ 25.

[25] ECF No. 316.

[26] Levens Fee Decl., ¶ 26.

[27] *Id.* Plaintiffs filed other discovery dispute letters, not included in the chart in the text, to compel discovery from Defendants. Those included deposition and document discovery disputes withdrawn while pending, in light of settlements in principle with Defendants. Levens Fee Decl., ¶ 27 (citing to ROHM discovery dispute letter, ECF No. 448, withdrawn per ECF No. 487, and KOA discovery dispute letter, ECF No. 503).

deposition. Plaintiffs took 19 depositions, including nine fact depositions and ten Rule 30(b)(6) corporate depositions, using approximately 295 exhibits. Most of these depositions were conducted through Japanese interpreters, adding to their length, complexity, and cost. Plaintiffs took one deposition in Japan. Indeed, 104 of the deposition exhibits included translations, with witnesses reviewing the deposition exhibit in Japanese, and the deposing attorney questioning the witness using the English translation, which had to be translated to Japanese for the witness. To increase efficiency, Plaintiffs and the indirect purchasers coordinated taking these depositions. Plaintiffs also defended a Rule 30(b)(6) deposition their class representative, James Schuten of Shuten Electronics, Inc.[28]

D. The work of the economic experts hired by Class Counsel was critical to obtaining the settlements from Defendants.

Over the course of this litigation, the work by Plaintiffs' economic expert, Dr. Kenneth Flamm, and his supporting team of economists at Christensen Associates, provided important support for Plaintiffs. Their market analyses, particularly of the evolving global marketplace for linear resistors during the past several decades, informed Plaintiffs' early legal analyses of the case and litigation strategy. This input impacted the facts alleged, the claims asserted, and the discovery (written and via deposition) taken. For example, the economic experts assisted Class Counsel in their Rule 30(b)(6) depositions of each Defendant's corporate designee, particularly with regard to issues affecting class certification, impact, and damages.[29]

The economic experts conducted complex and informative analyses of the discovery obtained from Defendants, including 38.98 GB of transactional data in 3,014 files, and over 4,500 separate profit and loss statements produced by the Defendants. The data were used to, among other things, generate estimates of the sales by each Defendant, which was used during settlement negotiations.[30]

The economic experts also completed a substantial amount of work for the class certification expert report because the final settlement in this case with KOA was reached on the eve of the report's due date. In addition to the work described above, the economists analyzed over 30 million

[28] Levens Fee Decl., ¶ 30.

[29] *Id.*, ¶ 32.

[30] *Id.*, ¶ 33.

sales transactions for the Defendants' parent companies, their international subsidiaries, and their U.S. subsidiaries. They also assisted counsel with multiple rounds of questions and answers with the Defendants about data topics. The economists consulted the Defendants' product guides, specification sheets, websites, and distributor websites for over 127,000 resistor models to determine and classify resistor types and to decode characteristics. The experts used this and other information to come up with preliminary estimates of the overcharge paid by the Settlement Class.[31]

E. Class Counsel reached settlements strategically with Defendants to maximize recovery for the Settlement Class.

Starting with the Defendant with the lowest dollar value of sales to direct purchaser class members, HDK, counsel engaged in negotiations strategically with Defendants in an attempt to maximize recovery for the Settlement Class. After informal settlement negotiations and a mediation, on July 6, 2018, Plaintiffs and HDK reached a settlement totaling $2,000,000. Following separate negotiations, on July 11, 2018, Plaintiffs reached an agreement with the Kamaya-Walsin defendant family, which had the second smallest amount of sales to the direct purchaser class for $5,250,000.[32]

After concluding these settlements and moving for preliminary approval of them on August 16, 2018 (ECF No. 474), which meant that the remaining Defendants knew that others had settled in this joint-and-several-liability case, Plaintiffs proceeded through discovery against the remaining three largest remaining Defendants. On September 3, 2018, Plaintiffs and Panasonic executed a settlement agreement for $12,000,0000. On October 29, 2018, DPPs and ROHM executed an agreement resolving Plaintiffs claims against ROHM for $6,500,0000.[33]

After Plaintiffs filed an amended motion for preliminary approval of settlements on November 8, 2018 that included Panasonic and ROHM (ECF No. 507), KOA was left as the sole remaining Defendant. That was important as KOA was the largest Defendant in the case in terms of sales to Class, and was implicated in some of the strongest evidence. At that point, Plaintiffs knew from statements by counsel on the record that the indirect purchasers had settled in principle with all

[31] *Id.*, ¶ 34.

[32] *Id.*, ¶ 37.

[33] *Id.*, ¶ 38.

Defendants, leaving Plaintiffs' claims against KOA as the sole claims remaining in the case. These factors enabled Plaintiffs to negotiate with KOA with a strong hand, allowing Plaintiffs to ultimately settle with KOA for $24,500,000, bringing the total common fund from all of Defendants' settlements to $50,250,000.[34]

III. ARGUMENT

Plaintiffs respectfully request that this Court award fees equal to 20 percent of the common fund, $10,050,000, which is below the Ninth Circuit's 25 percent benchmark. Applying a lodestar cross-check, this would result in a modest 1.21 multiplier of Class Counsel's lodestar of $8,313,750.75, which will increase through final approval and any appeals. Plaintiffs also request reimbursement of expenses incurred in connection with this litigation of $1,889,492.86. Finally, Plaintiffs request a service award of $15,000 to Schuten, the sole class representative.

A. Class Counsel's 20% fee request in reasonable.

Class Counsel has produced a shared benefit for the settlement class in the form of the $50.25 million common fund. The Supreme Court has explained that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole."[35] Here, an award of reasonable attorneys' fees compensates Class Counsel for vigorously litigating this action on behalf of direct purchasers. The Supreme Court has explained that such work is critical to the effective enforcement of the antitrust laws.[36]

Courts in the Ninth Circuit award attorney's fees in common fund cases using either the "percentage-of-recovery" method or the "lodestar" method.[37] Some courts have a preference for the percentage-of-recovery method because it "directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of

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[34] *Id.*, ¶ 39.

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

[36] *See, e.g. Reiter v. Sonotone Corp.*, 442 U.S. 330, 331 (1979); *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 266 (1972).

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

litigation[.]"[38]"In contrast, the 'lodestar [method] create[s] an unanticipated disincentive to early settlements, tempt[s] lawyers to run up their hours, and compel[s] district courts to engage in a gimlet-eyed review of line-item fee audits.'"[39] Regardless of which method is primary, the Ninth Circuit encourages "a cross-check using the other method."[40] Here, both methods support the fee request.

1. A 20-percent award is reasonable using a percentage of the fund analysis.

When applying the percentage-of-the fund method, the Ninth Circuit has established a benchmark of 25 percent.[41] "That percentage amount can then be adjusted upward or downward depending on the circumstances of the case."[42] Courts in this district have recognized that "'in most common fund cases, the award *exceeds* the benchmark.'"[43] At bottom, the Ninth Circuit asks district courts to "consider[] all of the circumstances of the case" and "reach[] a reasonable percentage."[44]

The Ninth Circuit instructs that courts may consider the following factors when determining the percentage of the fund to award: (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) whether the case was handled on a contingency basis; (5) the burdens class counsel experienced while litigating the case (e.g., cost, duration, foregoing other work); and (6) the market rate for the particular field of law.[45] Each of these factors supports Class Counsel's request for a fee award of 20 percent of the total common fund.

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[38] *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (internal quotation marks and citations omitted); *Vizcaino*, 290 F.3d at 1050 ("the primary basis of the fee award remains the percentage method").

[39] *Wal-Mart Stores*, 396 F.3d at 121 (internal quotation marks and citation omitted; alteration added and in original); *Vizcaino*, 290 F.3d at 1050 n.5 (lodestar is normally used "merely a cross-check on the reasonableness of a percentage figure" because "it is widely recognized that the lodestar method creates incentives for counsel to expend more hours than may be necessary on litigating a case so as to recover a reasonable fee, since the lodestar method does not reward early settlement").

[40] *Online DVD*, 779 F.3d at 949.

[41] *Id.* at 949, 955.

[42] *de Mira v. Heartland Emp't Serv., LLC*, 2014 WL 1026282, at *1 (N.D. Cal. Mar. 13, 2014).

[43] *Id.* (quoting *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008)).

[44] *Vizcaino*, 290 F.3d at 1048; *accord Online DVD*, 779 F.3d at 949.

[45] *Id.* at 954-55.

a. Class Counsel achieved exceptional results for the Class.

Plaintiffs' recovery of $50.25 million for the Settlement Class from Defendants is an exceptional result and indicates that the 20-percent fee request is reasonable. Based on the detailed transactional records Defendants produced, Plaintiffs' preliminary estimate of the total sales commerce on which to model potential overcharge damages in this litigation is approximately $1.1 billion. While the case resolved prior to the completion of expert discovery, Plaintiffs' experts preliminarily calculated an approximate overcharge between 8% and 14%, which would result in total single damages between approximately $88 million and $154 million.[46] The settlement fund of $50.25 million would therefore equate to between approximately 33% and 57% of the Settlement Class's estimated total single damages. Even with the most bullish estimate of damages, the combined settlements in this case significantly exceed the average recovery in analogous cases and demonstrate the strong result obtained by Plaintiffs.[47]

Moreover, Defendants would, without question, challenge Plaintiffs' estimate of damages and argue that these overcharge ranges are inflated. Indeed, indirect purchaser plaintiffs' expert in this case estimated the percentage overcharge on sales by Defendants to be 5.75%.[48] Applying this proposed overcharge to total sales to the direct purchasers would result in damages of $63 million. Pursuant to IPPs' estimated damages measure, Plaintiffs' combined settlements equal 80% of potential total single damages. This underscores the strength of Plaintiffs' recovery.

Further demonstrating the quality of the recovery, in total the settlements represent approximately 4.6 percent of estimated class period sales. In similar direct purchaser cases, courts have approved of settlements equating to significantly lower percentages of defendants' sales, even where recovery was equivalent to 1% of defendants' relevant commerce.[49]

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[46] Levens Fee Decl., ¶ 40.

[47] *See CRT.*, 2016 WL 3648478, at *7 & n.19 (citing survey of 71 settled cartel cases which showed that the weighted mean—weighting settlements according to their sales—was 19% of possible single damages recovery).

[48] Supp. Brief in Support of IPPs' Mot. for Prelim. Approval, Feb. 7, 2019, ECF No. 531; Decl. of Russell Lamb, Feb. 7, 2019, ECF No. 531-1; *see also* Levens Fee Decl., ¶ 42.

[49] *See Four in One Co. v. S.K. Foods, L.P.*, 2014 WL 28808, at *9 (E.D. Cal. Jan. 2, 2014) (approving settlements of 1% of relevant sales"); *In re Auto. Refinishing Paint Antitrust Litig.*, 617 F.

b. This case posed significant risks and challenges.

That this recovery was obtained despite substantial risks and challenges also supports the reasonableness of the 20-percent fee request. The risk associated with a case plays an important role in determining a fair fee award.[50] Courts have recognized that the '"antitrust class action is arguably the most complex action to prosecute."'[51] Even where liability is proven, there is the very real risk that plaintiffs will "recover[] no damages, or only negligible damages, at trial, or on appeal."[52] And this litigation has had unique risks and challenges.

Defendants have vigorously denied their participation in the alleged cartel, and courts have held that proving liability in cases like this one, where the Department of Justice ended its investigation prior to the start of discovery and without issuing any indictments, is more challenging than in other cases where defendants have been found criminally liable, such as the *Capacitors* case before this Court.[53] Yet, Plaintiffs' settlements compare favorably to settlements in cases where the defendants faced criminal prosecutions.

This is also an intrinsically difficult case due to the scope and length of the conspiracy alleged and the complexity associated with proving the existence of overcharges. Plaintiffs alleged a

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Supp. 2d 336, 344 (E.D. Pa. 2007) (approving settlements of 1.5% of relevant sales); *In re Linerboard Antitrust Litig.*, 321 F. Supp. 2d 619, 627 (E.D. Pa. 2004) (approving settlement of 1.62% of relevant sales).

[50] *Online DVD-Rental*, 779 F.3d at 955.

[51] *In re Linerboard Antitrust Litig. ("Linerboard I")*, 2004 WL 1221350, at *10 (E.D. Pa. June 2, 2004) (quoting *In re Motorsports Merch. Antitrust Litig.*, 112 F. Supp. 2d 1329, 1337 (N.D. Ga. 2000)).

[52] *See Wal-Mart Stores*, 396 F.3d at 118 ('"Indeed, the history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at trial, or on appeal.'" (quoting *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 476 (S.D.N.Y. 1998)); *see also In re Superior Beverage/Glass Container Consol. Pretrial*, 133 F.R.D. 119, 127 (N.D. Ill. 1990).

[53] *See Auto. Refinishing*, 617 F. Supp. 2d at 344-45 (fact that Department of Justice, like here, terminated its investigation without issuing any indictments, favored approval of settlements because this indicated that establishing liability "would not be a foregone conclusion" and thus the settlements were reasonable "considering the risks of litigation and considering the Government's reluctance to prosecute"); *Cf. Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 966 (9th Cir. 2009) (in favor of affirming approval of class action settlement, the Ninth Circuit explained that "[t]he class in this case does not have the benefit, like some other antitrust classes, of previous litigation between the defendants and the government").

more-than-eleven-year conspiracy period (from July 9, 2003 to August 1, 2014), which required obtaining discovery and evidencing the beginning of the conspiracy in 2003, more than a decade prior to when Plaintiff Schuten filed its complaint in 2015. Adding to the difficulty and complexity, the Defendants' headquarters and the primary witnesses (many retired) are located in Asia (primarily Japan). Class Counsel also had to review and analyze more than 11.8 million pages of predominantly foreign-language documents. That required attorneys with specialized knowledge of antitrust law, of organizing and running a foreign language review, and of managing hundreds of certified translations—including some individuals who had these skills and who could also speak Japanese (as well as Korean and Chinese). Class Counsel brought to bear hard-learned lessons from *ODD*, *Batteries*, and other antitrust cases. After reviewing the documents and having them translated before depositions, Class Counsel with experience taking foreign-language depositions in cartel cases were necessary to ensure that these difficult depositions were effectively utilized to build the Class's case. Moreover, Defendants have argued that, even assuming liability, proving impact and damages would be difficult because of the relatively small margins in the resistors industry.

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

c. Class Counsel obtained benefits for the Class in addition to the cash fund.

The settlements obtained by Class Counsel generated benefits beyond the cash settlement fund. Each settlement agreement did not settle or compromise any of Plaintiffs' claims against any of the other Defendants or co-conspirators and expressly provided that settling sales were not removed from the case.[54] All of the settlements also included cooperation provisions from the settling defendants. For example, each agreement required the settling defendant to provide declarations and/or testimony to support the admissibility and authenticity of documents.[55] Those provisions are

[54] Berman Final App. Decl., Ex. E (HDK Settlement Agreement), ¶ 32; Ex. D (Kamaya-Walsin Settlement Agreement), ¶ 51; Ex. B (Panasonic Settlement Agreement), ¶ 48; Ex. C (ROHM Settlement Agreement, ¶ 52; Ex. A (KOA Settlement Agreement), ¶ 49.

[55] Berman Final App. Decl., Ex. E, ¶¶ 25-26; Ex. D, ¶¶ 42-43; Ex. B, ¶¶ 40-41; Ex. C, ¶ 40-44; Ex. A, ¶ 42.

important because each settlement, therefore, ratcheted up the pressure on the remaining Defendants who not only faced joint and several liability, but also the increased risk that one of their former co-defendants would provide critical evidence for Plaintiffs.

d. Class Counsel's litigation on a contingency basis supports the fee request.

Class Counsel accepted this case on a purely contingency basis. Thus, for the past three-and-a-half years, counsel has invested $8.31 million in attorneys' fees and $1.81 million in out-of-pocket expenses with no guarantee that any of that investment would be recovered. Indeed, Plaintiffs did not request any fees or expenses until now, at the end of the case after settlements with all Defendants. Plaintiffs have provided a breakdown illustrating the time spent on this matter by timekeeper on various tasks including briefing, document review, depositions, and other matters.[56] In an effort to be fully transparent, Plaintiffs have also submitted submit detailed and contemporaneously kept time records *in camera* so that the Court can see the level of detail provided by timekeepers.[57]

The Ninth Circuit has held that a fee award must include consideration of the contingent nature of the fee.[58] Cases hold that attorneys who take on the risk of a contingency case should be compensated for the risk they assume.[59] A 20-percent fee award reasonably compensates Class Counsel for the financial burden and assumption of risk in this case.[60] A 20-percent fee award is below the 33 percent market rate usually charged for contingent representation.[61]

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[56] Berman Fee Decl., Exs. 1-3; Levens Fee Decl., Ex. 1-3.

[57] These materials are submitted in camera to preserve privilege and work product. *In Camera Review* Mot. at 3-4.

[58] *See, e.g.*, *Online DVD*, 779 F.3d at 954-55 & n.14; *Vizcaino*, 290 F.3d at 1050.

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

[60] *See Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1377 (9th Cir. 1993) ("The 25% 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 of their expert handling of the case, achieving a just settlement for the class."); *accord Hopkins v. Stryker Sales Corp.*, 2013 WL 496358, at *3 (N. D. Cal. Feb. 6, 2013) (awarding 30% because "case was conducted on an entirely contingent fee basis against a well-represented Defendant").

[61] *See, e.g.*, Lester Brickman, *ABA Regulation of Contingency Fees: Money Talks, Ethics Walks*, 65 Fordham L. Rev. 247, 248 (1996); F. Patrick Hubbard, *Substantive Due Process Limits on Punitive Damages Awards: "Morals Without Technique"?*, 60 Fla. L. Rev. 349, 383 (2008); Herbert M. Kritzer, *The Wages of Risk: The Returns of Contingency Fee Legal Practice*, 47 DePaul L. Rev. 267, 286 (1998).

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

The Ninth Circuit instructs district courts to consider the burdens class counsel experienced while litigating the case (e.g., cost, duration, and foregoing other work). This litigation has been pending for three and a half years. As explained in Section III.B, *infra*, Class Counsel has advanced substantial sums out-of-pocket and devoted substantial time to this litigation – 21,273.7 hours, for a lodestar of more than $8.31 million – and foregone other work while litigating this case.[62]

f. The market rate for antitrust class action lawyers with the experience of Class Counsel also shows the 20 percent fee request is at or under market.

The market rate for antitrust class action lawyers with Class Counsel's experience also supports the 20-percent fee request. Federal district courts across the country routinely award class counsel fees equivalent to, and often exceeding, 30 percent of the common fund.[63] In the *Capacitors* litigation, this Court awarded counsel for the direct purchasers 25 percent of the common fund after the first two rounds of settlements.[64] In other comparable antitrust class actions involving cartels of electronics manufacturers litigated in this District, courts have awarded similar percentages, and often higher, in attorneys' fees.[65]

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[62] Berman Fee Decl., ¶ 6; Levens Fee Decl., ¶ 6.

[63] *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1210 (S.D. Fla. 2006) (awarding 31.33% fee on $1.075 billion settlement fund); *accord In re Urethane Antitrust Litig.*, 2016 WL 4060156, at *6 (D. Kan. July 29, 2016) (awarding 33.33% fee on $835 million settlement; "Counsel's expert has identified 34 megafund cases with settlements of at least $100 million in which the court awarded fees of 30 percent or higher."); *see also, e.g.*, *In re Polyurethane Foam Antitrust Litig.*, 2015 WL 1639269, at *7 (N.D. Ohio Feb. 26, 2015) (awarding 30% fee on $147.8 million settlement fund); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1366 (S.D. Fla. 2011) (awarding 33.3% fee on $510 million settlement fund); *Linerboard I*, 2004 WL 1221350, at *1 (awarding 30% fee on $202.5 million settlement fund); *In re Cardizem CD Antitrust Litig.*, No. 99-md-1278 (E.D. Mich. Nov. 26, 2002), at 18-20 (awarding 30% of a $110 million dollar fund, which produced a multiplier of 3.7); *In re Vitamins Antitrust Litig.*, 2001 WL 34312839, at *9 (D.D.C. July 16, 2001) (awarding 34.6% fee on $365 million settlement fund); *In re Ikon Office Sols., Inc., Secs. Litig.*, 194 F.R.D. 166, 170 (E.D. Pa. 2000) (awarding 30% fee on $111 million settlement fund).

[64] *See* Order Granting Counsel's Motion for Attorneys' Fees and Reimbursement of Expenses, *In re Capacitors Antitrust Litig.*, No. 3:14-cv-03264-JD (N.D. Cal. Sept. 21, 2018), ECF No. 2196; Order Granting Counsel's Motion for Attorneys' Fees and Reimbursement of Expenses, *In re Capacitors Antitrust Litig.*, No. 3:14-cv-03264-JD (N.D. Cal. June 27, 2017), ECF No. 1714 (both orders awarding counsel for direct purchasers' 25 percent of the common fund).

[65] *See, e.g.*, Order Granting Co-Lead Counsel for Direct Purchaser Plaintiffs' Notice of Motion and Motion for an Award of Attorneys' Fees, Reimbursement of Expenses and Service Awards, *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-md-02420-YGR (N.D. Cal. May 16, 2018), ECF

A recent empirical study of fees in class action settlements also supports a fee of 20 percent. The authors found that, of the 19 antitrust settlements surveyed between 2009 and 2013 with a median recovery of $37.3 million, the median percentage awarded was 30 percent.[66]

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

Class Counsel invested $8,313,750.75 in attorneys' fees in this litigation though May 31, 2019 (as well as an additional $68,393.75 between June 1 and September 5, 2019). This lodestar does not include any fees for time spent before the appointment of lead counsel, any time on fee motions, or any time spent since September 5, 2019 (the initial final approval hearing date). Plaintiffs' requested fee of $10.05 million equates to a modest 1.21 multiplier of the lodestar, which is well within the range of multipliers awarded in 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."[67] 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

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No.2322 (30 percent for DPP settlements); *In re Cathode Ray Tube (CRT) Antitrust Litig. ("CRT2")*, 2016 WL 4126533 (N.D. Cal. Aug. 3, 2016) (30 percent for IPP settlement); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 2013 WL 1365900 (N.D. Cal. Apr. 3, 2013) (28.6 percent for IPP settlement); Order Granting Award of Attorneys' Fees, Reimbursement of Expenses & Incentive Payments, *In re Static Random Access Memory (SRAM) Antitrust Litig.*, No. 07-md-1819-CW (N.D. Cal. Oct. 14, 2011), ECF No. 1407 (33 percent for IPP settlement).

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

[67] *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011). Class Counsel's lodestar is based on the 21,302.75 hours that they have invested in prosecuting this action, times the *current* hourly rates for the timekeepers that worked on this case, consistent with Ninth Circuit law. Levens Fee Decl., ¶ 44; *see Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016) ("The lodestar should be computed either using an hourly rate that reflects the prevailing rate as of the date of the fee request, to compensate class counsel for delays in payment inherent in contingency-fee cases, or using historical rates and compensating for delays with a prime-rate enhancement."); *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 740 (9th Cir. 2016) (same, and holding that it is an abuse of discretion for a district court to calculate lodestar otherwise). So that the Court can see the only minor difference if Class Counsel's lodestar was calculated historical rates, Class Counsel also has provided those figures. Using historical rates, Class Counsel's total lodestar would be $7,745,698.50. Levens Fee Decl., ¶ 49. Awarding the requested fees of $10,050,000 would equate to a 1.3 multiplier of that amount, which is reasonable under the circumstances.

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.[68] 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 other factors likewise supports the positive multiplier, which is well-within the range applied in other cases.

Results for the Class. The first factor—"benefit obtained for the class"—is the most important consideration in assessing fees.[69] As outlined above (*see supra*, Section III.A.1.a), Class Counsel obtained an exceptional result and this alone supports an upwards lodestar adjustment.

Counsel's Expenditure of Resources. Hagens Berman and Cohen Milstein were appointed as co-lead counsel on behalf of the direct purchaser class. These two firms have staffed this case entirely with their own resources during the pendency of three-and-a-half years of litigation. In total, Class Counsel has taken the depositions of (usually leading the questioning) 19 current and former employees of the co-conspirators. A team of staff and contract attorneys at Class Counsel's two firms with language expertise in Japanese, Chinese, and Korean – as well as training in the antitrust laws – have reviewed millions of pages of documents produced by the Defendants in this case. This same dedicated team prepared the deposition exhibits and chronologies used in depositions.

After the appointment of Class Counsel, attorneys and professionals at our firms have spent 21,273.7 hours working on this case toward the lodestar of $8,313,750.75 (no hours in connection with this fee motion are being counted toward the lodestar). Class Counsel also has $1,889,492.86 in unreimbursed expenses.[70] Moreover, Class Counsel has litigated the case efficiently, with a streamlined core team that did the vast majority of the work and without farming out work to other

[68] *Id.* at 941-42. The Supreme Court has since called into question the relevance of two of the original *Kerr* factors: the contingent nature of the fee, and the "desirability" of the case. *See Resurrection Bay Conserv. Alliance 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. Plaintiffs, thus, do not address these questionable or irrelevant factors.

[69] *Bluetooth*, 654 F.3d at 942.

[70] *See* Levens Fee Decl., ¶ 56-57; Berman Fee Decl., ¶ 15.

firms that have an incentive to over-bill. A comparison to the lodestar estimated by the direct purchasers in *Capacitors* at the time of their *first* fee motion ($44,444,689.40)[71] demonstrates Class Counsel's efficient use of resources and supports the requested award.

High Level of Skill Required. Class Counsel explained in detail in Section III.A.1.b, *supra*, that this case was risky and presented novel and difficult challenges that had to be overcome to achieve these excellent settlements. As an example, even without a Department of Justice indictment or any cooperating witnesses, Plaintiffs were able to overcome multiple rounds of motions to dismiss challenging the sufficiency of the pleadings, that the claims were not barred by the statute of limitations, and also alleging facts showing that the U.S. subsidiaries participated in the conspiracy.

Additional challenges included supporting an alleged conspiracy for a lengthy class period that began decades ago, centered in Japan and other Asian countries, and with some of the best witnesses either retired or otherwise unable to be compelled from abroad to testify. Class Counsel had to organize a dedicated team of reviewers, contract attorneys, and others to review and translate documents mostly in Japanese, and then to prepare them for depositions conducted via translators. Class Counsel then conducted 19 fact and Rule 30(b)(6) depositions (many with translated exhibits), including one deposition that was held at the U.S. consulate in Japan. Class Counsel also obtained data and prepared to prove impact and damages to support a worldwide conspiracy that impacted their U.S. direct purchaser class. Ultimately, after vigorously contested discovery against some of the world's largest and best defense counsel, Plaintiffs achieved excellent settlements.

Class Counsel has foregone other employment for this case. Hagens Berman and Cohen Milstein dedicated a core team of experienced antitrust attorneys to the litigation of this action. The consequence of this is that several of these professionals worked nearly exclusively on this case for some number of years and forwent other employment while doing so. Class Counsel have dedicated a total of 21,273.7 hours to this litigation, and many of their attorneys and other professionals have

[71] *See* Counsel's Motion for Attorneys' Fees and Reimbursement of Expenses at 12, *In re Capacitors Antitrust Litig.*, No. 3:14-cv-03264-JD (N.D. Cal. Sept. 21, 2018), ECF No. 1458.

devoted many thousands of hours each.[72] Counsel's choice to commit their resources to the Settlement Class in lieu of other work supports the request for fees.

Comparison to other cases. The sixth and eighth *Kerr* factors – the customary fee and awards in similar cases – both support Class Counsel's fee request. Class Counsel's requested lodestar multiplier of 1.21 is conservative and at the low end of the range of multipliers surveyed by the Ninth Circuit in *Vizcaino*. *Vizcaino* found that in 20 of the 24 cases it surveyed, the multiplier was between 1.0 and 4.0.[73] Plaintiffs' requested fee is well within the range of other similar cases.[74] Indeed, "Courts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers."[75] The Ninth Circuit has affirmed a multiplier of 6.85, holding that it "falls well within the range of multipliers that courts have allowed."[76]

The EMG Study, a recent empirical study of fees in class action settlements also supports the requested multiplier of 1.21. The authors found that the mean and median multipliers for cases with settlements between $23.4 and $67.5 million (the range applicable here), were 1.65 and 1.5, respectively. The mean multiplier for antitrust cases, writ large, was 1.61.[77]

Class Counsel's Reputation. Hagens Berman and Cohen Milstein are two of the most well-respected class action litigation firms in the country and have litigated some of the largest class

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[72] Levens Fee Decl., Exs. 1-3; Berman Fee Decl., Exs. 1-3.

[73] *See Vizcaino*, 290 F.3d at 1051 n.6.

[74] *See, e.g.*, *Vizcaino*, 290 F.3d at 1050-51 (upholding a 28% 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,*., 396 F.3d at 123 (finding 3.5 multiplier reasonable); *CRT*, 2016 WL 4126533, at *10 (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*., 2013 WL 1120801, at *10 (N.D. Cal. Mar. 18, 2013) (finding that a lodestar multiplier of 1.66 confirms the reasonableness of the percentage-based attorneys' fees calculation, 25% of the settlement fund); *Lane v. Facebook, Inc*., 2010 WL 2076916, at *2 (N.D. Cal. May 24, 2010) (finding that a multiplier of 2 should be applied).

[75] *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% of a settlement, resulting in a lodestar multiplier of 4.3).

[76] *Steiner v. Am. Broad. Co., Inc.*, 248 F. App'x 780, 783 (9th Cir. 2007).

[77] EMG Study, 92 N.Y.U. L. Rev.at 965-66.

actions in history. Both firms have been recognized in courts throughout the U.S. for their ability and experience in handling major class litigation efficiently and obtaining outstanding results for their clients. Hagens Berman and Cohen Milstein include firm resumès that provide additional detail.[78]

B. Class Counsel requests reimbursement of reasonable out-of-pocket expenses incidental and necessary to the effective representation of the Class.

Plaintiffs respectfully request reimbursement of out-of-pocket expenses totaling $1,889,492.86. Courts reimburse attorneys prosecuting class claims on a contingent basis for "reasonable expenses that would typically be billed to paying clients in non-contingency matters," *i.e.*, costs "incidental and necessary to the effective representation of the Class."[79] Reimbursable litigation expenses include those for document production, experts and consultants, depositions, translation services, travel, mail, and postage costs.[80] The total expenses for which Plaintiffs seek reimbursement are broken down by category in the supporting declarations and exhibits, and Plaintiffs provide supporting receipts and invoices for all of their claimed expenses.[81]

The largest category of expenses is for economic expert costs – $1,082,209.53 or 59 percent of Plaintiffs' total costs. As explained in more detail in section II.D, *supra*, the work of these economic experts, Dr. Flamm and his supporting team of economists at Christensen Associates, was critical to the success of this case. Their market analyses, particularly of the evolving global marketplace for linear resistors, informed Plaintiffs' legal analyses and litigation strategy. Their input was also critical to shaping the discovery requested, including the questions asked at depositions. The economic experts also conducted complex analyses of large sets of transactional data and related documents, such as profit and loss statements. These analyses were important to negotiating with

[78] Levens Fee Decl., ¶¶ 60-70, Ex. 8; Berman Fee Decl., ¶¶ 32-49, Ex. 10.

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

[80] *See In re Media Vision Tech. Secs. Litig.*, 913 F. Supp. 1362, 1366-72 (N.D. Cal. 1996) (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), *judgment vacated and remanded on other grounds*, 461 U.S. 952 (1983) (travel, meals, and lodging).

[81] *See* Levens Fee Decl., ¶¶ 55-58, Exs. 6,7; Berman Fee Decl., Exs. 6-9.

Defendants about the impact and damages of the alleged conspiracy.

Plaintiffs' counsel have an incentive to limit expenses because expenses are only repaid in the event the case is successful. However, as an added assurance that expenses ultimately billed to a case are reasonable, both Hagens Berman and Cohen Milstein impose limitations on expenses related to travel and meals.[82] These limitations mirror (or are often more limiting than) similar caps on expenses for defense counsel, and ensure that the expenses charged to the Class are reasonable.

C. Plaintiffs request a Service Award for the Sole Class Representative.

Plaintiffs request a service award for the lone class representative, Schuten Electronics, in the amount of $15,000. 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."[83] This Court has expressed "skepticism" of settlements where the named plaintiffs "do appreciably better than rank-and-file class members,"[84] but also noted that, "there can be factors that warrant the award of additional money to the named representatives."[85]

As a threshold matter, the requested service award does not implicate any of the adequacy concerns that have caused the Ninth Circuit to overturn incentive payments in other cases. As a percentage of the settlement fund, the requested service award is a mere .03% of the fund—far less than the .17% of the fund deemed reasonable by the Ninth Circuit in *In re Online DVD-Rental Antitrust Litigation*, a case in which the Ninth Circuit approved service awards where the named plaintiffs received awards roughly 417 times unnamed class members' payments.[86] This is also not a

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[82] *See* Levens Fee Decl., ¶ 59; Berman Fee Decl., ¶ 30.

[83] *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009).

[84] *Sullivan v. Dolgen California, LLC*, No. 3:15-CV-01617-JD, 2017 WL 3232540, at *2 (N.D. Cal. July 31, 2017).

[85] *Cancilla v. Ecolab, Inc.*, No. 12-CV-03001-JD, 2016 WL 54113, at *4 (N.D. Cal. Jan. 5, 2016) citing *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003) (describing relevant factors in determining an incentive award as "the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions,...the amount of time and effort the plaintiff expended in pursuing the litigation...and reasonabl[e] fear[s of] workplace retaliation" (quotation omitted)).

[86] *Online DVD-Rental*, 779 F.3d at 947-48.

situation where the service award will result in a recovery for the class representative that is disproportionately large as compared to the Class. Based on the Claims Administrator's non-final estimates, the mean class member recovery will be $46,850.64, while the median will be $768.39.[87] Furthermore, Schuten was not promised any service payment from Class Counsel when retained,[88] nor did the Settlement Agreements in this case condition the proposed service payment on Schuten's support of the settlement.[89] Accordingly, nothing about the requested service award raises concerns regarding Schuten's adequacy.

To the contrary, Schuten has gone above and beyond in the class's interests. Schuten Electronics is a distributor of electronic components, including linear resistors. At 86-years of age, Jim Schuten, the owner of Schuten Electronics, came forward to prosecute this case as the sole Class Representative, knowing that because the industry is controlled by a small number of suppliers, others in the industry would be unlikely to step forward.[90] Schuten has been actively involved in this litigation and, indeed, without its willingness to come forward and prosecute the action when neither the government nor any other direct purchaser would, Settlement Class members would have received nothing for their injuries.

Moreover, because of his extensive knowledge of the industry, Mr. Schuten assisted counsel in ways beyond many class representatives. For example, as a long-time market participant, Mr. Schuten advised counsel on market dynamics relating to demand for the Defendants' products, interchangeability of the products, and his ability (or lack thereof) to negotiate prices for linear resistors. In this capacity, Schuten served as an industry expert as much as a named plaintiff and such experts are typically compensated at rates equal to several hundred dollars an hour.

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[87] *Compare* Keough Decl., ¶ 36 *with Stanton*, 327 F.3d at 977 (overturning incentive awards where the awards resulted in the named plaintiffs recovering significantly more than other class members).

[88] *Compare Rodriguez*, 563 F.3d at 959 (holding incentive agreements entered into as part of named plaintiffs' initial retention undermined named plaintiffs' adequacy).

[89] *Compare Radcliffe v. Experian Info. Sols. Inc.*, 715 F.3d 1157, 1165-67 (9th Cir. 2013) (expressing concern regarding language in a settlement agreement that conditioned incentive awards on the named plaintiffs' support of the settlement and overturning the award where such language was present and the award resulted in a disproportionate award for the named plaintiffs as compared other class members).

[90] Schuten Decl., ¶¶ 4-6, 7.

Additionally, the discovery involved in antitrust class actions such as this is extensive. Mr. Schuten searched for and produced documents responsive to 54 document requests and responded to 11 detailed interrogatories. Mr. Schuten also sat for a full-day deposition as the designated representative of Schuten Electronics pursuant to Rule 30(b)(6). To do so, Mr. Schuten educated himself to testify regarding eight areas, each with several sub-parts.[91] Following that, Mr. Schuten reviewed the transcript and consulted with class counsel regarding various settlement offers.

This amounted to a conservative estimate of more than 55 hours of work on the Class's behalf.[92] This work was done with no promise of repayment and the full knowledge that, because Schuten's purchasing volume was smaller than many other class members', its likely share of any potential settlement would be smaller than many other class members who did not pursue relief for themselves or the Class. In the face of this service and perseverance, an award of $15,000 to the class representative is reasonable. Indeed, courts have approved awards totaling much larger percentages of the aggregate settlement fund,[93] as well as awards of equal and greater amounts to individual Class Representatives.[94] Moreover, the requested award compares favorably compared to the total amounts awarded in cases with multiple class representatives—even though, as the only member of the class to step forward to represent the Class,[95] Schuten's service is of even greater value than any

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[91] Levens Fee Decl. ¶ 78; Schuten Decl., ¶¶ 8-14.

[92] Schuten Decl., ¶ 14.

[93] *See*, *e.g.*, *Online DVD-Rental*, 779 F.3d at 947-48 (approving incentive awards totaling .17% of fund); *Alvarez v. Farmers Ins. Exchange*, 2017 WL 2214585, at *1 (N.D. Cal. Jan. 18, 2017) (approving service awards equal to 1.8% of the settlement value).

[94] *See*, *e.g.*, *Nitsch v. Dreamworks Animation SKG Inc.*, No. 14-cv-04062-LHK, 2017 WL 2423161, at *9 (N.D. Cal. June 5, 2017) (ordering $100,000 service award for each class representative); *In re: Urethane Antitrust Litig.*, No. 04-md-91616-JWL, ECF No. 3276, Order Awarding Attorneys' Fees, Reimbursement of Litigation Expenses, and Incentive Payments (D. Ks. Jul. 29, 2016) (awarding $150,000 to each of the class representatives who did not testify at trial and $200,000 to the representative who testified at trial); *In re Janney Montgomery Scott LLC Financial Consultant Litigation*, 2009 WL 2137224, *12 (E.D. Pa. 2009) (approving $20,000 payments to each of the three named plaintiffs in complex FLSA matter).

[95] *See*, *e.g.*, *In re Lupron Mktg. & Sales Practices Litig.*,228 F.R.D. 75 (D. Mass. 2005) (noting that "[i]ncentive awards are recognized as serving an important function in promoting class action settlements, particularly where … the named plaintiffs participated actively in the litigation," and awarding incentive awards totaling $100,000.); *Alvarez*, 2017 WL 2214585, at *1 (approving nine service awards totaling $90,000); *In re Se. Milk Antitrust Litig.*, 2013 WL 2155387, at *8 (E.D. Tenn. 2013) (approving incentive awards totaling $160,000).

individual class representative in those cases.

Mr. Schuten brought his time and expertise to this matter when most in his position would be enjoying the fruits of their lifetime's hard work. To the extent some choose to use some of their retirement to share insights gained from their career, they are compensated as a consultant. Mr. Schuten has not and does not request that level of compensation. However, an award of $15,000—just .03% of the settlement fund—is an appropriate recognition of his service to the Class.

D. Plaintiffs request authorization to pay for additional claims administration.

This Court has approved the Settlement Notice Administrator to expend funds from the escrow accounts to pay taxes, tax expenses, notice, and administration costs as set forth in the Settlement Agreements. The Administrator has estimated that there will be a need for up to an additional $50,000 to pay for future costs of distribution.[96] Accordingly, Plaintiffs request that the Court authorize Plaintiffs to pay up to $50,000 for these costs.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request an award of $10,050,000 in attorneys' fees, reimbursement of expenses incurred totaling $1,889,492.86, a service award to the lone class representative of $15,000, and authorization to pay up to $50,000 from the common fund toward future costs to distribute the settlement funds.

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[96] Keough Decl., ¶ 36.

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