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Chairman of the Executive Committee
for the Direct Purchaser Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE OPTICAL DISK DRIVE ANTITRUST LITIGATION	Case No. 3:10-md-02143 RS MDL No. 2143
This Document Relates to: ALL DIRECT PURCHASER ACTIONS	**DECLARATION OF CADIO ZIRPOLI IN SUPPORT OF DIRECT PURCHASER PLAINTIFFS' SECOND MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND CLASS REPRESENTATIVE INCENTIVE AWARDS** Date: April 14, 2016 Time: 1:30 p.m. Judge: Honorable Richard Seeborg Courtroom: 3, 17th Floor

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I, CADIO ZIRPOLI, declare:

1. I am a partner at Saveri & Saveri, Inc., which the Court has appointed to act as Chairman of the Executive Committee for the Direct Purchaser Plaintiffs ("DPPs") in this action. I have been involved in almost every aspect of this case since its inception. I submit this declaration in support of Direct Purchaser Plaintiffs' Second Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Class Representative Incentive Awards. Except as otherwise noted, I make this declaration of my own personal knowledge, and if called upon to do so, could and would testify competently to the facts contained herein.

2. On March 16, 2015, DPPs filed their interim Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Class Representative Incentive Awards. Attached hereto as Exhibit 1 is a true and correct copy of Direct Purchaser Plaintiffs' [Interim] Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Class Representative Incentive Awards (ECF No. 1535) (Mar. 16, 2015). Attached hereto as Exhibit 2 is a true and correct copy of the Declaration of Cadio Zirpoli in Support of Direct Purchaser Plaintiffs' [Interim] Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Class Representative Incentive Awards (ECF No. 1535-2) (Mar. 16, 2015). The declaration in support of the interim motion described in detail the work performed by Class Counsel since the inception of the case in October 2009 until December 31, 2014. Accordingly, the present declaration provides a description of work performed from January 1, 2015 through the present.

3. The purpose of this declaration is to summarize the factual and procedural history of this litigation since January 1, 2015, including, but not limited to, class certification proceedings, discovery, motion practice, settlement negotiations, notice and overall case management.

INTRODUCTION

4. During the course of this litigation, the Executive Committee for the Direct Purchaser Plaintiffs ("Executive Committee") has supervised and directed the work performed by the other class counsel to ensure that the work they have performed has been done as effectively and efficiently as possible. As set forth in Case Management Order No. 1 (ECF No. 33) ("CMO No. 1"), the Executive Committee is comprised of the following seven firms: Berman DeValerio;

Cotchett Pitre & McCarthy, LLP; Hausfeld LLP; Kaplan Fox & Kilsheimer LLP; Lieff Cabraser Heimann & Bernstein, LLP; Pearson, Simon & Warshaw, LLP; and Saveri & Saveri, Inc. Guido Saveri of Saveri & Saveri, Inc. was appointed Chairman of the Executive Committee ("Chairman"). The Executive Committee as well as the other firms that represent DPPs in this action are collectively referred to herein as "Class Counsel."

5. DPPs have faced significant risks from the inception of this litigation. These risks included:

- Dismissal of the DPP action due to Defendants' motions to dismiss;
- Denial of DPPs' motion for class certification;
- Summary judgment in favor of Defendants;
- Proving all of the elements of the case at trial (including that Defendants participated in a price-fixing conspiracy that spanned six years, from January 1, 2004 until January 1, 2010); and
- Proving a conspiracy that affected products and purchases other than those included in the guilty plea entered by Defendant Hitachi-LG Data Storage, Inc. for each of the ten Defendants/Defendant families.

Despite these risks, Plaintiffs achieved additional settlements of $37,000,000 from all of the remaining Defendants.

6. Since January 1, 2015, the work of Class Counsel has focused on three areas: (1) settlement negotiations with the seven remaining defendant groups; (2) the preparation of a renewed motion for class certification; and (3) discovery. DPPs also performed various other tasks, including settlement administration, preparation of a motion for preliminary approval of settlements, providing notice of the settlements to class members, general case management, and other tasks.

7. DPPs have reached seven additional settlements totaling $37,000,000 in cash for the benefit of the Class Members, in addition to the previous three settlements totaling $37,900,000.[1]

[1] The three previous settlements were with: Hitachi-LG Data Storage, Inc. and Hitachi-LG Data Storage Korea, Inc.; LG Electronics, Inc. and LG Electronics USA ("LG"); and Hitachi, Ltd.

Unless otherwise noted herein, "Settling Defendants" include: 1) BenQ Corp. and BenQ America Corp. (collectively, "BenQ"); (2) Pioneer Corp., Pioneer North America, Inc., Pioneer Electronics (USA) Inc., and Pioneer High Fidelity Taiwan Co., Ltd. (collectively, "Pioneer"); (3) Koninklijke Philips Electronics N.V., Lite-On It Corp., Philips & Lite-On Digital Solutions Corp., and Philips & Lite-On Digital Solutions USA, Inc. (collectively, "PLDS"); (4) Quanta Storage Inc. and Quanta Storage America, Inc. (collectively, "QSI"); (5) Sony Corp., Sony Optiarc Inc., Sony Optiarc America Inc., Sony NEC Optiarc Inc., and Sony Electronics Inc. (collectively, "Sony"); (6) TEAC Corp. and TEAC America, Inc. (collectively, "TEAC"); and (7) Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Toshiba Corp., Toshiba America Information Systems, Inc., Toshiba Samsung Storage Technology Corp., and Toshiba Samsung Storage Technology Korea Corp. ("TSST-Korea") (collectively, "Toshiba/Samsung"). The settlement amounts are: $875,000 (BenQ), $4,200,000 (Pioneer), $15,000,000 (PLDS; reduced to $12,000,000 if Class Members representing more than 65% of purchases request exclusion), $400,000 (QSI), $6,000,000 (Sony), $1,325,000 (TEAC) and $9,200,000 (Toshiba/Samsung) (collectively, the $37,000,000 represents the "Second Settlement Fund").

8. The additional $37 million in settlements is an excellent result, especially in light of the Court's denial of DPPs' motion for class certification. The settlements compare favorably to those already approved by the Court in light of subsequent events.

9. The amount of Settling Defendants' sales is a matter of dispute. At each of the settlement conferences, the amount of relevant sales in the case was a point of contention. Each Defendant contended that DPPs' numbers were much higher than what DPPs believed were the sales that remained in the case. Defendants also argued that their sales would be vastly reduced by

("Hitachi") (collectively, "HLDS") ($26,000,000); Panasonic Corporation and Panasonic Corporation of North America (collectively, "Panasonic") ($5,750,000); and NEC Corporation ("NEC") ($6,000,000, plus $150,000 in notice costs) (collectively, the $37,900,000 represents the "First Settlement Fund").

FTAIA and other motions yet to be filed. The previous settlements ranged from approximately 3% to 3.83 % of sales based on DPPs' view of the sales in the case.[2]

SETTLEMENT

10. Class Counsel spent substantial time in settlement negotiations during the period covered by this Declaration. Ultimately, DPPs reached settlements with all of the Defendants who appeared in the action. Saveri & Saveri took the lead with regard to settlement negotiations. Saveri & Saveri attorneys participated in every negotiation, attended every mediation session, and were the principal authors of every settlement conference statement. Other Class Counsel provided substantial assistance. Saveri & Saveri attorneys were also responsible for the motions for preliminary approval, class notice, and other matters necessary to obtain court approval of the settlements.

11. Per the Court's order, ECF No. 1518, DPPs participated in settlement conferences with each of the remaining Defendants before Magistrate Judge Corley. Preparation for each settlement conference proved to be demanding and time-consuming. In particular, Class Counsel prepared demand letters and/or settlement conference statements for each remaining Defendant group in advance of each settlement conference. Each settlement conference statement required substantial review and analysis of liability evidence against each Defendant uncovered in the previous and concurrent document reviews as well as additional expert damage studies in support thereof.

12. The settlement conferences themselves required substantial preparation and participation of Executive Committee firms. Class Counsel participated in six in-person settlement conferences and multiple telephonic conferences held by Magistrate Judge Corley. Many of the conferences lasted a full day, and some required follow-up conferences or teleconferences. For several of the settlements, Saveri & Saveri and defense attorneys had numerous settlement meetings to finalize the terms of the agreement.

[2] For each of these percentage-of-sales calculations, only the value of the ODD in a finished product is included—i.e., the value of the other components of a laptop computer, for example, is not counted.

13. By August 2015, DPPs had reached settlements in principle with all of the Settling Defendants, including favorable settlement amounts and cooperation agreements with each. DPPs then finalized and executed the negotiated agreement with each Defendant. The terms of each of the settlement agreements were individually negotiated with Defendant families. In several instances, the negotiations took months to finalize. DPPs also negotiated escrow agreements in connection with issues related to each of the settlement agreements. DPPs filed their motion for certification of settlement classes, preliminary approval of the settlements with the remaining Defendants, and directing notice to the Class on November 3, 2015 (ECF No. 1724); the Court granted the motion on December 15, 2015 (ECF No. 1758). This motion and the supporting declaration provides further information regarding the settlements.

CLASS CERTIFICATION

14. On February 9, 2015 the Court granted DPPs (and Indirect Purchaser Plaintiffs ("IPPs")) leave to file a revised motion for class certification and set a briefing schedule whereby the opening brief would be due July 17, 2015—approximately five months from the date of the order. ECF No. 1518. Additionally, the Court referred the parties to Magistrate Judge Corley for settlement discussions, to be held within ninety days, if possible. *Id.* The settlement conference proceedings were held between February 13, 2015, *see* ECF No. 1523, and August 21, 2015, *see* ECF No. 1667. Accordingly, the class certification briefing schedule was extended due to the progress in settlement proceedings. *See* ECF Nos. 1577, 1622. These parallel schedules required Class Counsel to fully prepare to file DPPs' renewed motion for class certification and all supporting materials, including new Class Representative declarations, and a revised expert report that addressed all of the issues identified in the Court's order denying class certification. In support of these efforts, Class Counsel carried out substantial document review, data analysis, work with their expert and drafting in preparation for filing the renewed motion for class certification. Class counsel also worked with Class Representatives on new declarations in support of the renewed motion for class certification.

15. During the period of work on the renewed motion for class certification, the Executive Committee organized an on-site document review at the Saveri offices staffed by junior

associates, paralegals and law clerks from several Class Counsel firms. This review required the daily commitment of one paralegal at the Saveri & Saveri office who handled supervision of the review platform, work assignments, maintained the review manual, and allocated staffing assignments. Saveri & Saveri attorneys oversaw this process, conducted quality control and served as a liaison with DPPs' expert, Dr. Gary L. French, regarding documents and data identified by the reviewers. This required working with the expert and its staff on both transactional data and evidence of the conspiracy as well as Michael Lehmann of Hausfeld LLP who took the lead in drafting the renewed motion for class certification.

16. In addition, Class Counsel worked with specialized foreign language reviewers to translate additional documents for the renewed class certification brief and for the expert report in support thereof. The process of reviewing foreign language documents has proven to be time consuming and expensive. The foreign language documents were analyzed by attorneys and paralegals fluent in the relevant foreign languages who then determined which documents were sufficiently relevant to the litigation to require translations to English. In order to save the Class money and for efficiency's sake, DPPs and IPPs continued to coordinate their efforts with respect to the review and translation of many of the foreign language documents.

17. In support of the renewed motion for class certification, Class Counsel obtained declarations from Class Representatives regarding their purchases and/or descriptions of their facilities. The work performed by the Class Representatives for whom incentive awards are sought is described below.

DISCOVERY

18. During the period covered by this Declaration, DPPs—in coordination with IPPs—have continued to press Defendants and non-parties to ensure the production of relevant liability evidence. Most of these efforts were made for the purpose of enforcing the DPP-issued subpoena of FBI recordings from the U.S. Department of Justice ("DOJ") Antitrust Division that was vigorously opposed by Defendant TSST-Korea and one of its non-party employees who was a subject of the recordings, "John Doe 1." DPPs also received, reviewed and analyzed additional

discovery from the PLDS Defendants, the Pioneer Defendants and Defendant Toshiba Corporation as well as Direct Action Plaintiffs ("DAPs") HP and Dell.

A. Subpoena of DOJ Tape Recordings

19. To enforce DPPs' July 2014 subpoena to the DOJ Antitrust Division seeking production of secret government recordings of alleged ODD conspirators, Class Counsel collaborated with IPPs and other plaintiffs' groups to ensure entry of a reasonable protective order, intended to supplement the existing protective orders (ECF Nos. 629, 923), that preserved the interests of the Class. Pursuant to the terms of the protective order entered by Magistrate Judge Spero, I was designated and required under the order to serve the government-produced materials on all other parties through liaison counsel. When the recordings were produced to DPPs, I served the recordings on all parties pursuant to the protective order. As with earlier discovery disputes that could not be resolved between the parties, this matter was brought before Magistrate Judge Spero who considered several rounds of briefing and held hearings in which Class Counsel actively participated. The matter was also the subject of briefing and oral argument before the U.S. Court of Appeals for the Ninth Circuit.

20. On January 5, 2015 DPPs and IPPs filed their joint opposition to non-party John Doe 1's Emergency Motion for Injunction Under Circuit Rule 27-3 to the Ninth Circuit Court of Appeals seeking to prevent the release of the recordings until John Doe 1's appeal of its motion to quash DPPs' subpoena had been resolved. On January 30, 2015 the Ninth Circuit Court of Appeals denied John Doe 1's emergency motion without prejudice to renewal after the district court had approved a protective order governing the release of the recordings in dispute. *In re: Dell Inc., et al v. John Doe 1*, No. 14-17502 (9th Cir. Jan. 30, 2015) (ECF No. 16).

21. On February 18, 2015 DPPs and IPPs submitted to Magistrate Judge Spero a joint letter brief with the DOJ Antitrust Division, Defendants and non-party John Doe 1 detailing their positions on the entry of a supplemental protective order for government recordings, including two competing proposed supplemental protective orders. ECF No. 1524. DPPs participated in the hearing on the proposed supplemental protective orders before Magistrate Judge Spero on April 24, 2015. ECF No. 1529. Magistrate Judge Spero ordered the parties to submit a stipulated protective

order, and for the DOJ Antitrust Division to produce the recordings to DPPs on May 1, 2015. ECF No. 1600. Despite ongoing and last-minute objections by John Doe 1, *see* ECF Nos. 1595, 1602, DPPs and IPPs submitted a final proposed stipulated protective order to the Court on May 1, 2015. ECF No. 1604. Magistrate Judge Spero entered the protective order the same day. ECF No. 1605.

22. The DOJ Antitrust Division produced recordings and transcripts to me on May 1, 2015. Saveri & Saveri personnel duplicated and served the recordings on all parties pursuant to the supplemental protective order approved by Magistrate Judge Spero. *See* ECF No. 1605 ¶ 2.2. The DOJ Antitrust Division produced additional recordings on September 3, 2015. The first two productions from the DOJ Antitrust Division did not include any recordings or transcripts on which John Doe 1 is a participant, pending a ruling on John Doe 1's appeal to the Ninth Circuit Court of Appeals. ECF No. 1600.

23. Concurrently, DPPs and IPPs opposed John Doe 1's appeal to the Ninth Circuit Court of Appeals seeking to reverse this Court's denial of its motion to quash DPPs' subpoena. DPPs participated actively in the legal research and drafting of DPPs' and IPPs' joint opposition brief, and coordinated with the DAPs on their joint brief. On July 6, 2015 the Ninth Circuit Court of Appeals heard oral argument at which counsel for IPPs argued on behalf of DPPs and IPPs. On September 10, 2015 the panel issued its opinion, holding that the recordings were not grand jury materials subject to the protection of Federal Rule of Criminal Procedure 6(e). Following the Ninth Circuit opinion, on October 28, 2015 the DOJ Antitrust Division produced additional recordings and transcripts featuring John Doe 1, previously withheld per Court order. *See* ECF Nos. 1600, 1710. DPPs duplicated and served the additional recordings and transcripts on all parties pursuant to the supplemental protective order.

B. Review and Analysis of Additional Discovery

24. DPPs continued to receive, review and analyze discovery it propounded. In addition, DPPs monitored ongoing discovery in the IPP and DAP actions. In connection with new discovery, Class counsel received the following productions in the period covered by this Declaration:

25. In January 2015 DAP Dell served a new production containing transactional data.

26. In January 2015 DAP HP served a new production containing transactional data. In August 2015 DAP HP served an additional production containing transactional data. In December 2015 DAP HP served an additional production containing transactional data.

27. Between March 2015 and May 2015 the Pioneer Defendants served six new productions comprising over 56,000 additional pages of documents and data in response to previous requests for production of documents. DPPs' expert used transactional data contained in these productions to prepare the new expert report and to provide information for DPPs' settlement negotiations with Pioneer.

28. Between April 2015 and June 2015 Defendant Toshiba Corporation served three new productions containing transactional data pursuant to the Court's Order Regarding Joint Discovery Letter Re: Production of Toshiba PC Component Cost Data (ECF No. 1592).

29. Between October 2015 and December 2015, the PLDS Defendants served three new productions containing transactional data.

30. Class Counsel internally hosted document productions on their web-based, electronic data and transcript review platform located on servers at the Saveri & Saveri office. As noted in my previous declaration, hosting DPPs' document review platform in-house saved the class potentially hundreds of thousands of dollars. Class Counsel continued to use the coding system they set up at the start of discovery to identify the most probative documents relating to the relevant phases of litigation. Saveri & Saveri personnel continued to maintain the database, load new productions and assist in the search for additional material for class certification, conspiracy evidence and expert analysis.

31. Class Counsel continued to utilize junior associates and paralegals to review the documents and code them by topic. The Executive Committee maintained its decision that no document reviewer could bill at a rate higher than $350 per hour for initial document review. This included foreign language reviewers who typically bill out at higher rates.

PLEADINGS

32. During the period covered by this Declaration, Class Counsel filed, or participated in the preparation of, the following documents on CM/ECF system on behalf of DPPs:

- Joint Case Management Conference Statement (ECF No. 1505) (Jan. 22, 2015);
- Motion for Approval of the Notice to Class, for Approval of the Proof of Claim Form, to Set a Schedule for Claims, and to Schedule a Hearing for Attorneys Fees, Costs, and Incentive Awards (ECF No. 1508) (Jan. 29, 2015);
- Statement, Joint Submission re Supplemental Motion for Class Certification (ECF No. 1515) (Feb. 5, 2015);
- Discovery Letter Brief, Entry of Supplemental Protective Order for Government Protected Materials (ECF No. 1524) (Feb. 18, 2015);
- Stipulation with Proposed Order re Modified Briefing Schedule for DPPs' Revised Motion for Class Certification (ECF No. 1572) (Apr. 23, 2015);
- Letter from Shana E. Scarlett and Proposed Order re Protective Order Regarding Materials Subpoenaed from the Government (ECF Nos. 1593, 1594) (Apr. 29, 2015);
- Letter from Shana E. Scarlett and Proposed Order re Protective Order Regarding Materials Subpoenaed from the Government (ECF No. 1604) (May 1, 2015);
- Stipulation with Proposed Order Regarding Administrative Motions to Seal Materials Filed in Connection with Revised Motions for Class Certification (ECF No. 1620) (May 19, 2015);
- Stipulation and [Proposed] Order Regarding Modification of Briefing Schedule for Direct Purchaser Plaintiffs' Revised Motion for Class Certification (ECF No. 1621) (May 19, 2015);
- Joint Submission Regarding Modification of Briefing Schedule for Direct Purchaser Plaintiffs' Revised Motion for Class Certification (ECF No. 1646) (June 10, 2015);
- Report re Claims Process in Support of Direct Purchaser Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Class Representative Incentive Awards (ECF No. 1652) (July 16, 2015);
- Direct Purchaser Plaintiffs Notice of Motion and Motion for: 1) Certification of Settlement Classes; 2) Preliminary Approval of Class Action Settlements with BenQ, Pioneer, PLDS, QSI, Sony, TEAC, AND Toshiba/Samsung; 3) Directing Notice to

Class; and 4) Memorandum of Points and Authorities in Support Thereof (ECF No. 1724) (Nov. 3, 2015); and

- Proposed Order re Direct Purchaser Plaintiffs Notice of Motion and Motion for: 1) Certification of Settlement Classes; 2) Preliminary Approval of Class Action Settlements with BenQ, Pioneer, PLDS, QSI, Sony, TEAC, AND Toshiba/Samsung; 3) Directing Notice to Class; and 4) Memorandum of Points and Authorities in Support Thereof (ECF No. 1756) (Dec. 14, 2015).

33. On March 2, 2015 the Pioneer Defendants served their answer to DPPs' complaint. ECF No. 1533. DPPs had filed a complaint against Pioneer on August 18, 2014 after developing evidence of conspiratorial conduct. *See JLK Systems Group, Inc. v. Pioneer Corp.*, Case No. 3:14-cv-03748-LB. This action was related to the *In re Optical Disk Drive* action on August 25, 2014. ECF No. 1396. Class Counsel reviewed and analyzed Pioneer's answer for the purposes of the renewed motion for class certification and the settlement conference process.

CASE MANAGEMENT

34. Class Counsel appeared at the January 29, 2015 Case Management Conference on behalf of DPPs, and participated in drafting of the Joint Case Management Statement submitted by the parties in advance of the conference, ECF No. 1505.

35. Class Counsel have taken steps to ensure that their lodestar is reasonable by: (1) capping the hourly rate for initial document review (even of foreign-language documents) at $350 per hour; (2) not including hours worked on this case during the sixth months that took place prior to the appointment of the Executive Committee; (3) managing the case efficiently to ensure that tasks were not unnecessarily duplicated by Class Counsel firms; (4) coordinating with IPP Counsel whenever possible to reduce the work required to prosecute this action; (5) keeping and collecting contemporaneous records of hours worked pursuant to CMO No. 1; and (6) excluding all time in connection with DPPs' requests for attorneys' fees or reimbursement of costs.

NOTICE TO CLASS MEMBERS AND CLASS MEMBER RESPONSE

36. On January 29, 2015 DPPs filed their Motion for Approval of the Notice to Class, for Approval of the Proof of Claim form, to Set a Schedule for Claims, and to Schedule a Hearing

for Attorneys Fees, Costs, and Incentive Awards. ECF No. 1508. The Court did not hold a hearing on DPPs' unopposed motion and ruled on the papers. On March 2, 2015 the Court approved the notice to the class and the proof of claim form, set a schedule for claims, and scheduled a hearing for attorneys' fees, costs, and incentive awards. ECF No. 1532. Pursuant to Court order, ECF No. 1609, on July 16, 2015 DPPs provided information to the Court on the number of claims made and the estimated payout per class member. ECF No. 1652. On July 23, 2015 the Court granted DPPs' motion. ECF No. 1658.

37. In addition, DPPs worked closely with the claims administrator, Gilardi & Co. LLC ("Gilardi"), over much of the period covered by this Declaration. This work included: (1) drafting the claim form; (2) arranging the claims administration process; (3) disseminating class notice and claims; (4) keeping class members apprised of the progress of the case and the claims process; and (5) overseeing the claims auditing process.

38. In addition, Class Counsel anticipate ongoing claims administration work to continue in the future. Gilardi continues to audit the claims received and is in regular contact with Class Counsel regarding necessary backup and claims information. Once the auditing process is complete, DPPs will file a motion to distribute funds from the First and Second Settlement Funds in accordance with the plan of allocation.

INCENTIVE AWARDS FOR CLASS REPRESENTATIVES

39. The Class Representatives in this action devoted substantial amounts of time and resources to assisting in the prosecution of this matter. Their help was essential to the success of this case. None of the Class Representatives conditioned, or were asked to condition, their participation in the litigation upon receiving an incentive award. None of the Class Representatives conditioned, or were asked to condition, their approval of any of the settlements upon the promise or expectation that they would receive any benefit greater than the rest of the class members. The Court previously granted incentive awards of $5,000 to each of the three class plaintiffs named only in the Second Consolidated Amended Complaint ("SCAC") (Univision-Crimson Holding, Inc.; Warren S. Herman; and The Stereo Shop), and $10,000 for the six class plaintiffs named in the Third Consolidated Amended Complaint ("TCAC") (JLK Systems Group, Inc. and Jeff Kozik;

Meijer, Inc. and Meijer Distribution, Inc.; Paul Nordine; Seneca Data Distributors, Inc.; Gregory Starrett; and Ashley Tremblay). ECF No. 1658. DPPs now seek additional Class Representative incentive awards of $5,000 for the six class plaintiffs named in the TCAC for their work in support of the renewed motion for class certification. Each of the TCAC Class Representatives previously had their depositions taken and responded to discovery by responding to interrogatories and producing documents.

40. Jeff Kozik ("Kozik") is the sole proprietor of JLK Systems Group, Inc. ("JLK") in Moscow, Pennsylvania. Kozik has spent a significant amount of time and expense assisting in the litigation of this case for the absent members of the Class. During the period covered by this Declaration, Kozik continued in the same role as Class Representative, and consulted with Class Counsel regarding each of the settlements achieved on behalf of the Class.

41. Meijer, Inc., together with Meijer Distribution, Inc. (collectively, "Meijer"), is a Midwestern retailer operating over 200 stores in Michigan, Illinois, Indiana, Ohio, Wisconsin and Kentucky. Meijer has more than 70,000 employees. Meijer has spent a significant amount of time and expense assisting in the litigation of this case for the absent members of the Class. During the period covered by this Declaration, Meijer continued in the same role as Class Representative, and consulted with Class Counsel regarding each of the settlements achieved on behalf of the Class. Further, at the request of Class Counsel, Meijer provided a draft declaration in support of DPPs' renewed motion for class certification.

42. Paul Nordine ("Nordine") has spent a significant amount of time and expense assisting in the litigation of this case for the absent members of the Class. During the period covered by this Declaration, Nordine continued in the same role as Class Representative, and consulted with Class Counsel regarding each of the settlements achieved on behalf of the Class.

43. Seneca Data Distributors, Inc. ("Seneca") is a custom computer manufacturer. During the class period, Seneca was one of the largest computer manufacturers in North America. Seneca's primary business has been to manufacture desktop computers, notebook computers, and servers. Seneca's sales have mainly been to businesses in the following markets: digital signage, digital security and surveillance, digital broadcast, digital health, government and education. In

2013, Seneca employed approximately 150 people. Seneca has spent a significant amount of time and expense assisting in the litigation of this case for the absent members of the Class. During the period covered by this Declaration, Seneca continued in the same role as Class Representative, and consulted with Class Counsel regarding each of the settlements achieved on behalf of the Class. Further, at the request of Class Counsel, Seneca provided a draft declaration in support of DPPs' renewed motion for class certification.

44. Gregory Starrett ("Starrett") has spent a significant amount of time and expense assisting in the litigation of this case for the absent members of the Class. During the period covered by this Declaration, Starrett continued in the same role as Class Representative, and consulted with Class Counsel regarding each of the settlements achieved on behalf of the Class.

45. Ashley Tremblay ("Tremblay") has spent a significant amount of time and expense assisting in the litigation of this case for the absent members of the Class. During the period covered by this Declaration, Tremblay continued in the same role as Class Representative, and consulted with Class Counsel regarding each of the settlements achieved on behalf of the Class.

46. The total additional incentive payments to Class Representatives as requested would equal $30,000, or approximately 0.08% of the Second Settlement Fund.

47. The Second Settlement Fund would not exist without the efforts of the Class Representatives, who came forward to challenge the alleged antitrust violations. The Class Representatives were integral to helping Class Counsel analyze their claims and the evidence that formed the basis for each of the complaints and would have supported DPPs' renewed motion for class certification. Furthermore, they were consulted as part of the successful settlements described above.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 18th day of February, 2016 at San Francisco, California.

/s/ Cadio Zirpoli
Cadio Zirpoli

EXHIBIT 1

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Chairman of the Executive Committee
for the Direct Purchaser Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE OPTICAL DISK DRIVE ANTITRUST LITIGATION

This Document Relates to:

ALL DIRECT PURCHASER ACTIONS

Case No. 3:10-md-02143 RS

MDL No. 2143

DIRECT PURCHASER PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND CLASS REPRESENTATIVE INCENTIVE AWARDS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: May 14, 2015
Time: 1:30 p.m.
Judge: Hon. Richard Seeborg
Courtroom: 3

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that at 1:30 p.m. on May 14, 2015, Direct Purchaser Plaintiffs ("DPPs") and their counsel ("Class Counsel") will, and hereby do move before the Honorable Richard Seeborg, United States District Judge, at the United States Courthouse, 450 Golden Gate Avenue, Courtroom 3, San Francisco, California, for an award of attorneys' fees in the amount of 30% of the Settlement Fund ($11,370,000) plus interest, reimbursement of litigation expenses in the amount of $1,687,905.17, approval of the additional $1,593,268.18 in expenses paid with settlement funds, and payments to the Class Representatives of $5,000 or $10,000 for their time and effort representing the Class throughout the litigation. This motion is brought pursuant to Fed. R. Civ. P. 23(h), 54(b) and 54(d)(2).

This motion is made on the grounds that (a) such fees are fair and reasonable in light of Class Counsel's efforts in creating the Settlement Fund; (b) the requested fees comport with the Ninth Circuit case law in common fund cases; (c) the expenses for which reimbursement is sought were reasonably and necessarily incurred in connection with the prosecution of this action; and (d) a reasonable payment of $5,000 or $10,000 to each Class Representative for their efforts on behalf of the Class is warranted and appropriate.

This motion is based upon this Memorandum of Points and Authorities; the Declaration of Cadio Zirpoli in Support of Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Class Representative Incentive Awards; the Declaration of R. Alexander Saveri in Support of DPP Counsel's Request for Reimbursement of Litigation Expenses From the Litigation Fund; the proposed order submitted herewith; the declarations of Class Counsel, and other records, pleadings, and papers filed in this action; and upon such argument and further pleadings as may be presented to the Court at the hearing on this motion.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Direct Purchaser Plaintiffs ("DPPs") and their counsel ("Class Counsel") respectfully submit this Memorandum of Points and Authorities in Support of Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Class Representative Incentive Awards. To date, DPPs have obtained settlements with three of the thirteen defendant groups totaling over $37.9 million (the "Settlement Fund").[1] Class Counsel have invested over $24,000,000 in time and $1,687,905.17 in out of pocket expenses since this case began over five years ago. By this motion, they seek an interim award of attorneys' fees in an amount equal to 30% of the Settlement Fund ($11,370,000), reimbursement of their litigation expenses in the amount of $1,687,905.17, and approval of the additional $1,593,268.18 in expenses paid with settlement funds.

DPPs also seek incentive awards for the Class Representatives for their service in this case. DPPs seek awards of $10,000 for the six class plaintiffs named in the Third Consolidated Amended Complaint (JLK Systems Group, Inc. and Jeff Kozik; Meijer, Inc. and Meijer Distribution, Inc.; Paul Nordine; Seneca Data Distributors, Inc.; Gregory Starrett; and Ashely Tremblay), and $5,000 for the three class plaintiffs named only in the Second Consolidated Amended Complaint (Univision-Crimson Holding, Inc.; Warren S. Herman; and The Stereo Shop).

Class Counsel have prosecuted this case on a purely contingent basis. The settlements were achieved in the face of a tremendously hard fought defense, fueled by Defendants' near limitless resources. The settlements represent excellent recoveries for the class, and the fee class counsel seek is eminently fair in light of the mammoth investment of time and money they have made and the substantial risks such an undertaking presented. Indeed, Class Counsel seek less than half of the lodestar they have incurred to date.

As detailed in the accompanying declarations, the work done by Class Counsel was

[1] DPPs have settled with the following defendants: (1) Hitachi-LG Data Storage, Inc. and Hitachi-LG Data Storage Korea, Inc.; LG Electronics, Inc. and LG Electronics USA ("LG"); and Hitachi, Ltd. ("Hitachi") (collectively "HLDS")—$26,000,000; (2) Panasonic Corporation and Panasonic Corporation of North America (collectively "Panasonic")—$5,750,000; and (3) NEC Corporation ("NEC")—$6,150,000.

reasonable and necessary, of high quality, and efficiently performed. Among other things, Class Counsel have, to date:

- Conducted an initial investigation of this case to develop the theories and facts that formed the basis of the allegations against Defendants. The research included a review of publicly available information regarding the ODD industry and consultation with industry experts and economists prior to the filing of the complaints (*see e.g.*, Declaration of Cadio Zirpoli in Support of Direct Purchaser Plaintiffs' Notice of Motion and Motion for an Award Of Attorneys' Fees, Reimbursement of Expenses, and Class Representative Incentive Awards; Memorandum of Points and Authorities In Support Thereof ("Zirpoli Decl.") ¶ 10);
- Drafted three comprehensive consolidated amended complaints detailing the Defendants' violations of the antitrust laws, and defended two rounds of hard-fought motions to dismiss the complaints (*id.* ¶¶ 16–21);
- Conducted exhaustive legal research regarding the class's claims and the defenses thereto (*id.* ¶¶ 16–18);
- Reviewed and analyzed, beginning in June 2011, millions of pages of grand jury documents Defendants provided to the U.S. Department of Justice ("DOJ") (*id.* ¶¶ 28, 37–46);
- Propounded discovery that—after extensive research, negotiations with defendants, and motion practice—resulted in the identification of over one hundred defendant-employee custodians and the production of over sixteen million pages of documents, as well as voluminous electronic transactional data (*id.* ¶¶ 28–31, 36);
- Reviewed and analyzed these additional documents (many of which were in foreign languages and required translation), as well as voluminous transactional data and many thousands of pages of documents and transactional data from non-parties (*id.* ¶¶ 36–37, 46–47);
- Propounded several sets of interrogatories on defendants and issued Rule 30(b)(6) deposition notices (*id.* ¶¶ 28, 49);
- Cooperated with the Indirect Purchaser Plaintiffs ("IPPs") to take the depositions of nine employees of Defendants (*id.* ¶¶ 50, 52, 67);
- Contended with near-constant discovery disputes and motions to compel (*id.* ¶¶ 32–35);
- Responded to Defendants' discovery requests of class representatives and prepared and defended the depositions of the class representatives (*id.* ¶¶ 22–26);
- Prepared a motion for class certification and supporting materials, including over two hundred exhibits and the expert report of Dr. Gary L. French (and a Rule 23(f) Petition for Permission to Appeal) (*id.* ¶¶ 22–26);
- Consulted extensively with experts on issues pertaining to liability, class certification, and damages throughout the course of the Action and deposed the Defendants' expert Dr. Janusz Ordover (*id.* ¶¶ 10, 16–19, 22–24, 47, 50);
- Engaged in settlement negotiations with Defendants (*id.* ¶¶ 56–59); and

- Documented the settlements with HLDS; Panasonic; and NEC, briefed motions for preliminary and final approval as to each settlement, and worked with the settlement administrator to provide notice to the class of each settlement (*id.* ¶ 59).

DPPs have faced substantial risks in this case, including, among others:

- The risk of litigating against some of the largest and most sophisticated law firms in the world with seemingly limitless resources;
- The risk that the consolidated complaints would not withstand the individual and joint motions to dismiss, which claimed, *inter alia*, that the alleged conspiracy was not plausible under *Twombly* and *Iqbal*; that the conspiracy was confined to a handful of individual bilateral agreements; that certain DPPs lacked standing to sue for federal antitrust violations; and that the claims were time barred;
- The risk that Defendants would use the HLDS guilty pleas to try to limit the scope and effect of the conspiratorial conduct to the three OEMs (Dell, HP, and Microsoft) that were the subject of the guilty pleas;
- The risk that each defendant, including those that pled guilty to criminal charges, would successfully argue that any antitrust violation engaged in by their company's representatives had no antitrust impact and caused no damages to class members;
- The risk of not achieving class certification;
- The risk of trying a case in which many of Defendants' key employees would invoke their Fifth Amendment privilege against self-incrimination, depriving DPPs of important information and making authentication of critical documents difficult;
- The changing landscape of the law with respect to civil antitrust actions and class actions.

In this context, DPPs' request for an interim fee award of 30% of the settlements obtained to date is fair and reasonable. While the benchmark for attorneys' fees in the Ninth Circuit is 25%, in practice, awards are generally closer to 30%. Many courts have awarded 30%, or higher, where, as here, the litigation posed substantial risks and/or the multiplier is low.

Importantly, DPPs' fee request appears to have the near unanimous support of the class. Each of the three notices of settlement sent to class members disclosed that class counsel might seek as much as one-third of the settlement fund as a fee. While more than 700,000 notices were sent in connection with the HLDS settlement, only four objections were received. Zirpoli Decl. ¶ 84. This is especially significant where, as here, the class contains many large and sophisticated companies.

Class Counsel should also be reimbursed for the expenses they have advanced on behalf of the class. All were reasonable and necessary. It is also appropriate that the nine Class

Representatives receive modest awards for their time and service to the Class.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. Litigation History

1. Pre-Complaint Investigation, Service of Process, and the JPML

The first Direct Purchaser Class Action Complaint was filed on October 27, 2009 in the Northern District of California and assigned to the Honorable Vaughn R. Walker. Thereafter, eleven additional direct purchaser class action cases were filed; ten in the Northern District of California and one in the Central District of California. For many of the named foreign defendants, DPPs were required to effectuate service of process through the Hague Convention. This was a lengthy, time consuming, and in certain instances, expensive endeavor requiring the appointment of a special international process server. Zirpoli Decl. ¶¶ 11–12.

DPPs participated in the proceedings before the Judicial Panel on Multidistrict Litigation ("JPML") pursuant to which these actions were coordinated and transferred to this Court. *See ODD*, 701 F. Supp. 2d 1382. Zirpoli Decl. ¶ 13.

2. Appointment of Leadership

The firms representing DPPs agreed upon on a leadership structure. On April 29, 2010, DPPs submitted to the Court a proposed leadership structure that was unanimously supported by all DPPs and unopposed by the Defendants. (Dkt. No. 5). On May 7, 2010, as set forth in CMO No. 1, the Court endorsed DPPs' leadership proposal, and appointed an Executive Committee of DPPs' counsel, comprised of the following seven firms: Berman DeValerio; Cotchett Pitre & McCarthy, LLP; Hausfeld LLP; Kaplan Fox & Kilsheimer LLP; Lieff Cabraser Heimann & Bernstein, LLP; Pearson, Simon, & Warshaw, LLP; and Saveri & Saveri, Inc. Guido Saveri of Saveri & Saveri, Inc. was appointed Chairman of the Executive Committee and given the responsibility to oversee the litigation, including any subsequent related or tag-along cases, on behalf of the DPPs. Zirpoli Decl. ¶¶ 3–14. As set forth in CMO No. 1, the Chairman was tasked with making sure the DPP action was prosecuted in an effective and efficient manner, including, among other things, the periodic collection of time and expenses from Class Counsel, and coordinating the work of Class Counsel.

3. The Consolidated Complaints and Motions to Dismiss

On August 26, 2010, DPPs filed their Consolidated Direct Purchaser Class Action Complaint ("CAC"). Every Defendant except the leniency applicant moved—individually and/or as part of a joint motion—to dismiss the CAC. Following briefing and a hearing on the joint and individual motions to dismiss, on August 3, 2011, the Court dismissed the CAC with leave to amend. Zirpoli Decl. ¶ 17.

Following the dismissal of the CAC, DPPs drafted a more detailed Second Consolidated Direct Purchaser Class Action Complaint ("SCAC") that utilized information and documentary evidence provided by the amnesty applicant, along with industry-wide historical pricing and sales data from third parties. The SCAC was filed on September 23, 2011. In October 2011, the parties embarked on a second round of joint and individual motions to dismiss the SCAC (Dkt. Nos. 434, 436, 441, 446, 449, 458, 460, and 463). All Defendants except for the Philips/Lite-On/PLDS group (amnesty applicant) joined the joint motion to dismiss, most also filed individual motions.The Court denied all of the motions. (Dkt. No. 531). Defendants filed their answers between June 4 and August 17, 2012. Zirpoli Decl. ¶ 18.

As the case progressed, discovery uncovered new facts. In March of 2013, DPPs sought leave of Court and were permitted to file a Third Consolidated Direct Purchaser Class Action Complaint ("TCAC"). (Dkt. No. 782). DPPs made five changes from the SCAC to the TCAC. *First*, the TCAC modified the proposed class definition to eliminate references to "ODD Devices" and to clarify that the class is comprised of those who bought stand-alone external or internal ODDs, or ODDs incorporated only into desktop or laptop computers sold by Defendants, their affiliates, or their subsidiaries. *Second*, the TCAC dropped Sony Computer Entertainment America, Inc., as a named defendant, because that entity sold only game consoles which were no longer products within the definition of the litigation class. *Third*, the TCAC eliminated references to and allegations regarding ODD Devices. *Fourth*, three named plaintiffs that purchased ODD Devices—Warren Herman, The Stereo Shop, and the related companies Central New York Univision Video Systems, Inc., Crimson Tech, Inc., and Univision Crimson Holding, Inc. were withdrawn as proposed class representatives. *Finally*, the TCAC added four new named plaintiffs: the related

companies Meijer, Inc. and Meijer Distribution, Inc., Ashley Tremblay, Gregory Starrett, and Paul Nordine. Zirpoli Decl. ¶ 19.

The parties negotiated a stipulation and proposed order which deemed Defendants' previously filed Answers to the DPPs' SCAC as sufficient for purposes of responding to the DPPs' TCAC, which the Court approved on April 26, 2013 (Dkt. No. 851). Zirpoli Decl. ¶ 20.

During the course of this litigation, DPPs developed evidence with respect to the conspiratorial conduct of the Pioneer entities, and on August 18, 2014, filed a complaint against the Pioneer entities (*JLK Systems Group, Inc., et al. v. Pioneer Corp.., et al.*, Case No. 14-cv-03748-LB). This action was related to the *In re Optical Disk Drive Action* on August 28, 2014. The Pioneer Defendants answered DPPs' complaint on March 2, 2015. (Dkt. No. 1533). Zirpoli Decl. ¶ 21.

4. The Discovery Process

From the inception of this litigation, DPPs—in coordination with the IPPs—have had to fight for nearly every stitch of discovery that has been produced. At the first case management conference, the DOJ informed the Court that they intended to intervene for the purpose of staying discovery in the civil actions. On May 20, 2010, the DOJ filed a motion for a limited stay of discovery (Dkt. No. 67) and DPPs filed an opposition (Dkt. No. 90). On June 24, 2010 the Court heard argument from the parties on the DOJ's motion to stay discovery, and denied the DOJ's motion (Dkt. No. 119). Zirpoli Decl. ¶ 27.

On September 1, 2010, DPPs served their first set of requests for production of documents and interrogatories on all Defendants. After multiple rounds of objections and meet and confers, on May 11, 2011, DPPs and IPPs filed a joint motion to compel documents produced to the DOJ in connection with its criminal investigation. (Dkt. No. 370) On April 7, 2011, Judge Spero granted the motion, and ordered the production of the DOJ material. (Dkt. No. 379). In June 2011, Defendants produced the documents previously produced to the DOJ. The DOJ production consisted of millions of pages of documents, much of it in foreign languages. Zirpoli Decl. ¶ 28.

Following the denial of the motions to dismiss the SCAC, DPPs and IPPs engaged in months of meet and confers negotiating a discovery plan that included, *inter alia,* custodians, search terms, a deposition protocol, and matters relating to transactional and other electronic data. Ultimately the

parties could not agree on a number of items. The parties briefed the following issues for resolution by Judge Spero: (1) the ESI protocol, (2) custodians, (3) search terms, (4) deposition protocols, (5) production of certain transactional data, (6) categories of documents pertaining to class certification, and (7) and supplemental interrogatory responses. Zirpoli Decl. ¶ 29.

Eventually Defendants agreed to search and produce over one hundred employee files totaling more than sixteen million pages of documents. The documentary evidence was thoroughly analyzed, coded, and organized by DPPs in an electronic review platform which DPPs used to analyze and identify the important evidence in the case. DPPs used this database for many tasks, including drafting the consolidated complaints, drafting briefs, preparing for depositions, informing settlement negotiations, and drafting the motion for class certification and supporting expert reports. The online database allowed DPPs to run targeted searches in both English and foreign languages and prioritize documents by custodian and topic. *Id.* ¶ 36. The foreign language documents were analyzed by lawyers and paralegals fluent in the respective foreign languages, who then had to determine which documents were sufficiently relevant to the litigation to require English translations and in certain cases, certified translations. *Id.* ¶ 46. Additionally, DPPs—in coordination with IPPs—obtained and reviewed thousands of pages of non-party discovery and transactional data. Zirpoli Decl. ¶ 47.

DPPs spent significant time responding to defendants' discovery requests. Class Counsel assisted the named plaintiffs in the search and production of relevant documents and responding to interrogatories. In particular, DPPs spent a significant amount of time and resources responding to contention interrogatories. DPPs also spent significant time preparing for and defending each of the named plaintiff depositions. Zirpoli Decl. ¶ 48.

DPPs also participated in the depositions of five sets of Defendants' employees and former employees between April 2013 and November 2013. Of the nine Defendant witnesses deposed, four of the depositions spanned multiple days and required the assistance of a translator, and the remaining five deponents asserted their Fifth Amendment right against self-incrimination. *Id.* ¶¶ 50, 52.

On July 11, 2014, DPPs and IPPs issued a subpoena to the DOJ Antitrust Division seeking

production of FBI recordings, and verbatim transcriptions thereof, among and between Defendants in this litigation. After extensive meeting and conferring with the DOJ, DPPs and IPPs reached an agreement and negotiated a draft stipulated proposed protective order regarding production of the tapes. On September 3, 2014, DPPs and IPPs filed the stipulated proposed protective order. Defendant TSST-Korea and interested party "John Doe 1" objected to production of the tapes. After extensive motion practice, their objections were overruled by this Court. On December 22, 2014, John Doe 1 filed a notice of appeal and an emergency motion for an injunction pending appeal. Zirpoli Decl. ¶ 55.

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

On May 29, 2013, DPPs filed their motion for class certification (Dkt. No. 878) with an accompanying Expert Report of Gary L. French Ph.D. Regarding Class Certification. DPPs' moving papers, accompanying declarations, proposed order, and sealing motion comprised in excess of 3,000 pages. DPPs' motion included 205 exhibits, most of which were identified through extensive searches of DPPs' electronic database of Defendants' documents—many of which required certified translations. Defendants filed their opposition to class certification and motion to strike report of DPPs' Expert Dr. Gary French on October 21, 2013, which also comprised hundreds of pages and exhibits. (Dkt. Nos. 1027, 1028, 1030, 1031, 1037, 1038, 1039, 1041). On February 18, 2014, DPPs filed their reply brief in support of class certification (Dkt. No. 1127) with an accompanying Expert Reply Report (Dkt. No. 1128), and Opposition to Motion to Strike (Dkt. No. 1130). Zirpoli Decl. ¶ 22.

On May 16, 2014, the Court held a hearing on the motions for class certification and motions to strike, at which DPPs presented extensive oral argument. On October 3, 2014, the Court denied DPPs' and IPPs' motions for class certification. (Dkt. No. 1444). On October 24, 2014, DPPs and IPPs separately petitioned for permission to appeal the Court's Order pursuant to Rule 23(f) of the Federal Rules of Civil Procedure. On January 14, 2015, the United States Court of Appeals for the Ninth Circuit denied both DPPs' and IPPs' petitions for permission to appeal the Court's order denying class certification. Zirpoli Decl. ¶¶ 25–26.

B. Settlement History

In late 2012, DPPs and the HLDS defendants began to discuss the possibility of settlement. On November 13, 2012, after several months of negotiations, the parties entered into a settlement agreement pursuant to which HLDS agreed to pay $26,000,000. This amount represented approximately 3.42% of HLDS' sales of ODDs (after accounting for opt-outs). The Court finally approved the HLDS settlement on September 23, 2013. Zirpoli Decl. ¶ 56.

During the course of several months in early 2013, DPPs and Panasonic negotiated the terms of a settlement releasing the claims in the TCAC. On August 21, 2013, DPPs settled with Panasonic for $5,750,000. The $5,750,000 settlement amount represents approximately 3.833% of Panasonic's sales of ODDs after opt-outs. The Court finally approved the Panasonic settlement on May 15, 2014. Zirpoli Decl. ¶ 58.

Beginning in the spring of 2013, DPPs began negotiating the terms of a settlement with counsel for NEC. On February 24, 2014, DPPs settled with NEC for the claims in the TCAC for $6,150,000, approximately 3.1% of NEC's ODD sales (after accounting for opt-outs).[2] The Court finally approved the NEC settlement on August 14, 2014.[3] Zirpoli Decl. ¶ 59.

III. ARGUMENT

DPPs' requests (1) for an award of attorneys' fees in the amount of 30% of the Settlement Fund; (2) for approval of the expenses; (3) for reimbursement of expenses Class Counsel have advanced on behalf of the class; and (4) for incentive awards for the class representatives are reasonable and appropriate under Ninth Circuit law and should be approved.

A. The Common Fund Doctrine and the Percentage-of-the-Recovery Approach

1. The Ninth Circuit Recognizes the Common Fund Doctrine

Counsel who represent a class and produce a benefit for class members are entitled to compensation. As the Supreme Court has explained, "this Court has recognized consistently that a

[2] For each of these percentage-of-sales calculations, only the value of the ODD in a finished product is included—i.e., the value of the other components of a laptop computer, for example, is not counted.

[3] For a more detailed case history, DPPs respectfully refer the Court to the accompanying Zirpoli Declaration.

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." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). *See also Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 392–93 (1970); *Central R.R. & Banking Co. v. Pettus,* 113 U.S. 116, 123 (1885). The Supreme Court has also recognized that under the "common fund doctrine" a reasonable fee may be based "on a percentage of the fund bestowed on the class." *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). The purpose of this doctrine is that "those who benefit from the creation of the fund should share the wealth with the lawyers whose skill and effort helped create it." *In re Wash. Pub. Power Supply Sys. Sec. Litig*., 19 F.3d 1291, 1300 (9th Cir. 1994) ("*WPPSS*"); *see also Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 271 (9th Cir. 1989) ("*Paul, Johnson*") (well-settled that lawyer who helps create common fund should be allowed to share in the award).

The Supreme Court has repeatedly recognized that private antitrust litigation is essential to the effective enforcement of the antitrust laws. *See, e.g., Pillsbury Co. v. Conboy*, 459 U.S. 248, 262–63 (1983); *Reiter v. Sonotone Corp*., 442 U.S. 330, 331 (1979); *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 266 (1972); *Perma Life Mufflers, Inc. v. Int'l Parts Corp*., 392 U.S. 134, 139 (1968). Substantial fee awards in successful cases encourage meritorious class actions, and thereby promote private enforcement of—and compliance with—the antitrust laws. As noted by the Second Circuit in *Alpine Pharmacy, Inc. v. Charles Pfizer & Co., Inc.*, 481 F.2d 1045, 1050 (2d Cir.), *cert. denied*, 414 U.S. 1092 (1973), "[i]n the absence of adequate attorneys' fee awards, many antitrust actions would not be commenced . . . ."

Here, Class Counsel's efforts have created a common fund of $37.9 million for the benefit of the class. Under either a "percentage-of-the-fund" or "lodestar" method, Class Counsel's requested fee is warranted in light of the value of the extensive work performed, the difficulty and risk of the case, and the results achieved, among other things.

2. Percentage-of-the-Recovery Approach Is the Predominant Method for Determining Attorneys' Fees Under Ninth Circuit Law

The amount of the award of reasonable attorneys' fees and expenses is within the sound discretion of the district court. *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1029 (9th Cir. 1998);

WPPSS, 19 F.3d at 1296. 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. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) ("*Vizcaino II*"); *In re Online DVD-Rental Antitrust Litig.*, No. 12-15705, 2015 WL 846008, at *9 (9th Cir. Feb. 27, 2015) ("*Online DVD*"). Most district courts in the Ninth Circuit have exhibited a clear preference for the percentage-of-the-fund method. Virtually all of the major recent antitrust class actions in the Northern District of California have applied the percentage-of-the-fund approach. *See, e.g.*, *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2011 WL 7575003, at *1–2 (N.D. Cal. Dec. 27, 2011) ("*LCD I*") (30%); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2013 WL 149692, at *1–2 (N.D. Cal. Jan. 14, 2013) ("*LCD II*") (30%); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2013 WL 1365900, at *7–8 (N.D. Cal. Apr. 3, 2013) ("*LCD III*") (28.6%); *In re Static Random Access Memory (SRAM) Antitrust Litig.*, Case No. 07-md-1819-CW (N.D. Cal. June 30, 2011) (Dkt. No. 1370) ("*SRAM*") (30%); *Meijer v. Abbott Laboratories*, C-07-05985 (N.D. Cal. Aug. 11, 2011) (Dkt. No. 514) ("*Meijer*") (33⅓%); *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, M-02-1486, 2007 WL 2416513 (N.D. Cal. Aug. 16, 2007), at *1 ("*DRAM*") (25%).

This Court has used the percentage-of-the-fund approach with a lodestar cross-check in recent cases. *See, e.g.*, *In re SunPower Sec. Litig.*, Case No. 09-cv-5473-RS ¶ 6 (N.D. Cal. July 3, 2013) (Dkt. No. 270) ("*SunPower*"); *In re Warner Music Group Corp. Digital Downloads Litig.*, Case No. 12-cv-559-RS ¶ 3 (N.D. Cal. Jan. 12, 2015) (Dkt. No. 116) ("*Digital Downloads*").

The most recent Ninth Circuit opinion on fees in an large antitrust class action, *Online DVD*, affirmed the validity of the percentage-of-the-fund approach and noted that it was reasonable to apply the percentage to the entire fund (as opposed to the net fund after costs). 2015 WL 846008, at *13 ("Here, the district court concluded that class counsels' fee request, which applied the 25% benchmark percentage to the entire common fund, was reasonable. Indeed, the court explicitly explained how administrative costs in particular make it possible to distribute a settlement award 'in a meaningful and significant way.' Similarly, notice costs allow class members to learn about a settlement and litigation expenses make the entire action possible.").

B. Application of the Pertinent Factors Shows that an Upward Adjustment of the Benchmark Is Justified

"[I]n this circuit, the benchmark percentage is 25%." *Id.* at *9. However, "[t]he 25% benchmark rate, although a starting point for analysis, may be inappropriate in some cases." *Vizcaino II*, 290 F.3d at 1048. Indeed, *Vizcaino II* makes clear that it is not sufficient to arbitrarily apply a percentage; rather the district court must show why that percentage and the ultimate award are appropriate based on the facts of the case. *Id.*; *see also Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993) ("This 'benchmark percentage should be adjusted, or replaced by a lodestar calculation, when special circumstances indicate that the percentage recovery would be either too small or too large in light of the hours devoted to the case or other relevant factors.'" (quoting *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990)). In considering whether an award of 30% would be fair, several factors may be considered:

> In [*Vizcaino II*], we listed several factors courts may consider in assessing a request for attorneys' fees that was calculated using the percentage-of-recovery method. These factors include the extent to which class counsel "achieved exceptional results for the class," whether the case was risky for class counsel, whether counsel's performance "generated benefits beyond the cash settlement fund," the market rate for the particular field of law (in some circumstances), the burdens class counsel experienced while litigating the case (e.g., cost, duration, foregoing other work), and whether the case was handled on a contingency basis. In addition, a court may cross-check its percentage-of-recovery figure against a lodestar calculation.

Online DVD, 2015 WL 846008, at *14 (citations omitted). In addition, the Court may consider other factors including the volume of work performed, counsel's skill and experience, the complexity of the issues faced, and the reaction of the class. *See, e.g.*, *In re Heritage Bond Litig.*, 02-ML-1475 DT, 2005 WL 1594403, at *18–23 (C.D. Cal. June 10, 2005) ("*Heritage Bond*").

As a practical matter, fee awards tend to approximate 30%. *See, e.g.*, *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1378 (N.D. Cal. 1989) ("*Activision*") ("[T]his court finds that in most recent cases the benchmark is closer to 30%.").

Thus, in the other large electronics antitrust class actions in this district over the past decade, the court, with one exception, has awarded a fee of 30% or near 30%. *See, e.g.*, *LCD I*, 2011 WL 7575003 (30%); *LCD II*, 2013 WL 149692 (30%); *LCD III*, 2013 WL 1365900 (28.6%); *SRAM*, Case No. 07-md-1819-CW (N.D. Cal. June 30, 2011) (Dkt. No. 1370) (30%); *DRAM*, 2007

WL 2416513 (25%).

Similarly, a 2008 study of the effectiveness of private antitrust enforcement reviewed "forty of the largest recent successful private antitrust cases." Robert H. Lande & Joshua P. Davis, *Benefits from Private Antitrust Enforcement: An Analysis of Forty Cases*, 42 U.S.F. L. Rev. 879 (2008). In cases with recoveries of less than $100 million, eleven of sixteen cases involved fee awards of at least 30%, with seven awards of 33.3%. *Id.* at 911 tbl.7A.[4]

Finally, fee awards of less than 30%, unlike this case, often involve substantial multipliers—*i.e.*, counsel receive a multiple of their hourly rate. *See, e.g.*, *DRAM*, 2007 WL 2416513 (multiplier of 2.3). By the same token, fees in excess of 30% often involve cases presenting substantial risk, again, as here. *See, e.g.*, *See, e.g., In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) ("*Pac. Enters.*") (award of 33% justified because of complexity and risk).

In this context, it is plain that the fee award DPPs seek is in line with recoveries awarded in other major class action cases. Consideration of the *Vizcaino* factors confirms the appropriateness of the fee requested.

1. Class Counsel Achieved an Excellent Recovery for the Class

Courts emphasize that the recovery achieved is an important factor to be considered in determining an appropriate fee award. *See Hensley v. Eckerhart*, 461 U.S. 424, 431 (1983); *Vizcaino v. Microsoft Corp.*, 142 F. Supp. 2d 1299, 1303 (W.D. Wash. 2001) *aff'd*, 290 F.3d 1043 (9th Cir. 2002) ("*Vizcaino I*"); *In re Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008) ("*Omnivision*").

Here, DPPs have obtained a $37.9 million in cash. The settlements confer a substantial and immediate benefit to class members, and represent an excellent recovery, especially in light of the many risks involved in the action, as detailed below and in the Zirpoli Declaration.

The combined settlements represent a recovery of 3.55% of the settling defendants' sales during the class period. This compares favorably with similar class action settlements finally

[4] Consistent with the Supreme Court's emphasis on the importance of private enforcement of the antitrust laws, the authors also found that "private litigation provides more than four times the deterrence of the criminal fines." *Id.* at 893.

approved in other price-fixing cases. For example, in *In re Rubber Chemicals Antitrust Litigation*, No. C-04-1648 MJJ ¶ 6 (N.D. Cal. Jan. 9, 2007) (Dkt. No. 458) ("*Rubber Chems.*"), a price-fixing case in which some of the defendants had entered guilty pleas in related criminal proceedings, Judge Jenkins characterized a settlement payment of 4% of a defendant's sales as "an excellent recovery." *See also*, *e.g.*, *In re Linerboard Antitrust Litig.*, 321 F. Supp. 2d 619, 627 (E.D. Pa. 2004) (1.62% of sales); *In re Auto. Refinishing Paint Antitrust Litig.*, No. MDL 1426, 2004 WL 6248154, at *7 (E.D. Pa. Sept. 27, 2004) (recovery represented 2% of sales); *In re Plastic Tableware Antitrust Litig.*, No. Civ. A. 94-3564, 1995 WL 723175, at *1 (E.D. Pa. Dec. 4, 1995) (settlement equal to 3.5% of sales).

2. A High Level of Skill Was Required to Prosecute This Case and Class Counsel Are Highly Qualified

The skill and quality of legal counsel also support the requested fee award. *See Mark v. Valley Ins. Co.*, Case No. CV 01-1575-BR, 2004 WL 2260605, at *2 (D. Or. Oct. 6, 2004). Class Counsel are among the nation's most experienced and skilled practitioners in the antitrust litigation field, and each firm has successfully litigated these types of cases on behalf of direct purchasers of price-fixed products throughout the country—including within this Circuit.[5]

This was a complex case which required DPPs to confront many novel and/or difficult legal and factual issues. Courts have recognized that the novelty and difficulty of issues in a case are significant factors to be considered in making a fee award. *See*, *e.g.*, *Vizcaino I*, 142 F. Supp. 2d at 1303, 1306. Antitrust price-fixing conspiracy cases are notoriously complex and difficult to litigate. *See, e.g.*, *In re Linerboard Antitrust Litig.*, No. CIV.A. 98-5055, 2004 WL 1221350, at *10 (E.D. Pa. June 2, 2004) ("antitrust class action is arguably the most complex action to prosecute"). Not only did Class Counsel effectively manage the logistics of litigating such a complex case, with more than thirty plaintiffs' firms, scores of able defense counsel, and thirteen defendant groups (both foreign and domestic), but as described in detail below, they successfully tackled many difficult legal and factual issues presented by this case.

[5] *See, e.g.*, *DRAM*, MDL No. 1482; *SRAM*, MDL No. 1819; *LCD*, MDL No. 1827; *CRT*, MDL No. 1917. *See also* Exhibit 1 to the Saveri Declaration and the firm biographies attached as exhibits to each of the Class Counsel's individual declarations filed concurrently herewith.

The caliber of opposing counsel is another important factor in assessing the quality of Class Counsel's work. *Vizcaino I*, 142 F. Supp. 2d at 1303; *In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 634 (D. Colo. 1976); *Arenson v. Board of Trade*, 372 F. Supp. 1349, 1354 (N.D. Ill. 1974). Here, DPPs were opposed by attorneys from some of the best and largest firms in the country with near limitless resources at their disposal.[6]

3. The Risks of This Litigation

Risk is an important factor in determining a fair fee award. *Online DVD*, 2015 WL 846008, at *14. Ninth Circuit courts have recognized that risk is a reason to increase a fee award above the 25% benchmark. *Vizcaino I*, 142 F. Supp. 2d at 1303–04. While DPPs believe that they can overcome it, consistent with the complexity and difficulty of antitrust class actions in general, this case has presented, and continues to present, substantial risk. DPPs address a few of the risks presented in this case below.

a. Defendants Have Tremendous Resources

The resources available to the opposing parties are also an important risk factor to be considered. *See Vizcaino I*, 142 F. Supp. 2d at 1303–04. Here, of course, Defendants' resources are vast.[7]

b. Antitrust Class Actions Are Unpredictable

"Antitrust litigation in general, and class action litigation in particular, is unpredictable." *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 475 (S.D.N.Y. 1998). "The 'best' case can be lost and the 'worst' case can be won, and juries may find liability but no damages. None of these risks should be underestimated." *In re Superior Beverage/Glass Container Consol. Pretrial*, 133 F.R.D. 119, 127 (N.D. Ill. 1990). Moreover, there is always the risk that the law may change in

[6] By way of example of the resources available to the Defendants, Latham & Watkins (Toshiba/TSST's counsel) employs over 2,100 attorneys in 33 offices worldwide. *See* http://www.lw.com. Ropes & Gray (HLDS's counsel) employs over 1,100 attorneys at 11 offices worldwide. *See* http://www.ropesgray.com.

[7] For example, Samsung Group, parent of the Samsung Defendants, has $470.2 billion in assets and employs over 425,000 people. *See* http://www.samsung.com/us/aboutsamsung/samsung_group/our_performance.

unfavorable ways.

c. The Risk that Class Certification Will Be Denied

As the state of the present litigation has shown, there is a risk that a class will not be certified. Several large antitrust class actions have been denied certification in recent years. *See, e.g.*, *In re Graphics Processing Units Antitrust Litig.*, 253 F.R.D. 478, 508 (N.D. Cal. 2008) (denying certification of indirect purchaser class and certifying a direct purchaser class that was much smaller than requested); *In re Rail Freight Fuel Surcharge Antitrust Litig.*, 725 F.3d 244, 255 (D.C. Cir. 2013) (vacating District Court's granting of class certification and remanding for further proceedings in light of *Comcast*, 133 S. Ct. 1426); *In re Flash Memory Antitrust Litig.*, No. C 07-0086 SBA, 2010 WL 2332081, at *19 (N.D. Cal. June 9, 2010).

d. The Risk of Not Being Able to Establish Liability

Many large antitrust cases do not make it past summary judgment. *See*, *e.g.*, *In re Online DVD-Rental Antitrust Litig.*, No. 11-18034, 2015 WL 845842, at *17 (9th Cir. Feb. 27, 2015) (affirming district court's granting of summary judgment against plaintiffs); *In re Citric Acid Antitrust Litig.*, 191 F.3d 1090, 1093, 1108 (9th Cir. 1999), *cert. denied sub nom. Gangi Bros. Packing Co. v. Cargill, Inc.*, 529 U.S. 1037 (2000) (Ninth Circuit affirmed grant of summary judgment in favor of Cargill, the only defendant not to settle).

While one defendant and four of its employees pled guilty to charges brought against them by the DOJ, Defendants have consistently argued the conduct underlying those pleas related only to bid-rigging in relation to three large OEMs, and do not evince the market wide conspiracy DPPs allege. *See* Zirpoli Decl. ¶ 18.

Additionally, there is no guarantee that DPPs will be able to obtain evidence of the alleged conspiracy. For example, five of the nine deponents thus far in this case invoked their Fifth Amendment right against self-incrimination and refused to testify, thereby potentially depriving DPPs of usable evidence. Zirpoli Decl. ¶¶ 52–53. Several of these individuals were thought to be ringleaders of the conspiracy. *Id.* They also authored important documents, and their refusal to testify could make it difficult to establish the admissibility of these documents at trial. *Id.*

DPPs must also prove that the alleged conspiracy harmed class members and the amount of

such harm. Both of these issues are complex and difficult (and expensive) to prove, and, again, success is hardly guaranteed.

4. Contingent Nature of the Fee

The Ninth Circuit has confirmed that a fair fee award must include consideration of the contingent nature of the fee, where there is no assurance of attorneys' fees or reimbursement of expenses. *See, e.g.*, *Vizcaino II*, 290 F.3d at 1050; *Online DVD*, 2015 WL 846008, at *14 & n.14. It is well-established that attorneys who take on the risk of a contingency case should be compensated for the risk they take:

> It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for winning contingency cases. *See* Richard Posner, *Economic Analysis of Law* § 21.9, at 534–35 (3d ed. 1986). Contingent fees that may far exceed the market value of the services if rendered on a non-contingent basis are accepted in the legal profession as a legitimate way of assuring competent representation for plaintiffs who could not afford to pay on an hourly basis regardless whether they win or lose.

WPPSS, 19 F.3d at 1299.

The commencement of a class action is no guarantee of success. "[T]he risk of non-payment in complex cases, such as this one, is very real." *In re Veeco Instruments Inc. Sec. Litig.*, No. 05-md-01695(CM), 2007 WL 4115808, at *6 (S.D.N.Y. Nov. 7, 2007).

Class Counsel have received no compensation during the over five-year course of the litigation. They have incurred over $24 million in time and $1.6 million in expenses, and took the chance that they might never be compensated. This factor strongly supports the requested fee.

5. High Quality of Work Performed

Finally, Class Counsel respectfully submit that the work they have performed has been of the highest quality and has been of great benefit to the class. The Court is familiar with the history of this case, having presided over five years of contentious litigation, represented by over fifteen hundred docket entries. The Litigation History in Part II.A provides an overview of the substantial work Class Counsel undertook by describing the various substantive motions, procedural matters, discovery requests and disputes, depositions, and other work necessary to build a case of this magnitude. Further description of the work performed by Class Counsel is set forth in the Zirpoli

Declaration at paragraphs 10 through 59. The amount and quality of the work of Class Counsel also strongly supports the fee they seek.

6. Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee

Finally, a cross-check of the requested fee with Class Counsel's lodestar demonstrates that the proposed fee is more than reasonable, because it amounts to less than half of the value—over $24.8 million—of the time Class Counsel has invested in the case. *See Online DVD*, 2015 WL 846008, at *15; *Vizcaino II*, 290 F.3d at 1048–50.

As summarized in the Saveri Declaration, Class Counsel have spent—through December 31, 2014—56,197.50 hours prosecuting this Action. All of this time was reasonable and necessary for the prosecution of this action. *Online DVD*, 2015 WL 846008, at *9 ("The lodestar method requires 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." (quotation marks omitted)).Class Counsel took meaningful steps to ensure that their work was efficient. Among other things, work was assigned by Saveri & Saveri, Inc. among the various firms to avoid duplication; as required by CMO 1, counsel kept contemporaneous time records and periodically reported their time to Saveri & Saveri, Inc.; and wherever possible, DPPs coordinated with the Indirect Purchaser Plaintiffs to avoid duplication of effort. Zirpoli Decl. ¶¶ 14, 27, 29–30, 33–36, 40, 46, 49, 67.

Moreover, the lodestar materially understates the work performed by class counsel because (1) it does not include time spent by counsel before the appointment of the executive committee, and therefore excludes substantial work by counsel in connection with their pre-filing investigation of the case, the JPML proceeding, and the organization of counsel; and (2) it includes time only through December 31, 2014. Zirpoli Decl. ¶¶ 7, 67.

At the historic hourly rates of class counsel—i.e., those in place at the time the work was performed—this time results in a lodestar of $24,811,762.75. *See* Ex. 4 to Saveri Decl.; *see also* declarations from all other Class Counsel firms filed herewith. The record demonstrates that Class Counsel's hourly rates are reasonable. Each firm's declaration avers that the rates charged are that

firm's usual and customary rates at the time the work was performed. *See* declarations of Class Counsel filed herewith. Furthermore, in connection with one of the largest tasks they undertook, if not the largest—the initial review and coding of the millions of pages of documents produced in the case—Class counsel capped the allowable hourly rate at $350. Zirpoli Decl. ¶¶ 42, 67.

DPPs' fee request of $11,370,000 thus amounts to less than half (46%) of their lodestar. This confirms its reasonableness beyond question. *See Online DVD*, 2015 WL 846008, at *15 ("[W]here, as here, the lodestar amount was *three times* the benchmark, it was not an abuse of discretion for the district court to accept the benchmark using a quick cross-check of class counsel's lodestar summary figures."); *In re Portal Software, Inc. Sec. Litig.*, No. C-03-5138 VRW, 2007 WL 4171201, at *16 (N.D. Cal. Nov. 26, 2007) (fact that fee sought is less than the lodestar suggests fairness of award); *LCD II*, 2013 WL 149692, at *1 (fact that fee sought is less than the lodestar "serves to confirm the reasonableness of the fees requested.").

7. The Reaction of the Settlement Class to Date Supports the Fee Request

Settlement notices were sent to class members in connection with each of the settlements with HLDS, Panasonic, and NEC. All three settlement notices informed class members that "At a future time, Interim Lead Counsel will ask the Court for attorneys' fees not to exceed one-third (33.3%) of this or any future Settlement Fund plus reimbursement of their costs and expenses." *See, e.g.*, Declaration of Markham Sherwood in Support of Final Approval of Class Action Settlement with HLDS (Aug. 29, 2013) (Dkt. No. 986-3), Ex. 1 at p. 4. As noted above, out of over 700,000 class members, including many large and sophisticated businesses, only four objections were received, and only one—from an individual—challenged the percentage of fees that might be sought by Class Counsel.[8] "When a class is comprised of sophisticated business entities that can be

[8] No objections were received from the over 300,000 members of the Panasonic or NEC settlement classes. Two class members sent letters were sent to the Court (*see* Dkt. Nos. 1134, 1278), one in regard to the Panasonic settlement and one in regard to the NEC settlement. One sought exclusion from the settlement, and the other (received three weeks after the deadline to object) objected generally to lawsuits against Japanese companies. *See* Zirpoli Decl. ¶ 84. No objections to the Panasonic or NEC settlements were received other than these two letters. This brief and supporting documentation will also be posted on the website established for the settlements prior to the notice to the class of the instant fee request. *See In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 994–95 (9th Cir. 2010).

expected to oppose any request for attorney fees they find unreasonable, the lack of objections 'indicates the appropriateness of the [fee] request.'" *In re Remeron Direct Purchaser Antitrust Litig.*, No. Civ.03-0085 FSH, 2005 WL 3008808, at *13 n.1 (D.N.J. Nov. 9, 2005) (awarding fee of 33.3% of a $75 million settlement). The reaction of the class to date, therefore, also supports the amount of the fee DPPs seek.

C. Class Counsel Are Entitled to Reimbursement for Their Reasonable Litigation Expenses

Class Counsel also request reimbursement of litigation costs and expenses they incurred on behalf of the class in the amount of $3,281,173.35. Saveri Decl. ¶ 32. 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 West*, 557 F.2d 759, 769 (9th Cir. 1977); *OmniVision*, 559 F. Supp. 2d at 1048 ("Attorneys may recover their reasonable expenses that would typically be billed to paying clients in non-contingency matters."). Reasonable reimbursable litigation expenses include: those for document production, experts and consultants, depositions, translation services, notice, claim administration. *See, e.g.*, 1 Alba Conte, *Attorney Fee Awards* § 2.19 (3d ed. 2004).

Here Class Counsel's reasonable expenses include: (i) document management system and database costs of $412,415.86; (ii) notice and claims administration costs of $192,367.90 (iii) translation services of $28,713.17; (iv) court filing fees and costs of $7,458.17; (v) payments to experts of $2,266,336.54; (vi) federal express costs of $3,746.71; (vii) transcript costs of $16,480.06; (viii) online legal and factual research (e.g., LexisNexis and Westlaw) of $158,727.04; (ix) messenger and delivery costs of $2,960.88; (x) in-house copy charges (capped at 20 cents per page) of $76,800.34; (xi) professional copy charges of $3,492.25; (xii) postage charges of $1,015.40; (xiii) service of process charges of $5,970.23; (xiv) telephone and facsimile charges of $17,603.24; and (xv) travel and meal charges of $87,085.56. Saveri Decl. ¶ 33. These expenses were reasonable and necessary for the prosecution of this action and are customarily approved by courts as proper litigation expenses. *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); *Redding v. Fairman*, 717 F.2d 1105, 1119 (9th Cir. 1983) (same); Conte, *Attorney Fee Awards* § 2.19.

Class Counsel maintained strict control over the Litigation Expenses. Some of the Litigation Expenses were paid out of a litigation fund created by Class Counsel and maintained by Saveri & Saveri (the "Litigation Fund"). Class Counsel collectively contributed $1,265,000.00 to the Litigation Fund for which they seek reimbursement. Saveri Decl. ¶ 30. A description of the payments from the Litigation Fund by category is set forth in Exhibit 5 to the Saveri Declaration. *Id*. In addition, the Court approved the withdrawal of a total of $2,000,000 from the Settlement Fund for use in the prosecution of the litigation, subject to an accounting. *See* Dkt. Nos. 1085, 1336, 1504. Expenses paid using those funds are set forth in Exhibit 6 to the Saveri Declaration. Saveri Decl. ¶ 31.

Accordingly, Class Counsel respectfully request (1) Court approval of the expenses and (2) reimbursement of the $1,687,905.17 that Class Counsel have advanced on behalf of the class and that have not been reimbursed. Saveri Decl. ¶ 29–30, 32.

D. Payments to the Class Representatives Are Appropriate

Courts often approve incentive awards to class representatives for their service to the Class. *Online DVD*, 2015 WL 846008, at *4, *8 (approving incentive awards of $5,000 per class representative and noting that they were "relatively small, well within the usual norms of 'modest compensation' paid to class representatives for services performed in the class action"); *In re Lorazepam & Chlorazepate Antitrust Litig.*, 205 F.R.D. 369, 400 (D.D.C. 2002) (approving incentive awards of $25,000 and $10,000, a total of 0.3% of each class's recovery); *In re Mego Fin. Corp. Sec. Litig*., 213 F.3d 454, 463 (9th Cir. 2000) (affirming $5,000 incentive awards to class representatives). *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 959 (9th Cir. 2009). ("Incentive awards are fairly typical in class action cases."). Incentive awards are intended to 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 private attorneys general. *Rodriguez*, 563 F.3d at 958–59.

DPPs seek awards of $10,000 per Class Representative in the TCAC (for a total of $60,000) and $5,000 to each of the three class representative in the SCAC who were dropped from the TCAC (for a total of $15,000). These modest awards would be well within the amounts Ninth Circuit courts find acceptable. *See, e.g.*, *Online DVD*, 2015 WL 846008, at *8 (approving incentive awards of $5,000, amounting to 0.17% of settlement fund); *Presley v. Carter Hawley Hale Profit Sharing Plan*, No. C9704316SC, 2000 WL 16437, at *2 (N.D. Cal. 2000) (approving $25,000 incentive awards); *In re McKesson HBOC, Inc. ERISA Litig.*, 391 F. Supp. 2d 844, 851 (N.D. Cal. 2005) (approving $5,000 incentive awards); *In re Sorbates Direct Purchaser Antitrust Litig.*, No. 99-1358MMC, 2002 WL 31655191, at *3 (N.D. Cal. Nov. 15, 2002) (approving $7,500 incentive award). In *LCD II*, the Court approved a two-tiered incentive award, giving $5,000 to all eleven class representatives and an additional $10,000 to the four that testified at trial. 2014 WL 149692, at *9.

Here, the class representatives each expended substantial time and effort as named plaintiffs herein. Among other things, they spent time reviewing and responding to multiple sets of document requests and interrogatories, including collecting responsive documents; reviewing briefs and pleadings; and consulting with class counsel regarding litigation strategy, settlement negotiations, and other matters. Zirpoli Decl. ¶¶ 68–80. In addition, the TCAC Class Representatives spent significant time preparing for and being deposed. Zirpoli Decl. ¶ 73–78.

By shouldering the burdens associated with this litigation, each Class Representative has made a significant contribution to the recovery obtained for the class. In light of the benefits conferred by the settlements reached in this case, the important role of the class should be acknowledged with a reasonable payment to compensate them for their time and expenses associated with actively participating in this litigation.

IV. CONCLUSION

For the foregoing reasons, DPPs respectfully request that the Court grant Plaintiffs' Motion for An Award of Attorneys' Fees, Reimbursement of Expenses, and Class Representative Incentive Awards.

Dated: March 16, 2015

/s/ *R. Alexander Saveri*

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EXHIBIT 2

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE OPTICAL DISK DRIVE ANTITRUST LITIGATION	Case No. 3:10-md-02143 RS MDL No. 2143
This Document Relates to: ALL DIRECT PURCHASER ACTIONS	**DECLARATION OF CADIO ZIRPOLI IN SUPPORT OF DIRECT PURCHASER PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND CLASS REPRESENTATIVE INCENTIVE AWARDS** Date: May 14, 2015 Time: 1:30 p.m. Judge: Honorable Richard Seeborg Courtroom: 3, 17th Floor

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I, CADIO ZIRPOLI, declare:

1. I am a partner at Saveri & Saveri, Inc., which the Court has appointed to act as Chairman of the Executive Committee for the Direct Purchaser Plaintiffs ("DPPs") in this action. I have been involved in almost every aspect of this case since its inception. I submit this declaration in support of Direct Purchaser Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Class Representative Incentive Awards. Except as otherwise noted, I make this declaration of my own personal knowledge, and if called upon to do so, could and would testify competently to the facts contained herein.

2. The purpose of this declaration is to summarize the factual and procedural history of this litigation, including, but not limited to, the initial filing and investigation of this action, class certification proceedings, discovery, motion practice, settlement negotiations, and notice.

INTRODUCTION

3. During the course of this litigation, the Executive Committee for the Direct Purchaser Plaintiffs ("Executive Committee") have supervised and directed the work performed by the other class counsel to ensure that the work they have performed has been done as effectively and efficiently as possible. As set forth in Case Management Order No. 1 (Dkt. No. 33) ("CMO No. 1"), the Executive Committee is comprised of the following seven firms: Berman DeValerio; Cotchett Pitre & McCarthy, LLP; Hausfeld LLP; Kaplan Fox & Kilsheimer LLP; Lieff Cabraser Heimann & Bernstein, LLP; Pearson, Simon & Warshaw, LLP; and Saveri & Saveri, Inc. Guido Saveri of Saveri & Saveri, Inc. was appointed Chairman of the Executive Committee ("Chairman"). The Executive Committee as well as the other firms that represent DPPs in this action are collectively referred to herein as "Class Counsel."

4. DPPs have faced significant risk from the inception of this litigation. Plaintiffs have faced the challenge of proving that Defendants participated in a price-fixing conspiracy that spanned six years, from January 1, 2004 until January 1, 2010.

5. Since the transfer of the MDL action to this Court on April 7, 2010, over 1,500 entries have been made to the Case No. 10-md-2143 docket on the CM/ECF system. Upon review of the docket, aside from the peripheral administrative filings and entries unrelated to the class

actions, the vast majority of the docket entries are substantively related to the Direct Purchaser Plaintiff and/or Indirect Purchaser Plaintiff cases ("Class Cases").

6. As a result of these efforts, DPPs have reached three settlements thus far in this case totaling $37,900,000 in cash for the benefit of the Class Members. Unless otherwise noted herein, "Setting Defendants" include: Hitachi-LG Data Storage, Inc. and Hitachi-LG Data Storage Korea, Inc.; LG Electronics, Inc. and LG Electronics USA ("LG"); and Hitachi, Ltd. ("Hitachi") (collectively "HLDS"); Panasonic Corporation and Panasonic Corporation of North America (collectively "Panasonic"); and NEC Corporation ("NEC"). The settlements amounts are: $26,000,000 (HLDS), $5,750,000 (Panasonic), and $6,000,000, plus $150,000 in notice costs (NEC) (collectively, the $37,900,000 represents the "Settlement Fund").

7. For their years of as-yet uncompensated hard work on behalf of the Class Members, including over 56,197.5 hours and a total lodestar of $24,811,762.75, Class Counsel seek an award of attorneys' fees in the amount of 30% of the Settlement Fund, or $11,370,000. This requested fee would amount to approximately 46% of Class Counsel's lodestar. This number is even further reduced by the fact that Class Counsel have not submitted time from October 2009 until the appointment of the Executive Committee in March of 2010 (6 months). In addition, Class Counsel have undertaken significant work since December 31, 2014, the last date for time submitted in connection with this request for attorneys' fees.

8. DPPs are also seeking incentive awards for the Class Representatives for their service in representing the Class. DPPs are seeking an award of $5,000 for each of the three class plaintiffs named only in the Second Consolidated Amended Complaint,[1] and $10,000 for the six class plaintiffs named in the Third Consolidated Amended Complaint.[2] The work performed by the court-appointed Class Representatives for whom incentive awards are sought is described later in this Declaration.

[1] Univision-Crimson Holding, Inc.; Warren S. Herman; and The Stereo Shop.

[2] JLK Systems Group, Inc. and Jeff Kozik; Meijer, Inc. and Meijer Distribution, Inc.; Paul Nordine; Seneca Data Distributors, Inc.; Gregory Starrett; and Ashley Tremblay.

9. The $37.9 million in settlements recovered for the benefit of the Settlement Classes is an excellent result. The relevant percentages of sales previously submitted to the Court in connection with the respective motions for preliminary and final approval of the settlements with HLDS, Panasonic and NEC are as follows (after accounting for opt-outs):

- The $26,000,000 settlement with HLDS represents approximately 3.42% of sales of ODDs sold by HLDS that remain in the case during the class period alleged in the SCAC.
- The $5,750,000 settlement with Panasonic represents approximately 3.833% of Panasonic's sales of ODDs left in the TCAC class.
- The $6,000,000 plus $150,000 in notice costs with represents approximately 3.1% of NEC's sales of ODDs left in the TCAC class[3].

PLEADING STAGE

A. Pre-Complaint Investigation and the JPML

10. Before the initial complaints were filed, DPPs began investigating the ODD industry to determine what claims, if any, could be brought against one or more of the Defendants. The background investigation included an analysis of industry documents, review of statements by company representatives, review of the industry in trade press, domestic and foreign newspapers as well as Defendants' public filings. Additionally, DPPs consulted with experts regarding the structural analysis of the ODD industry and its pricing patterns. This initial investigation and analysis continued after the initial complaints were filed.

11. The first Direct Purchaser Class Action Complaint was filed on October 27, 2009 in the Northern District of California and assigned to the Honorable Vaughn R. Walker (Ret.). Thereafter, eleven additional direct purchaser class action cases were filed; ten in the Northern District of California and one in the Central District of California.

[3] For each of these percentage of sales calculations, only the value of the ODD in a finished product is included – i.e., the value of the other components of a laptop computer, for example, is not counted.

12. For many of the named foreign Defendants, DPPs were required to effectuate service of process through the Hague Convention. This was a lengthy, time consuming and in certain instances expensive endeavor requiring the appointment of a special international process server.

13. Class Counsel were instrumental in arguing before the Judicial Panel on Multidistrict Litigation ("JPML") for the coordination and transfer to the Northern District of California of the ODD direct purchaser actions. On April 2, 2010, pursuant to 28 U.S.C. § 1407, the JPML issued an Order granting Direct Purchaser Plaintiffs' Motion for Transfer and Consolidation of the related actions to the Northern District of California, and assigned them to the Honorable Vaughn R. Walker (Ret.) for consolidated pretrial proceedings. *In re Optical Disk Drive Prods. Antitrust Litig.*, 701 F. Supp. 2d 1382 (J.P.M.L. 2010).

B. Negotiation and Appointment of Leadership Structure

14. In March 2010, prior to transfer of the *In re Optical Disk Drive Products Antitrust Litigation* to the Northern District of California there were twelve direct purchaser complaints on file. Class Counsel were able to organize themselves and come to agreement on a leadership structure. On April 29, 2010, DPPs submitted to the Court a proposed leadership structure that was unanimously supported by all DPPs and unopposed by the Defendants. (Dkt. No. 5). On May 7, 2010 as set forth in CMO No. 1, the Court endorsed DPPs' leadership proposal, and appointed the Executive Committee. As set forth in CMO No. 1, the Chairman of the Executive Committee is tasked with the responsibility of overseeing the litigation, including any subsequent related or tag-along cases. Among other things, the Chairman is required to make sure the DPP action is prosecuted in an effective and efficient manner, including the periodic collection of time and expenses from Class Counsel, coordinating the efficient work of the Executive Committee on all aspects of the litigation, and coordinating and making assignments regarding briefing, argument of motions, and discovery.

15. On May 18, 2010, the Court issued an order granting a motion by the U.S. Department of Justice ("DOJ") to intervene for the purpose of seeking to limit discovery in the civil actions. (Dkt. No. 62). On June 4, 2010, the Court appointed Hagens, Berman, Sobol, Shapiro

LLP as interim lead counsel for the indirect purchaser plaintiff class ("IPP Counsel"). (Dkt. No. 96). On October 7, 2010, the *In re Optical Disk Drive Products Antitrust Litigation*, MDL 2143, was reassigned to the Honorable Richard Seeborg. (Dkt. No. 245).

C. Filing of the Three Amended Complaints and Opposing Two Rounds of Motions to Dismiss

16. Following the appointment of the Executive Committee, the Court ordered Class Counsel and IPP Counsel to file consolidated complaints on behalf of their respective classes. DPPs spent a significant amount of time and resources researching the ODD industry, the products at issue in the case, and the historical and structural analysis of the market. DPPs engaged economists to research the financial and statistical sales data to support the allegations of collusion alleged in the Consolidated Direct Purchaser Class Action Complaint ("CAC").

17. On August 26, 2010, DPPs filed their first CAC. On October 12, 2010, certain Defendants filed joint and individual motions to dismiss the Direct Purchaser Plaintiffs' CAC (Dkt. Nos. 251, 257, 258, 262, and 263), and briefing on these motions was completed on December 10, 2010. On November 11, 2010, Defendants NEC Corporation, BenQ Corporation, and BenQ America Corp. filed additional motions to dismiss the Direct Purchaser Plaintiffs' Consolidated Amended Complaint. (Dkt. No. 313 and 314.) Briefing on these motions was completed on January 6, 2011 (NEC Corporation) and January 12, 2011 (BenQ Corp. and BenQ America Corp.). On December 17, 2010 and January 12, 2011, Defendant Quanta Storage Inc. filed a motion to dismiss the Direct Purchaser Plaintiffs' Consolidated Amended Complaint (Dkt. No. 325.) Briefing on this motion was completed on January 20, 2011. Following briefing and a hearing on the joint and individual motions to dismiss, on August 3, 2011, the Court dismissed the CAC with leave to amend. (Dkt. No. 393).

18. Following the dismissal of the CAC, DPPs drafted a more comprehensive Second Consolidated Direct Purchaser Class Action Complaint ("SCAC") that utilized information and documentary evidence provided by the DOJ's amnesty applicant, along with industry wide historical pricing and sales data from third parties. The SCAC was filed on September 23, 2011. In October 2011, again not a single defendant answered the SCAC, instead the parties embarked on a

second round of joint and individual motions to dismiss the SCAC (Dkt. Nos. 434, 436, 441, 446, 449, 458, 460, and 463). All Defendants except for the Philips/Lite-On/PLDS group (amnesty applicant) joined the joint motion to dismiss, including HLDS who on November 8, 2011 plead guilty to violating the Sherman Act. (Dkt. No. 460). The PLDS entities reached agreement with DPPs that they did not need to respond to the SCAC until after the Court had ruled on the motions to dismiss. DPPs conducted exhaustive legal research regarding the class's claims and defenses thereto in responding to each of the joint and individual motions to dismiss. The individual and joint motions to dismiss the SCAC were denied on April 19, 2012. (Dkt. No. 531). Defendants filed their individual Answers to the SCAC between June 4 and August 17, 2012.

19. As the case progressed and the investigation uncovered new facts, in March of 2013 DPPs sought leave of Court and were permitted to file a Third Consolidated Direct Purchaser Class Action Complaint ("TCAC"). (Dkt. No. 782) DPPs made five changes from the SCAC to the TCAC. *First*, the TCAC modified the proposed litigation class definition to eliminate references to "ODD Devices" and to clarify that the litigation class is comprised of those who bought stand-alone external or internal ODDs, or ODDs incorporated only into desktop or laptop computers sold by Defendants, their affiliates, or their subsidiaries. *Second*, the TCAC dropped Sony Computer Entertainment America, Inc., as a named defendant, because that entity sold only game consoles which were no longer products within the definition of the litigation class. *Third*, the TCAC eliminated references to ODD Devices and a few paragraphs concerning them in the SCAC. *Fourth*, three named plaintiffs that purchased ODD Devices—Warren Herman, The Stereo Shop, and the related companies Central New York Univision Video Systems, Inc., Crimson Tech, Inc., and Univision Crimson Holding, Inc. were withdrawn as proposed class representatives. *Finally*, the TCAC added four named plaintiffs: the related companies Meijer, Inc. and Meijer Distribution, Inc., Ashley Tremblay, Gregory Starrett, and Paul Nordine.

20. The parties negotiated a stipulation and proposed order which deemed Defendants' previously filed answers to the DPPs' SCAC as sufficient for purposes of responding to the DPPs' TCAC, which the Court signed into Order on April 26, 2013. (Dkt. No. 851).

D. Pioneer Complaint

21. During the course of this litigation DPPs developed evidence with respect to the conspiratorial conduct of the Pioneer entities, and on August 18, 2014, filed a complaint against the Pioneer entities (*JLK Systems Group, Inc., et al. v. Pioneer Corporation., et al.*, Case No. 3:14-cv-03748-LB). This action was related to the *In re Optical Disk Drive Action* on August 28, 2014. The Pioneer Defendants answered DPPs' complaint on March 2, 2015. (Dkt. No. 1533).

CLASS CERTIFICATION PROCEEDINGS

A. The Direct Purchasers Plaintiffs Moved for Class Certification and Petitioned for an Appeal Pursuant to Rule 23(f)

22. On May 29, 2013, the DPPs filed their motion for class certification (Dkt. No. 878) with an accompanying Expert Report of Gary L. French Ph.D. Regarding Class Certification. DPPs' moving papers, accompanying declarations, proposed order, and sealing motion comprised in excess of 3,000 pages. DPPs' motion included 205 exhibits, most of which were identified through extensive searches of DPPs' electronic database of Defendants' documents, many of which required certified translations. Defendants filed their Opposition to Class Certification and Motion to Strike Report of Direct Purchaser Plaintiffs' Expert Dr. Gary French on October 21, 2013, which comprised hundreds of pages and exhibits. (Dkt. Nos. 1027, 1028, 1030, 1031, 1037, 1038, 1039, 1041.) On February 18, 2014, Direct Purchaser Plaintiffs filed their Reply Brief In Support of Class Certification (Dkt. No. 1127) with an accompanying Expert Reply Report (Dkt. No. 1128), and Opposition to Motion to Strike (Dkt. No. 1130). Class Counsel were able to obtain declarations from both HP and Dell in support of their reply brief in support of class certification.

23. DPPs defended Dr. French's deposition and took the deposition of Defendants' expert Dr. Ordover.

24. DPPs spent a significant amount of time and resources obtaining transactional data from each of the Defendants and third parties. Additionally, DPPs expended great resources searching Plaintiffs' document database for documents supporting the motion for class certification.

25. On May 16, 2014, the Court held a hearing on the Motions for Class Certification and Motions to Strike, at which DPPs presented oral argument.

26. On October 3, 2014, the Court denied Direct Purchaser Plaintiffs' and Indirect Purchaser Plaintiffs' Motions for Class Certification (Dkt. No. 1444). On October 24, 2014, Direct and Indirect Purchaser Plaintiffs separately petitioned for permission to appeal the Court's Order, pursuant to Rule 23(f) of the Federal Rules of Civil Procedure. On January 14, 2015, the United States Court of Appeals for the Ninth Circuit denied both Direct and Indirect Purchaser Plaintiffs' petitions for permission to appeal the district court's October 3, 2014 order denying class action certification.

DISCOVERY

27. From the inception of this litigation, DPPs—in coordination with IPPs—have had to fight for nearly every stitch of discovery that has been produced. At the first case management conference, the DOJ informed the Court that they intended to intervene for the purpose of staying discovery in the civil actions. On May 20, 2010, the DOJ filed a motion for a limited stay of discovery (Dkt. No. 67) and DPPs filed a motion in opposition (Dkt. No. 90). On June 24, 2010 the Court heard argument from the parties on the DOJ's motion to stay discovery, and denied the DOJ's motion (Dkt. No. 119).

28. DPPs served the first of several sets of interrogatories and requests for production of documents on all Defendants on September 1, 2010. After multiple rounds of objections and meet and confers, on March 11, 2011, DPPs and IPPs filed a joint motion to compel to obtain documents produced to the DOJ in connection with its criminal investigation. (Dkt. No. 370). On April 7, 2011, Judge Spero granted Plaintiffs' joint motion to compel, and ordered the production of the DOJ material in sixty days, nearly ten months after the DPPs served their initial discovery requests on Defendants. (Dkt. No. 379). In June 2011, Defendants produced the documents previously produced to the DOJ. The DOJ production consisted of millions of pages of documents, much of which were in foreign languages.

29. Following the denial of the motions to dismiss the SCAC, DPPs and IPPs coordinated their efforts and engaged in months of meet and confers to negotiate a discovery plan

that included an ESI protocol, custodians, search terms, a deposition protocol, and other aspects of permissible discovery. In an attempt to move the discovery process along in a more efficient manner, DPPs and IPPs proposed document custodians to each Defendant in their August 13, 2012 Discovery Plan based on their review of the DOJ documents.

30. Pursuant to the Court's July 17, 2012 Case Management Order (Dkt. No 606), and as part of their proposed Discovery Plan, DPPs and IPPs proposed an ESI search term protocol for any Defendant who intended to use search terms to collect documents. In response, Defendants objected: (i) to reviewing documents before reaching a final agreement on all search terms; (ii) to sharing search metrics (i.e., the number of hits, the number of documents searched); (iii) to a sampling search term results; and (iv) to adding search terms at a later date (with or without good cause). The parties met and conferred about this dispute on multiple occasions in the following weeks, but were unable to resolve their disagreements, and on September 17, 2012, Plaintiffs moved for an order adopting their proposed ESI search term protocol (Dkt. No. 660). The Court addressed this issue at the October 9, 2012 discovery hearing, and adopted Plaintiffs' proposed ESI Search Term Protocol (Dkt. No. 660-1) with two modifications (Dkt. No. 708).

31. Following the adoption of a Discovery Plan and ESI protocol, the parties spent several months meeting and conferring over custodians, search terms, deposition protocols, production of certain transactional data, specific class certification documents, supplemental interrogatory responses, and narrative discovery responses.

A. Discovery Disputes/Motions to Compel

32. As discussed above, Class Counsel were in constant communication with Defendants' counsel, attempting to negotiate and reach agreement on discovery disputes without involving the Court. However, there were several occasions where the parties could not reach agreement. In those instances, the parties briefed the discovery disputes before Magistrate Judge Spero.

33. Plaintiffs and the HLDS Defendants were unable to reach agreement on appropriate document custodians, and on September 4, 2012, DPPs and IPPs jointly submitted a motion to compel the HLDS Defendants to search the records of twelve additional custodians (Dkt. No. 637).

On September 7, 2012, the Court issued an order granting Plaintiffs' motion to compel nine additional custodians. (Dkt. No. 641).

34. The parties were unable to reach agreement on a proposed protocol for the location of depositions of witnesses who reside in foreign countries, despite meeting and conferring on the issue several times. On September 17, 2012, DPPs and IPPs submitted a joint letter brief to Judge Spero regarding their dispute concerning the presumptive location for depositions of witnesses residing in foreign countries (Dkt. No. 647). During the October 9, 2012 discovery hearing, the Court ordered the parties to continue to meet and confer on the issue, however the parties were again unable to reach a stipulation, and on October 22, 2012 submitted to the Court a second joint letter presenting the final position of each party (Dkt. No. 705). On October 24, 2012, Judge Spero issued an Order re location of Depositions (Dkt. No. 707).

35. On September 17, 2012, DPPs and IPPs jointly moved to compel the Sony Defendants to collect and produce documents from the files of Tomohiko Nagashima. (Dkt. No. 668). The Court granted Plaintiffs' motion to compel with respect to expense reports and telephone bills. (Dkt. No. 708).

36. During the initial phase of discovery, Defendants eventually agreed to search and produce over one hundred employee files comprising over 2,000 gigabytes, millions of documents, totaling more than 16 million pages. The documentary evidence was thoroughly analyzed, coded, and organized by Class Counsel in a web-based, electronic document review platform for use in drafting briefs, preparing for depositions, responding to discovery, conducting settlement negotiations, and drafting DPPs' motion for class certification. The web-based database allowed Class Counsel to run targeted searches in both English and foreign languages and prioritize Defendants' documents by custodian and topic. Because most Defendants refused to voluntarily provide the document translations in their possession, DPPs in coordination with IPPs were forced to spend considerable time, effort, and expense to locate, prioritize, and translate certain foreign language documents that evidenced the conspiracy alleged.

37. In order to manage this large volume of documents in English, Chinese, Japanese and Korean, DPPs needed an efficient and cost effective way of managing, organizing and coding

the documents in order to respond to motions to dismiss, discovery, prepare for class certification, summary judgment and potentially trial.

38. Knowing that document management services can be one of the most significant costs in a large case, Class Counsel obtained bids from document management services that have been used in other large antitrust cases. After consultation with industry experts and in consultation with the Executive Committee, Class Counsel decided to purchase licenses for a web-based, electronic data and transcript review platform, and internally host the document review on servers at the Saveri office saving the class potentially hundreds of thousands of dollars.

39. Class Counsel worked with an outside IT specialist to load, manage, and maintain the numerous document productions on servers located at the Saveri office. This saved the Class the expense of hosting the over sixteen million pages of documents on a document management service's servers, which would have been very expensive. By hosting the documents on the Saveri Firm's servers, the only expense to the class was the cost of loading documents and internally maintaining the database. The IT specialist, in conjunction with Class Counsel, has been able to handle the several layers of complexity involved in each of the Defendant's ESI.

40. DPPs and IPPs set up an ESI protocol that established a uniform format for the production of ESI which enabled DPPs to run searches through the documents on the electronic database that was ultimately established. The agreed upon metadata that was required from each defendant in their productions allowed DPPs to run complex searches in both English and the various Asian languages. The review platform that DPPs have utilized for the past several years to host and review the large volume of documents has proven successful to conduct careful and targeted analysis of the discovery produced to date.

41. Members of the Executive Committee met to discuss and plan the document review process. Based on years of experience and past antitrust electronic cases, Class Counsel set up a coding system to identify the most probative documents relating to all facets of the litigation. Class Counsel then utilized junior associates and paralegals to review the documents and code them by topic.

42. The Executive Committee made the decision that no document reviewer could bill at a rate higher than $350 per hour for initial document review. This included foreign language reviewers who typically bill out at a higher rate.

43. The Executive Committee assigned attorneys from many of the Class Counsel firms to assist in the document review process. Each reviewer was provided with a detailed memorandum regarding the theory of the case, the existing facts and evidence supporting that theory, and materials required to assist them in the document review. The attorneys were then trained on the analytic software and how to manage the documents that were reviewed and coded.

44. During the initial discovery phase through class certification, the document review required the daily commitment of at least one attorney at the Saveri office who handled the day to day adjustments to the document review platform, supervision of the review platform, work assignments, allocation of staffing, searching and assigning documents and conducting quality control. Since the document review platform was being managed on servers at the Saveri office, it also involved significant communication with the IT specialist to manage and load the document productions as they were produced on a rolling basis to correct any load or ESI issues with the various defendant productions.

45. Although the ESI protocols were negotiated and agreed to by all parties, Class Counsel experienced numerous issues relating to the loading of data into the database. While many of the issues were technical in nature, they required extensive meet and confers with Defendants and consultation with the IT specialist to make sure the data could be properly loaded into the database.

46. The process of reviewing foreign language documents has proven to be time consuming and expensive. The foreign language documents were analyzed by lawyers and paralegals fluent in the respective foreign languages, who then had to determine which documents were sufficiently relevant to the litigation to require English translations, and in certain cases, certified translations. In order to save the Class money and for efficiency's sake, DPPs and IPPs coordinated their efforts with respect to the review, translation and cost of many of the foreign language documents. Many of these documents required certified translations and have proven to

be some of the most important documents introduced at depositions, in responding to motions to dismiss, and at class certification. Class Counsel have expended significant financial resources to third-party translation agencies for foreign language document review and certified copies of translations.

47. Additionally, DPPs, in coordination with IPPs, obtained and reviewed thousands of pages of non-party discovery and obtained a significant volume of transactional data that was provided to the experts.

48. DPPs have responded to several sets of interrogatories and requests for production of documents served by Defendants. Class Counsel and the Class Representatives have spent significant time locating responsive information. On several occasions, DPPs were required to meet and confer with defense counsel and, where appropriate, provide Defendants with supplemental responses and document productions. In particular, DPPs spent a significant amount of time and resources responding to contention interrogatories.

49. In August 2012, DPPs and IPPs jointly served a detailed Rule 30(b)(6) deposition notice on each Defendant, seeking information critical to class certification, including topics related to corporate structure and organization, manufacturing and production, pricing, costs and profits, and each Defendant's relationship with other entities (such as the investors in joint ventures). To facilitate efficient and timely responses, the parties negotiated and reached agreement that each Defendant would provide a narrative response to the Rule 30(b)(6) deposition notice (Dkt. No. 715), and agreed upon a production schedule that was confirmed by Judge Spero (Dkt. No. 730). All Defendants provided narrative responses on December 31, 2012, with the exception on the Sony Defendants (provided responses on January 15, 2013) and the LG Defendants (provided responses on January 31, 2013). Defendants' responses covered 26 topics and totaled over 1,100 pages.

B. Depositions Taken and Defended

50. Seventeen depositions have been taken to date related to the Direct Purchaser Action, of which three took place in San Francisco, eight elsewhere across the country, and six outside of the United States. Nine of these depositions were of Defendants' witnesses, six were of

the Direct Purchaser Class Representatives, one was of Defendants' expert, and one of Direct Purchaser Plaintiffs' expert. Class Counsel either took the lead role, assisted in the preparation of, attended, or defended, each of these depositions.

51. Class Counsel spent significant time preparing and defending each of the Class Representatives named in the TCAC for their depositions. A chart of the class representative depositions, dates and locations is set forth below:

Date	Direct Purchaser Class Representative	Witness	Location	Exhibits Marked
6/12/2013	JLK Systems	Jeff Kozik	Philadelphia, PA	1-9
7/25/2013	Meijer and Meijer Distribution, Inc.	David Demartra	Grand Rapids, MI	1-12
9/6/2013	Paul C. Nordine	Paul C. Nordine	Chicago, IL	1-4
6/6/2013	Seneca Data Distributors	Stephen Maser	Syracuse, NY	n/a
		James Petrie	Syracuse, NY	1-6
8/28/2013	Gregory Starrett	Gregory Starrett	Charlotte, NC	1-4
8/28/2013	Ashley Tremblay	Ashley Tremblay	Seattle, WA	1-8

52. In addition to preparing for and defending the depositions of the six Class Representatives, Class Counsel participated in the depositions of five sets of Defendants' employees and former employees between April 2013 and November 2013. Of the nine Defendant witnesses deposed, four of the depositions spanned multiple days and required the assistance of a translator, and the remaining five deponents asserted their Fifth Amendment right against self-incrimination and refused to answer Plaintiffs' questions. The depositions have yielded hundreds of deposition exhibits to date, and are summarized in the following chart:

Defendant Group	Date(s)	Exhibits Marked	Location
HLDS	April 18, 2013	1-14	Berkeley, California
	April 19, 2013	15-33	
SONY	July 10, 2013	34-44	Hong Kong
	July 11, 2013	45-62	
HLDS	July 21, 2013	63-71	San Francisco
	July 22, 2013	72-93	
	July 23, 2013	94-119	
	July 24, 2013	120-149	
PLDS	July 31, 2013	150-176	San Francisco
	August 1, 2013	177-213	
	August 2, 2013	214-258	
TSSTK	October 14, 2013	266-302	Grand Hyatt (Seoul, South Korea)
TSSTK	October 16, 2013	303-355	Grand Hyatt (Seoul, South Korea)
QSI	November 18, 2013	356-432	Grand Hyatt (Taipei, Taiwan)
QSI	November 20, 2013	433	Grand Hyatt (Taipei, Taiwan)
QSI	November 21, 2013	434-443	Grand Hyatt (Taipei, Taiwan)

53. The TSSTK and QSI deponents thus far in this case have refused to testify at deposition and invoked their Fifth Amendment right against self-incrimination. The silence of these witnesses created further problems for DPPs in establishing liability for their case. Because many of the best documents found by DPPs were authored by these individuals, their refusal to testify made it potentially difficult to authenticate these documents.

C. Proffer

54. Members of the Executive Committee have attended proffers by the Antitrust Criminal Penalty Enhancement and Reform Act ("ACPERA") candidate where they set forth their involvement in the alleged ODD conspiracy and highlighted and explained relevant documents.

D. Subpoena of DOJ Tape Recordings

55. On July 11, 2014, DPPs and IPPs issued a subpoena to the DOJ Antitrust Division seeking production of FBI recordings, and verbatim transcriptions thereof, among and between Defendants in this litigation. After meeting and conferring with the DOJ, DPPs and IPPs reached an agreement and negotiated a draft stipulated proposed protective order regarding production of

the tapes. On September 3, 2014, DPPs and IPPs jointly filed the stipulated proposed protective order. Defendant TSST-Korea and interested party "John Doe 1" objected to production of the tapes. After extensive motion practice, their objections were overruled by this Court. On December 22, 2014, John Doe 1 filed a notice of appeal and an emergency motion for an injunction pending appeal. In addition, the parties have met and conferred further regarding a revised protective order for the future production of the tapes and submitted their proposed protective orders to Judge Spero.

SETTLEMENT NEGOTIATIONS

A. Protracted Settlement Negotiations with Three Defendant Groups

56. Starting in March of 2010, DPPs began preliminary settlement discussions with certain Defendants with the assistance of a mediator. These sessions did not result in a settlement. In late 2012, DPPs and counsel for LG Electronics, Inc., and LG Electronics USA, Inc. began to discuss the possibility of settling the case. After several settlement discussions spanning the course of several months over the telephone and written correspondence, the parties met in person along with counsel for Defendants HLDS and Hitachi, Ltd. After lengthy and protracted negotiations, including the review of industry materials, documents produced to the DOJ, and transactional data, a settlement was reached with HLDS that included the dismissal of LG and Hitachi for $26,000,000. The settlement reached was for dismissal of the claims asserted in the SCAC for the period of January 1, 2004 until December 31, 2011. This amount represented approximately 3.42% of HLDS' sales of ODDs alleged in the SCAC (after accounting for opt-outs).

57. Defendants filed a motion requesting the Court deny or defer granting preliminary approval of the HLDS settlement until after a hearing on class certification of the litigated class. DPPs filed a reply in support of preliminary approval arguing that the Non-Settling Defendants lacked standing. The Court agreed with DPPs, and preliminarily and finally approved the HLDS settlement on September 23, 2013.

58. During the course of several months in early 2013, DPPs and counsel for Panasonic negotiated the terms of a settlement releasing the claims in the TCAC. The negotiations were informed by documents that had been produced to the DOJ, as well as from the custodial

productions, industry material, and transactional data. On August 21, 2013, DPPs settled with Panasonic for $5,750,000 for a release of claims asserted in the TCAC. The $5,750,000 settlement amount represents approximately 3.833% of Panasonic's sales of ODDs left in the case after opt-outs. The Court finally approved the Panasonic settlement on May 15, 2014.

Beginning in the spring of 2013, DPPs began negotiating the terms of a settlement with counsel for NEC. Similar to the previous two settlement negotiations, negotiations were informed by documents produced to the DOJ and from the custodial productions, industry material and transactional data in the settlement discussions. On February 24, 2014, DPPs settled with NEC for the claims in the TCAC for $6,000,000 plus $150,000 in notice costs. The $6,150,000 represents approximately 3.1% of NEC's ODD sales after accounting for opt-outs. The Court finally approved the NEC settlement on August 14, 2014.

59. Class Counsel's efforts during the course of each of the settlement negotiations included a detailed analysis of the evidence against each Defendant, damages computations and each of Defendants' potential exposure. In connection with each of the settlements, Class Counsel, documented the settlements, briefed motions for preliminary and final approval, and worked with the settlement administrator to provide notice to the classes.

RISKS OF THE LITIGATION

60. The skill and quality of legal counsel also support the requested fee award. The Executive Committee and members of Class Counsel are among the nation's most experienced and skilled practitioners in the antitrust litigation field, and these firms have successfully litigated these types of cases on behalf of direct purchasers of price-fixed products throughout the country—including within this Circuit.[4] Highly skilled counsel was required to successfully represent the settlement classes and obtain such a favorable recovery due to the caliber of opposing counsel and the complexity of the issues in this case.

[4] *See, e.g.*, *DRAM*, MDL No. 1482; *SRAM*, MDL No. 1819; *LCD*, MDL No. 1827; *CRT*, MDL No. 1917.

A. High Caliber of Opposing Counsel

61. DPPs were opposed by attorneys from some of the largest firms in the country with near limitless resources at their disposal.[5] By way of example of the resources available to the Defendants: Latham & Watkins (counsel for Toshiba/TSST) employs over 2,100 attorneys in 33 offices worldwide. *See* http://www.lw.com. Ropes & Gray (counsel for HLDS) employs over 1,100 attorneys at 11 offices worldwide. *See* http://www.ropesgray.com.

B. Complexity and Difficulty of Issues

62. This was a complex case which required Class Counsel to confront many novel and/or difficult legal and factual issues. Antitrust price-fixing conspiracy cases are notoriously complex and difficult to litigate. Here, not only did Class Counsel effectively manage the logistics of litigating such a complex case, with more than 36 plaintiffs' firms, scores of able defense counsel, and 13 Defendant groups (both foreign and domestic), but as described in detail below, they successfully tackled many difficult legal and factual issues presented by this case.

C. Defendants Had Tremendous Resources

63. The resources available to the opposing parties are also an important risk factor to be considered. The enormity of the Defendants' resources is apparent from their publicly available financial disclosures and the breadth of their business operations. As an example, Samsung Group, parent of the Samsung Defendants, has $470.2 billion in assets, and employs over 425,000 people. *See* http://www.samsung.com/us/aboutsamsung/samsung_group/our_performance.

D. The Inherent Risk of Antitrust Class Actions

64. In reviewing Defendants' vigorous defenses, it was apparent that Class Counsel took on great risk in prosecuting this large and complex antitrust class action. As an antitrust case with foreign Defendants, and both components and finished products, this case carried more risks than non-antitrust cases. Additionally, there is a changing landscape with respect to both antitrust and class action law. Several significant opinions from the United States Supreme Court and the

[5] Firms representing Defendants include: Latham & Watkins LLP; Ropes & Gray LLP; Wintson & Strawn LLP; Baker Botts LLP; Boies Schiller & Flexner LLP; Dickstein Shapiro LLP; Jones Day; O'Melveny & Myers LLP; and Drinker Biddle & Reath LLP.

Ninth Circuit regarding antitrust class actions were issued during the pendency of this litigation. *See, e.g., Comcast Corp. v. Behrend*, 133 S. Ct. 1426 (2013).

E. The Risk of Not Being Able to Establish Liability

1. DOJ Investigation and Indictments

65. While this litigation received an initial boost from the DOJ's announcement of a criminal investigation of the ODD industry, the DOJ's presence soon created an additional risk for Plaintiffs. The indictments returned by the DOJ became an obstacle that Class Counsel had to overcome throughout this litigation. While Defendant HLDS and four of its employees pled guilty to charges brought against them by the DOJ, those guilty pleas only covered Defendants' conduct with respect to three large OEMs and not with respect to any other ODD purchasers. Each of the Direct Purchaser Complaints alleged a broader conspiracy for a larger class period than what was included in the guilty pleas. Defendants consistently argued, both as to liability and damages, that any action taken by the HLDS Defendants had no connection to the Class as a whole. Class Counsel had to contend with this argument on the motions to dismiss, at class certification, and during settlement negotiations.

2. Invocation of Fifth Amendment by Key Witnesses

66. Another barrier to establishing liability was that five of the nine Defendant witnesses deposed thus far in this case refused to testify at deposition and invoked their Fifth Amendment right against self-incrimination. Several of these individuals were thought to be ringleaders of the conspiracy and faced individual indictments for their participation in the conspiracy. These individuals held promise for DPPs to uncover the important facts of the conspiracy. The silence of these witnesses created further problems for DPPs in establishing liability for their case.

CLASS COUNSEL MADE EFFORTS TO ENSURE THE LODESTAR FIGURE IS ACCURATE

67. Class Counsel have taken steps to insure that the lodestar figure is not improperly inflated by: (1) capping the hourly rate for initial document review (even of foreign-language documents) at $350 per hour; (2) not including hours worked on this case during the sixth months

that took place prior to the appointment of the Executive Committee; (3) managing the case efficiently to ensure that tasks were not unnecessarily duplicated by Class Counsel firms; (4) coordinating with IPP Counsel whenever possible to reduce the work required to prosecute this action; (5) keeping and collecting contemporaneous records of hours worked pursuant to CMO No. 1; and (6) including hours only through December 31, 2014, despite the significant amount of work that has been done since then.

INCENTIVE AWARDS FOR CLASS REPRESENTATIVES

68. The Class Representatives in this action devoted substantial amounts of time and resources to assisting in the prosecution of this matter. Their help was essential to the success of this case. None of the class representatives conditioned, or were asked to condition, their participation in the litigation upon receiving an incentive award. None of the class representatives conditioned, or were asked to condition, their approval of any of the settlements upon the promise or expectation that they would receive any benefit greater than the rest of the class members.

69. DPPs are seeking an award of $5,000 for each of the three class plaintiffs named only in the SCAC, Univision-Crimson Holding, Inc.; Warren S. Herman; and The Stereo Shop, and $10,000 for the six class plaintiffs named in the Third Consolidated Amended Complaint ("TCAC"), JLK Systems Group, Inc. and Jeff Kozik; Meijer, Inc. and Meijer Distribution, Inc.; Paul Nordine; Seneca Data Distributors, Inc.; Gregory Starrett; and Ashley T. Walton (née Tremblay).

70. Warren S. Herman conferred with his counsel concerning the factual basis for the ODD case; he reviewed the SCAC to which he became a party and provided information for inclusion therein; he produced documents and other information relating to his purchases and fitness as a class representative and conferred with his counsel regarding proposed settlements, responses to interrogatories and litigation developments on an ongoing basis.

71. Terry Kongelf, the sole proprietor of The Stereo Shop, spent a significant amount of time reviewing pleadings, working with and assisting Class Counsel, following the progress of the case, reviewing and responding to discovery requests, reviewing transactional data relevant to The Stereo Shop's ODD purchases, gathering and producing documents, requesting copies of ODD-

purchase documents from third parties, and participating in discussions with Class Counsel regarding settlement and case strategy.

72. Univision-Crimson Holding, Inc. ("Univision") reviewed and approved the initial complaints, major motions, and otherwise kept abreast of litigation developments. Univision also searched and collected relevant documents in anticipation of formal discovery responses, and reviewed and approved the first settlement agreement with HLDS.

73. Jeff Kozik ("Kozik") is the sole proprietor of JLK Systems Group, Inc. ("JLK") in Moscow, Pennsylvania. Kozik took time away from his business to meet with, and discuss, the merits of the case with class counsel, including reviewing and approving the consolidated complaints; the opposition to Defendant's motion to dismiss, and the briefing related to class certification. Kozik answered the Defendants' interrogatories, and gathered and produced responsive documents to Defendants' document requests, including searching for and gathering both hard copy receipts and electronic documents related to his purchases of ODDs. Kozik traveled to Philadelphia to prepare for and sit for his deposition, and later traveled to San Francisco to attend the class certification hearing. Kozik was consulted with, and discussed with counsel, the settlements achieved to date.

74. Meijer, Inc. and Meijer Distribution, Inc. ("Meijer") operates throughout the Midwestern United States over 200 stores with more than 60,000 employees in Michigan, Illinois, Indiana, Ohio and Kentucky. Meijer has spent a significant amount of their own time and expense litigating this case for the absent members of the class. Meijer's efforts include working closely with Plaintiffs' counsel throughout the investigation, prosecution, and the settlement of the claims in this litigation, including: providing information to prosecute the case; reviewing draft complaints; responding to interrogatory requests; searching, collecting, and producing documents and purchase data in response to Defendants' discovery requests; preparing for and giving a 30(b)(6) deposition, and consulting with Class Counsel regarding, *inter alia*, the preparation of the TCAC, and the settlements with Panasonic and NEC. All of these efforts required Meijer to turn its attention away from its daily business.

75. Paul Nordine ("Nordine") conferred with his counsel concerning the factual basis for the ODD case. Nordine reviewed and provided information for inclusion in the TCAC. He later conferred with counsel concerning the factual basis for naming Pioneer as a Defendant and reviewed and provided information for inclusion in the Pioneer complaint. During the course of the litigation Mr. Nordine conferred with his counsel on an ongoing basis regarding proposed settlements and litigation developments. Mr. Nordine also produced documents and information to his counsel and to opposing counsel to the extent responsive to Defendants' discovery requests. Mr. Nordine conferred extensively with his counsel to prepare for his deposition and was deposed by counsel for Defendants in Chicago Illinois. He later reviewed his deposition transcript for accuracy.

76. Seneca Data Distributors, Inc. ("Seneca") is a custom computer manufacturer. During the class period, Seneca was one of the largest computer manufacturers in North America. Seneca's primary business has been to manufacture desktop computers, notebook computers, and servers. Seneca's sales have mainly been to businesses in the following markets: digital signage, digital security and surveillance, digital broadcast, digital health, government and education. In 2013, Seneca employed approximately 150 people. Seneca has spent a significant amount of its own time and expense litigating this case for the absent members of the class. Seneca has participated in the action by, *inter alia*, responding to Defendants' discovery requests, including multiple interrogatories and document requests; searching through paper and electronic records, collected relevant documents and electronically-stored information; and producing responsive materials to Defendants. Seneca provided verified answers to interrogatories concerning, *inter alia*, its business and ODD transactions. Seneca provided testimony from two witnesses in an all-day deposition taken of Seneca by Defendants pursuant to Rule 30(b)(6). Finally, Seneca kept abreast of major litigation developments, including review and prior approval of amended complaints and settlement agreements.

77. Gregory Starrett actively participated in the action by, *inter alia*, preparing for and attending a one day deposition, reviewing, preparing and producing his invoices and receipts for his direct purchase of a computer containing an ODD, preparing responses and verified answers to

two sets of interrogatories, and consulting extensively with Class Counsel regarding, *inter alia*, the preparation of the TCAC, the settlements, and class certification motion.

78. Ashley T. Walton (née Tremblay) actively participated in the action by, *inter alia*, reviewing, preparing and producing her invoices and receipts for her direct purchase of a computer containing an ODD, preparing responses and verified answers to two sets of interrogatories, and consulting extensively with Class Counsel regarding, *inter alia*, the preparation of the TCAC, the settlements, and class certification motion. In addition, in preparation for her deposition, Ms. Walton met with Class Counsel three times—twice telephonically and once in person.

79. The total incentive payments to all Class Representatives as requested would equal, $75,000, or approximately 0.2% of the Settlement Fund.

80. The Settlement Fund would not exist without the efforts of the Class Representatives, who came forward to challenge the alleged antitrust violations. The Class Representatives were integral in helping Class Counsel analyze their claims and the evidence that were ultimately the subject of each of the complaints. The Class Representatives met with counsel at the outset of the action, responded to interrogatories, searched for and produced documents, requested and received reports from Class Counsel. Additionally, those named in the TCAC prepared for depositions with Class Counsel, attended depositions, communicated with Class Counsel and monitored the status of the case, and, in some cases, prepared to testify at class certification.

NOTICE TO CLASS MEMBERS AND CLASS MEMBER RESPONSE

81. Following preliminary approval of the settlement with HLDS, each Defendant was required to provide DPPs and the claims administrator Gilardi & Co. LLC ("Gilardi") with a list of known direct purchasers for the SCAC class and their contact information. Class Counsel worked closely with Gilardi to send direct notice to as many class members as possible. Defendants provided DPPs with lists of email and U.S. postal addresses for roughly 500,000 email addresses and 200,000 U.S. postal addresses. Direct purchasers of ODDs and products containing ODDs include a significant number of large, sophisticated business entities who could be expected to oppose a fee request if it were unreasonable. The settlement notices contained a description of the

fees and expenses being requested by Class Counsel. "At a future time, Interim Lead Counsel will ask the Court for attorneys' fees not to exceed one-third (33.3%) of this or any future Settlement Fund plus reimbursement of their costs and expenses . . . ." *See, e.g.*, Declaration of Markham Sherwood in Support of Final Approval of Class Action Settlement with HLDS (Aug. 29, 2013) (Dkt. No. 986-3), Ex. 1 at p. 4 ("Sherwood Decl.").

82. The HLDS notice plan was implemented by the settlement administrator Gilardi & Co., LLC. Sherwood Decl., ¶¶ 3–8. Specifically, Gilardi printed and mailed 436,488 notices to class members through U.S. Mail and electronically mailed notices to 274,874 unique electronic mail addresses of class members on May 31, 2013. Sherwood Decl., ¶¶ 4–5. Gilardi also published notice in the June 4, 2013 national edition of the *Wall Street Journal*. Sherwood Decl., ¶ 8, Ex. B. Gilardi also maintains the case website, at which class members can view and print the Class Notice, the Settlement Agreement, the Preliminary Approval Order, and the Order Modifying Schedule. Sherwood Decl., ¶ 6. Gilardi also established a toll-free telephone number to answer Class members' questions in both English and Spanish. Sherwood Decl. ¶ 7.

83. Following preliminary approval of both the Panasonic and NEC settlements counsel sent two additional notices to class members defined by the definition in the TCAC. Again class members were informed that Class Counsel would be seeking up to a third of the Settlement Fund in attorney's fees and reimbursement of costs. No objections were received to either the Panasonic or NEC settlements. *See* Declaration of Ross Murray in Support of Final Approval of Class Action Settlement with Panasonic ¶ 9 (April 24, 2014) (Dkt. No. 1220-2); Declaration of Ross Murray in Support of Final Approval of Class Action Settlement with NEC Corporation ¶ 9 (July 24, 2014) (Dkt. No. 1358-2).

84. From the direct notice to the more than 700,000 class members ***only*** **four** objections were received to the HLDS settlement. Two additional letters were sent to the Court (see Dkt. Nos. 1134, 1278). One sought exclusion from the NEC settlement, and the other (received three weeks after the deadline to object to the Panasonic settlement) objected generally to lawsuits against Japanese companies.

85. The objections to the HLDS settlement and letters are as follows:

Objection of William Curtis Kristy III

86. Mr. Kristy's objection was that the percentage of fees that would eventually be sought by Counsel for Plaintiffs is too high. This objection was not yet ripe at the time of the HLDS settlement approval process, as the Court was not asked to rule on the amount of attorneys' fees that would awarded in connection with the settlement approval motion. Mr. Kristy may renew his objection now that it is the proper time. Class Counsel have requested that the claims administrator send notice of this fee request to Mr. Kristy.

Objections of Glen Steven Scott

87. Mr. Scott raised three points in his objection to the Settlement.

88. *First*, Mr. Scott objected to the exclusion of purchasers at the retail level from the class, *i.e.*, indirect purchasers. Exclusion of indirect purchasers from the direct purchaser settlement class was required by *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977). Any retail-level purchasers that are excluded from the class due to their status as indirect purchasers are class members in the related indirect purchaser case. Thus, those excluded purchasers will not be without recourse for the alleged wrongs in this lawsuit, as they are represented in the related indirect purchaser action.

89. *Second*, Mr. Scott objected to the potential that Class Counsel will somehow be compensated twice for the same expense. This concern was unfounded. Class Counsel, as required, has accounted for all expenses to be reimbursed. This accounting ensures that Class Counsel are only compensated once for each expense incurred. *See* Declaration of R. Alexander Saveri in Support of Direct Purchaser Plaintiffs' Request for Reimbursement of Litigation Expenses From the Litigation Fund.

90. *Third*, Mr. Scott objected to the exclusion of certain devices from the class definition in the TCAC. The contents of the TCAC were irrelevant to the fairness of the HLDS Settlement, particularly because the HLDS Settlement was based upon the class definition in the SCAC, not the TCAC.

Objections of Jeanne Giles

91. Ms. Giles raised five points in her objection to the Settlement.

92. *First*, Ms. Giles objected that the notice was incomprehensible to a layperson. This objection lacked merit, as the notice is drafted so as to be as simplified as possible without distorting the information described therein. In addition, the Notice provided in clear language a telephone number that could be called to obtain further clarification regarding the HLDS Settlement.

93. *Second*, Ms. Giles objected that the notice was premature because not all parties had settled. However, it is a standard practice to seek preliminary approval of class action settlements in large antitrust cases such as this so that the settling parties can be dismissed from the case and the Class will not be burdened with pursuing claims against Defendants that have settled.

94. *Third*, Ms. Giles objected that the public record documents on PACER are not free. Plaintiffs do not control the cost of using PACER.

95. *Fourth*, Ms. Giles objected that Defendants should not be allowed to settle if they have done wrong as this would allow them to escape being found guilty of wrongdoing at trial. Again, this type of objection is too general to be of help to the Court in determining the fairness of the Settlement. In addition, whether Defendants committed any acts of wrongdoing is not the only factor that will determine whether Plaintiffs will succeed at trial against Defendants. The HLDS Settlement provides the Class with a substantial recovery that would be by no means guaranteed if the case were eventually brought to trial, even if it can be proven that Defendants committed acts of wrongdoing.

96. *Fifth*, Ms. Giles' fifth objection was the converse of her fourth objection, *i.e.*, that Class Counsel should not be allowed to collect fees for frivolous claims. As with her fourth objection, this type of objection is too general to be of help to the Court in determining the fairness of the Settlement.

Objection of John W. Davis

97. Mr. Davis's sole objection was that he believed the notice did not provide him sufficient time to evaluate the proposed settlement. The reason for the delay in Mr. Davis's receipt of the Notice of the Settlement was that the address provided by Defendants for Mr. Davis was no longer up to date, and the Notice that was originally sent to Mr. Davis was returned to Gilardi as

undeliverable. Sherwood Decl. ¶ 11. Upon the return of the Notice that was sent to Mr. Davis to Gilardi, Gilardi began the process of searching for an up-to-date address for Mr. Davis. Upon discovery of Mr. Davis's new address, Gilardi sent out a second notice to Mr. Davis that arrived in enough time for him to draft and send his objection. *Id.* The fact that Mr. Davis received a second mailed Notice in time to submit a timely objection is evidence that the notice plan was well constructed and executed. While Mr. Davis reserved the right to submit further objections to the Settlement, he has not done so to date. Upon receipt of Mr. Davis's objection, Plaintiffs' counsel called him and informed him of the facts described above. After hearing the explanation, Mr. Davis informed Plaintiffs' counsel that he did not intend to pursue his objection and stated that I could so inform the Court.

98. On December 20, 2013, Tom Henn wrote to the Court following Notice to class members regarding the Panasonic settlement. Mr. Henn expressed his general disfavor of lawyers and the justice system.

99. On May 14, 2014, Mr. Michael R. Horan wrote to the Court following Notice to class members regarding the NEC settlement. Mr. Horan requested exclusion from the settlement, and expressed his discontent with Japanese companies being the subject of a lawsuit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 16th day of March, 2015 at San Francisco, California.

/s/ Cadio Zirpoli
Cadio Zirpoli