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8 *Interim Lead Class Counsel for Indirect Purchaser Plaintiffs*

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

14

IN RE CAPACITORS ANTITRUST LITIGATION

Case No. 3:14-cv-03264-JD

15

MDL No. 3:17-md-02801-JD

16

THIS DOCUMENT RELATES TO:

17

ALL INDIRECT PURCHASER PLAINTIFF ACTIONS

INDIRECT PURCHASER PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

18

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Date: October 18, 2018

21

Time: 10:00 a.m.

22

Place: Courtroom 11, 19th Floor

Judge: Hon. James Donato

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1 **NOTICE OF MOTION AND MOTION**

2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that at 10:00 am on October 18, 2018, in connection with a
4 hearing on final approval of certain settlements, Plaintiffs and their counsel (“Class Counsel”) will
5 move, and hereby do move, this Court before the Honorable James Donato, United States District
6 Judge, at the United States Courthouse, 450 Golden Gate Avenue, Courtroom 11 (19th Floor), San
7 Francisco, California, for an award of attorneys’ fees in the amount of \$8,647,500.00 (25% of the
8 Settlement Fund), and reimbursement of litigation expenses in the amount of \$4,715,036.97. This
9 motion is brought pursuant to Fed. R. Civ. Proc. 23(h), 54(b) and 54(d)(2).

10 The motion should be granted because (a) the requested attorneys’ fees are fair and reasonable
11 considering Class Counsel’s extensive and longstanding efforts to create a Settlement Fund of
12 \$34,590,000; (b) the requested fees comport with Ninth Circuit case law developed in similar
13 common fund litigation; and (c) the expenses for which reimbursement is sought were reasonably
14 and necessarily incurred in connection with the prosecution of this Action.

15 This motion is based upon this Notice of Motion and Motion; the following Memorandum of
16 Points and Authorities; the accompanying Declaration of Adam J. Zapala; the Declarations of
17 Supporting Class Counsel; the [Proposed] Order submitted herewith; and such other records,
18 pleadings, and papers filed in this action the Court may consider; and upon such argument as may be
19 presented to the Court at the hearing on this motion.

20 DATED: August 13, 2018

Respectfully submitted,

21 */s/ Adam J. Zapala*

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TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	Page
I. INTRODUCTION	1
II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY	4
A. Litigation History.....	4
1. Initial Complaints and Appointment of Leadership.....	4
2. The Consolidated Complaints and Successive Rounds of Motions to Dismiss	4
B. The Discovery Process.....	6
C. Substantial Depositions Have Occurred in the Case	8
D. The IPP Case Has Involved Substantial Non-Party Discovery	8
E. Class Certification and Expert Work.....	9
1. IPPs Have Expended Significant Time and Resources on Other Litigation Events	9
III. ARGUMENT	10
A. The Ninth Circuit Recognizes the Common Fund Doctrine and a Percentage-of-the-Recovery as the Predominant Method for Determining Attorneys’ Fees in Class Action Cases	10
B. The Vizcaino Factors Support the Award Requested.....	11
1. Counsel for IPPs Have Achieved an Excellent Recovery for IPPs	12
2. A High Level of Skill Was Required to Prosecute This Case	13
3. The Risks of this Litigation.....	13
4. Contingent Nature of the Fee.....	14
5. The High Quality of the Work Performed	14
6. The Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee.....	14
C. Counsel for IPPs Are Entitled to Reimbursement of Their Reasonable Litigation Expenses	15
IV. CONCLUSION.....	15

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

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372 F. Supp. 1349 (N.D. Ill. 1974)13

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444 U.S. 472 (1980).....10

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No. MDL No. 1917, 2016 U.S. Dist. LEXIS 102408 (N.D. Cal. Aug. 3, 2016).....11

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113 U.S. 116 (1885).....10

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M-02-1486, 2007 WL 2416513 (N.D. Cal. Aug. 16, 2007), (25%)11

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253 F.R.D. 478 (N.D. Cal. 2008).....13

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405 U.S. 251 (1972).....10

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461 U.S. 424 (1983).....12

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No. CIV.A. 98-5055, 2004 WL 1221350 (E.D. Pa. June 2, 2004).....13

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Case No. CV 01-1575-BR, 2004 WL 2260605 (D. Or. Oct. 6, 2004).....13

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C-07-05985 (ECF No. 514) (N.D. Cal. Aug. 11, 2011).....10

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396 U.S. 375 (1970).....10

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779 F.3d 934 (9th Cir. 2015)11

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142 F. Supp. 2d 1299 (W.D. Wash. 2001).....12, 13

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Indirect Purchaser Plaintiffs (“IPPs”) have reached settlements worth a cumulative \$49,540,000 with eight of the sixteen defendant groups in this litigation.¹ In October 2017, this Court finally approved an initial round of IPP settlements worth \$14,950,000. Dkt. 1934. Since then, Class Counsel’s efforts have resulted in another round of settlements worth \$34,590,000 (the “Second Settlement Fund”). Through this motion, Class Counsel seek an award of attorneys’ fees in the amount of 25% of the Second Settlement Fund for a total of \$8,647,500.00 and for reimbursement of litigation expenses in the amount of \$4,715,036.97.

Class Counsel have prosecuted this case on a purely contingent basis. The settlements were reached in the face of an immensely hard-fought defense by some of the most sophisticated and respected firms in the country. The fees Class Counsel seek are eminently fair considering the results achieved for the Class, the extraordinary investment of time and money Counsel have made, and the substantial risks that the litigation presented.

The declarations accompanying this motion show that Class Counsel spent 31,218.6 hours in time from October 1, 2016 to March 31, 2018.² Declaration of Adam J. Zapala in Support of IPPs’ Motion for Reimbursement of Attorneys’ Fees and Expenses (“Zapala Decl.”) ¶ 83. Cumulatively, over nearly four years of litigation, Class Counsel have spent 64,007.5 hours and advanced \$6,834,513.17 in necessary litigation expenses. Zapala Decl. ¶ 85, Ex. 3.

To date, Class Counsel performed the following work:

- Conducted an initial investigation of the case to develop the theories of liability and the facts that formed the basis of the allegations against Defendants. This research

¹ IPPs have reached settlements with Hitachi Chemical Co., Ltd., Hitachi AIC, Hitachi Chemical Co. America (together, “Hitachi”); Holy Stone Enterprise Co., Ltd., Holy Stone Holdings Co., Ltd., Holy Stone Polytech Co., Ltd., and Milestone Global Technology, Inc. (together, “Holy Stone”); NEC Tokin Corp. and NEC Tokin America Inc. (together, “NEC Tokin”); Nippon Chemi-Con Corp. and United Chemi-Con Corp. (together, “Nippon Chemi-Con”); Nitsuko Electronics Corporation (“Nitsuko”); Okaya Electric Industries Co, Ltd. (“Okaya”); Rubycon Corp. and Rubycon America Inc. (together, “Rubycon”); and Soshin Electric Co., Ltd. (“Soshin”). Additionally, IPPs have reached confidential settlement agreements with three other Defendant families.

² Interim Lead Counsel (Cotchett, Pitre & McCarthy, LLP) and Supporting Counsel are referred together herein as “Class Counsel.”

1 included a review of publicly-available information regarding the Capacitor industry
and consultation with industry experts and economists;

- 2 • Organized and attended several proffer sessions with the Antitrust Criminal Penalty
3 Enhancement and Reform Act (“ACPERA”) applicant to obtain cooperation and learn
4 additional liability, class certification, and damages information relevant to the case
and Defendants;
- 5 • Drafted and extensively researched five comprehensive consolidated amended
6 complaints detailing Defendants’ violations of the antitrust laws, which were
initially submitted under seal and later filed in the public record (Dkts. 345-3 (400),
7 741 (1160), 1057, 1112 (1588), and 1466 (1589));
- 8 • Conducted exhaustive legal research regarding the Class’ claims and the defenses
9 thereto, particularly with respect to Defendants’ multiple rounds of motions to
dismiss and motions for summary judgment based on the Foreign Trade Antitrust
10 Improvements Act (“FTAIA”);
- 11 • Opposed and, on the whole, prevailed after extensive rounds of hard-fought motions
12 to dismiss. In total, Defendants filed 8 motions with arguments covering personal
jurisdiction (which required jurisdictional discovery), the sufficiency of the
13 conspiracy allegations under *Twombly* and *Iqbal*, the sufficiency of the complaint in
light of the numerous state laws under which IPPs sued, among several other attacks
14 on the pleadings;
- 15 • Propounded several sets of discovery that – after extensive meet and confers and
16 negotiations with Defendants and significant motion practice before this Court –
resulted in the identification of hundreds of document custodians and the production
of more than eleven million documents (28 million pages and 4.55 terabytes) in
17 addition to approximately 500 gigabytes of electronic transactional data;
- 18 • Drafted, met and conferred, negotiated and entered into agreements with Defendants
19 over several case management documents, such as the Stipulation and Order
Concerning the Discovery of Electronically Stored Information (“ESI”) (Dkt. 782)
the Protective Order (Dkt. 563), the Expert Stipulation and Order (Dkt. 540), the
20 Discovery Limits Stipulation and Order (Dkt. 685) and several other similar
documents that contribute to the effective and efficient administration of this
litigation;
- 21 • Engaged in multiple, extended discovery meet and confers with Defendants
22 concerning the appropriate document custodians for each corporate family, the
appropriate English-language search terms, the appropriate Japanese-language search
terms and other search mechanisms that would assist Defendants in identifying and
23 producing responsive documents;
- 24 • Organized teams of lawyers that reviewed, searched, and extensively coded and
25 analyzed these documents—most of which were in Japanese and required
translations;
- 26 • Engaged in extensive non-party discovery, including issuing comprehensive
27 subpoenas for documents to non-party distributors of capacitors to obtain their
transactional data for both their purchases of capacitors from Defendants and their
28 sales of capacitors to IPPs. After protracted meeting and conferring, IPPs succeeded
in obtaining data for approximately 85% of the commerce sold from distributors to
the IPPs;

- 1 • Propounded several sets of Interrogatories and Requests for Admission and issued Rule 30(b)(6) deposition notices;
- 2 • Answered several sets of discovery propounded by Defendants, including Requests for Production of Documents, Interrogatories and Requests for Admission;
- 3
- 4 • Contended with near-constant discovery disputes and motions to compel;
- 5 • Prepared for and took the depositions of 133 fact and 30(b)(6) witnesses from Defendants and one non-party witnesses;
- 6
- 7 • Prepared for and defended the depositions of the 11 IPP Class Representatives;
- 8
- 9 • Engaged and consulted extensively with industry experts, economists, and statisticians on issues pertaining to electronic discovery, liability, summary judgment regarding FTAIA, class certification, and damages, throughout the course of the action;
- 10
- 11 • Engaged in protracted settlement discussions and mediations with the Settling Defendants, *see, e.g.*, Dkts. 1305-2, 1374-2 (Williams Decl. in Support of Motion for Preliminary Approval), Dkt. 2099-2 (Zapala Decl. in Support of Motion for Preliminary Approval);
- 12
- 13 • Documented the settlements with the Settling Defendants, briefed motions for preliminary approval and final approval, and engaged class action notice experts to develop a robust notice program;
- 14
- 15 • Engaged in extensive preparations with experts regarding class certification, expert deposition preparation, and Defendants' *Daubert* motion;
- 16
- 17 • Drafted IPPs' Motion for Class Certification and a Reply Brief in Support of IPPs' Motion for Class Certification utilizing complex economic and market analyses; and
- 18 • Opposed Defendants' *Daubert* motion.

19 During this arduous four-year timeline, as reflected in the Zapala Declaration ¶ 9, Class
20 Counsel faced significant financial risks while expending substantial litigation costs and attorney
21 hours without resort to any outside litigation funders. *Id.* ¶¶ 5, 7-8, 10.

22 The Court previously awarded Class Counsel \$3,737,500.00 in attorneys' fees (25% of the
23 \$14,950,000 Settlement Fund) accrued as of September 30, 2016, and a reimbursement of litigation
24 costs and expenses in the amount of \$2,558,454.00. ECF No. 1938. The Court found that Class
25 Counsel's lodestar of \$13,139,375 through September 30, 2016 was reasonable. *Id.* at 2. This prior
26 award of attorneys' fees represented less than 30% of Class Counsel's reasonable lodestar through
27 September 30, 2016. *Id.*

1 By way of this motion, Class Counsel seek an award of attorneys' fees in an amount equal to
 2 25% of the \$34,590,000 Second Settlement Fund (\$8,647,500). Taking into account the attorneys'
 3 fees already distributed, if the attorneys' fees requested in this motion are granted, the total lodestar
 4 cross-check shows a negative multiplier of 0.478, as Class Counsel's cumulative lodestar through
 5 March 31, 2018 is \$25,928,960.50 based on historical hourly rates for 64,007.5 hours of work
 6 performed.³ IPPs also seek reimbursement of their litigation expenses in the amount of
 7 \$4,715,036.97.⁴ Against this background, IPPs respectfully submit that their request for an interim
 8 fee award of 25% of the Second Settlement Fund is fair and reasonable.

9 **II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

10 **A. Litigation History**

11 **1. Initial Complaints and Appointment of Leadership**

12 Cotchett, Pitre & McCarthy, LLP ("CPM") filed its first indirect purchaser complaint on
 13 October 17, 2014, in the Northern District of California on behalf of its client, Toy-Knowlogy, Inc.
 14 This complaint was the product of many hours of investigation and research by CPM. Zapala Decl.
 15 ¶ 11. CPM filed its second indirect purchaser complaint on October 20, 2014, on behalf of its client,
 16 CAE Sound. *Id.* ¶ 12.

17 On October 31, 2014, this Court appointed CPM as Interim Lead Counsel for the putative
 18 Indirect Purchaser Plaintiff class. Dkt. 319; Zapala Decl. ¶ 13. This Court found that CPM "has
 19 significant experience in handling complex class actions, including cases involving antitrust claims
 20 of the type at issue here." Dkt. 319.

21 **2. The Consolidated Complaints and Successive Rounds of Motions to** 22 **Dismiss**

23 On November 11, 2014, IPPs filed under seal a 128-page, factually-detailed First
 24 Consolidated Complaint ("FCC"). Dkt. 345-3. The FCC named 15 Defendant families and outlined
 25 price-fixing conspiracies regarding electrolytic and film capacitors. The FCC was the result of
 26

27 ³ Negative Multiplier (0.4776) = (Prior Fee Award (\$3,737,500.00) + Requested Fee
 Award (\$8,647,500)) / Cumulative Lodestar Through March 31, 2018 (\$25,928,960.50).

28 ⁴ The notice provided to the class stated the Class Counsel would seek up to
 \$4,750,000 in litigation costs.

1 considerable work. Interim Lead Counsel spent significant time researching legal and factual issues.
2 IPPs supplemented the initial complaints with factual information learned in proffer sessions with the
3 ACPERA applicant. Japanese documents were reviewed and translated to supplement factual
4 allegations and to ensure that the classes' claims survived any challenges under *Twombly*.

5 On December 19, 2014, Defendants collectively and separately moved to dismiss the FCC.
6 Dkts. 474, 475, 478. On May 26, 2016, this Court largely denied Defendants' motion, finding that
7 IPPs alleged plausible conspiracy claims. Dkt. 710. The Court also rejected Defendants' arguments
8 regarding the statutes of limitations, finding that IPPs had plausibly alleged fraudulent concealment.
9 *Id.* The Court partially granted the motion, determining that IPPs had to supplement their allegations
10 concerning the involvement of Defendants' U.S. subsidiaries. *Id.*

11 In response to the Court's order, IPPs added substantial detail to the amended complaint. After
12 IPPs filed the SCC, Defendants again collectively and separately moved to dismiss on July 6, 2015.
13 Dkts. 791, 793.

14 On January 27, 2016, IPPs filed their Third Consolidated Complaint ("TCC"), in which IPPs
15 added additional class representatives. Dkt. 1057. Pursuant to stipulation, on March 22, 2016, IPPs
16 filed a Fourth Consolidated Complaint ("FCC") to clarify a factual allegation and avoid further
17 motion practice before the Court. Dkt. 1111-4.

18 Additionally, on November 20, 2015, Defendant Nissei Electric Co., Ltd. ("Nissei") moved
19 to dismiss, arguing that the successor Nissei entity lacked contacts with the United States sufficient
20 for the exercise of personal jurisdiction. Dkt. 963. The parties were forced to engage in intensive
21 meet-and-confers regarding jurisdictional discovery. IPPs conducted extensive factual research
22 concerning Nissei's contacts with the United States, and reviewed jurisdictional discovery
23 documents. On April 15, 2016, IPPs opposed Nissei's motion. Dkt. 1179-5. On March 7, 2017, this
24 Court denied Nissei's motion and found that the exercise of personal jurisdiction was appropriate.
25 Dkt. 1546.

26 On December 21, 2016, IPPs filed a motion for leave to file the Fifth Consolidated Complaint
27 ("FCC"). Dkt. 1414. Through that motion, IPPs sought to add the Holy Stone entities as Defendants
28 to IPPs' complaint and to add AVX Corp., Kemet Corp., and Kemet Electronics Corp., as co-

1 conspirators. *Id.* Holy Stone opposed IPPs' motion. Dkt. 1416. The Court granted IPPs' motion
2 and thereafter IPPs filed the operative Fifth Consolidated Complaint. Zapala Decl. ¶¶ 14-22.

3 **B. The Discovery Process**

4 This case is unquestionably complex by any measure. The discovery process has been lengthy
5 and arduous. The case involves both substantial amounts of discovery, as well as a multitude of
6 disputes with more than a dozen Defendants. As reflected in the Court's docket, IPPs have been
7 forced to fight for many of the categories of discovery that they have sought. As recounted in the
8 Zapala Declaration, IPPs propounded several rounds of written discovery on Defendants, including
9 multiple sets of Requests for Production of Documents, Interrogatories, and Requests for Admission.
10 Zapala Decl. ¶¶ 24-28.

11 Because of the complex nature of discovery in conspiracy cases, the parties held extensive
12 meet and confer negotiations over the scope of the requests, document custodians, and a search term
13 protocol. In many cases, these negotiations required the intervention of the Court through motions
14 to compel. The parties ultimately reached agreement, in many instances after disputed issues were
15 presented to the Court, which resulted in Defendants producing documents from hundreds of
16 document custodians. Zapala Decl. ¶¶ 29-31.

17 IPPs also spent significant time and resources in discovery negotiations concerning
18 Defendants' production of transactional sales data. The transactional data produced in this litigation
19 is enormous. Defendants and non-parties have produced over 500 gigabytes of sales data, reflecting
20 many millions of transactions. IPPs and their experts spent significant time understanding the data
21 and making use of it; this process often required close consultation between IPPs and their experts
22 for purposes of clarifying the data and normalizing it for use by the experts in support of class
23 certification. IPPs propounded multiple sets of questions seeking clarification from Defendants
24 regarding their data. In some cases, this required multiple sets of questions to a single Defendant
25 family. Often answers to IPPs' questions required follow up questions as answers required more
26 questions. Zapala Decl. ¶ 32.

27 The document productions in this case have also been enormous. Defendants produced to
28 IPPs several hundred separate document productions. Thus far, IPPs have received over 11 million

1 documents spanning over 28 million Bates-numbered pages of documents produced by the
2 Defendants, which is a massive amount of document discovery by any measure. To make matters
3 more complex, the substantial majority of these documents were produced in Japanese. To effectively
4 manage and review this colossal amount of material, IPPs and DPPs coordinated their document
5 review efforts. Because of the large number of depositions in the case, IPPs and DPPs have worked
6 together to organize teams of reviewers responsible for prepping counsel for depositions. These tasks
7 included identifying custodial files, creating “proof charts” and other work product aimed as
8 summarizing the deposition target’s best documents. IPPs and DPPs worked together to identify
9 those documents that were worthy of obtaining a certified translation for purposes of use in the
10 litigation. Those documents were then identified, culled and sent to outside vendors for certified
11 translations at significant cost. Zapala Decl. ¶¶ 37-40.

12 Document review was even more complex because, as discussed, many of the documents
13 were provided in foreign languages. These documents required review by attorneys fluent in those
14 foreign languages, who then had to determine which documents were sufficiently relevant to the
15 litigation to require full English translations and, in certain cases, certified translations for use in
16 depositions. Though expensive and time consuming, the online database and process developed by
17 IPPs and DPPs permitted Plaintiffs to efficiently prioritize documents and custodians. Zapala Decl.
18 ¶ 41.

19 In addition to the offensive discovery outlined above, Plaintiffs were required to respond to
20 discovery and to produce relevant documents to Defendants from the eleven Class Representatives.
21 IPPs’ counsel spent significant time responding to Defendants’ discovery requests aimed at each of
22 the eleven Class Representatives and in assisting Class Representatives in the search and production
23 of relevant documents. Zapala Decl. ¶¶ 44. In addition to responding to Requests for Production of
24 Documents, Defendants also served a total of four sets of interrogatories on the eleven Class
25 Representatives. IPPs spent time and resources with their clients researching and responding to these
26 inquiries. Additionally, IPPs also spent substantial time researching and responding to Defendants’
27 contention interrogatories concerning the FTAIA and supplementing the same. Zapala Decl. ¶ 45.

1 **C. Substantial Depositions Have Occurred in the Case**

2 Lead Counsel for IPPs and Supporting Counsel have also spent significant time preparing for
3 and taking the depositions of Defendants' employees and former employees. Conspiracy cases are
4 document heavy and require a substantial number of depositions.

5 To date, Plaintiffs have taken **133 depositions** of Defendants' employees or former employees
6 in either their Fed. R. Civ. Proc. 30(b)(1) or 30(b)(6) capacity. The significant majority of these
7 depositions have required an interpreter, thus substantially prolonging the length of the deposition.
8 Plaintiffs also took one non-party deposition. Zapala Decl. ¶ 47.

9 In many cases, Defendants or their employees refused to appear in the United States for
10 deposition, thus requiring trips to foreign locations, such as Japan and Hong Kong. Adding to the
11 complexity, deponents in Japan are precluded from appearing voluntarily. IPPs, therefore, were
12 required to file motions with the Court, obtain deposition rooms at the U.S. Consulate or Embassy,
13 and procure a deposition visas after a diplomatic exchange between the United States and Japan.
14 Additionally, some former employees refused to appear voluntarily, thus requiring Plaintiffs to file
15 successive motions concerning deposition attendance. Zapala Decl. ¶ 48.

16 In connection with Defendants' summary judgment motions regarding the FTAIA, Plaintiffs
17 propounded additional discovery, and took the depositions of the Defendants' fact declarants (or a
18 designated 30(b)(6) deponent). IPPs, in coordination with DPPs, took 17 such depositions for
19 purposes of the FTAIA motion. Zapala Decl. ¶ 49.

20 **D. The IPP Case Has Involved Substantial Non-Party Discovery**

21 IPPs have also engaged in extensive, and protracted, non-party discovery. IPPs sought
22 documents from over 30 non-party capacitor distributors. Zapala Decl. ¶ 51. Though additional
23 documents were sought, IPPs primarily sought *both* the distributors' purchasing data *and* their sales
24 data to demonstrate pass-through to the IPP class. Counsel for IPPs spent significant time meeting
25 and conferring with representatives of the distributors. In some cases, IPPs were forced to resort to
26 filing miscellaneous actions in foreign courts to enforce the subpoenas and obtain the needed
27 transactional data. Over the course of 2 years, IPPs were successful in obtaining useable transactional
28 data from the majority of the subpoena recipients. Zapala Decl. ¶¶ 51-54.

1 **E. Class Certification and Expert Work**

2 Class Counsel spent significant time and resources consulting with their experts and
3 economists in support of class certification and merits related issues. Counsel worked with experts
4 in creating econometric models to demonstrate overcharge, pass-through, and damages. These
5 models formed the basis of IPPs' motion for class certification. Counsel prepared IPPs' expert for
6 deposition and defended IPPs' expert's deposition. On June 15, 2017, Class Counsel moved to certify
7 the Indirect Purchaser Plaintiff class, with the issue now fully briefed and under submission. Dkts.
8 1681, 1749, 1778. Counsel worked extensively with IPPs' experts in opposing Defendants' *Daubert*
9 motion. Zapala Decl. ¶¶ 61-63.

10 **1. IPPs Have Expended Significant Time and Resources on Other**
11 **Litigation Events**

12 On October 1, 2015, Defendants moved for summary judgment on one slice of commerce that
13 IPPs contend is not barred by the FTAIA: sales from foreign manufacturers to foreign distributors
14 who resell those capacitors to purchasers in the United States. *See* Dkt. 911. In support of their
15 motion, Defendants submitted fact declarations from 19 declarants. On November 23, 2015, IPPs
16 filed their Opposition to Defendants' summary judgment motion. In the Opposition, IPPs argued that
17 the FTAIA did not bar claims based on purchases from foreign distributors. Dkt. 965. On September
18 30, 2016, the Court issued an Order. In it, the Court ordered additional briefing as to whether any of
19 IPPs' state law claims had a narrower reach than the FTAIA. On November 4, 2016, Defendants
20 submitted their supplemental briefing on the IPP motion, arguing that the extraterritorial reach of
21 New York and Florida law were narrower than the reach of the Sherman Act. Dkt. 1372. On
22 December 2, 2016, IPPs submitted their Opposition brief, providing extensive authority showing that
23 the extraterritorial reach of state law was at least coterminous with that of federal law. Dkt. 1407;
24 *see also* Zapala Decl. ¶¶ 55-60.

25 As the Court would expect, IPPs have also invested substantial time and effort to settle the
26 case against appropriate Defendants. Each settlement reached includes a substantial cash component,
27 and a commitment by the Settling Defendant to provide cooperation to benefit IPPs' continued
28 prosecution of the case. *See* Zapala Decl. ¶¶ 64-75.

1 **III. ARGUMENT**

2 **A. The Ninth Circuit Recognizes the Common Fund Doctrine and a**
 3 **Percentage-of-the-Recovery as the Predominant Method for Determining**
 4 **Attorneys' Fees in Class Action Cases**

5 As the Supreme Court has explained, “a litigant or a lawyer who recovers a common fund for
 6 the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the
 7 fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Mills v. Elec. Auto-Lite Co.*,
 8 396 U.S. 375, 392–93 (1970); *Central R.R. & Banking Co. v. Pettus*, 113 U.S. 116, 123 (1885); *In re*
 9 *Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994) (“WPPSS”).

10 The Supreme Court has repeatedly recognized that private antitrust litigation is essential to the
 11 effective enforcement of the antitrust laws. *See, e.g., Pillsbury Co. v. Conboy*, 459 U.S. 248, 262–63
 12 (1983); *Reiter v. Sonotone Corp.*, 442 U.S. 330, 331 (1979); *Hawaii v. Standard Oil Co.*, 405 U.S.
 13 251, 266 (1972); *Perma Life Mufflers, Inc. v. Int’l Parts Corp.*, 392 U.S. 134, 139 (1968); WPPSS, 19
 14 F.3d at 1296. The district court has discretion in a common fund case to choose either the “percentage-
 15 of-the-fund” or the “lodestar” method in calculating fees. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043,
 16 1047 (9th Cir. 2002) (“Vizcaino IP”); *In re Online DVD-Rental Antitrust Litig.*, No. 12-15705, 2015
 17 WL 846008, at *9 (9th Cir. Feb. 27, 2015) (“Online DVD”). Most district courts in the Ninth Circuit
 18 have exhibited a clear preference for the percentage-of-the-fund method. Virtually all the major recent
 19 antitrust class actions in the Northern District of California have applied the percentage-of-the-fund
 20 approach. *See, e.g., In re Capacitors Antitrust Litigation*, No. 14-cv-3264, ECF No. 1714 (N.D. Cal. June
 21 27, 2017) (awarding 25% of \$32,600,000 settlement fund to DPP counsel) (“Capacitors”); *Capcitors*, ECF
 22 No. 1938 (N.D. Cal. October 30, 2017) (awarding 25% of \$14,950,000 settlement fund to IPP counsel); *In*
 23 *re: Cathode Ray Tube (CRT) Antitrust Litig.*, No. C-07-5944 JST, 2016 WL 4126533, at *1 (N.D. Cal. Aug.
 24 3, 2016) (27.5%); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2011 WL 7575003,
 25 at *1–2 (N.D. Cal. Dec. 27, 2011) (“LCD P”) (30%); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No.
 26 M 07-1827 SI, 2013 WL 149692, at *1–2 (N.D. Cal. Jan. 14, 2013) (“LCD IP”) (30%); *In re TFT-*
 27 *LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2013 WL 1365900, at *7–8 (N.D. Cal. Apr. 3,
 28 2013) (“LCD IIP”) (28.6%); *In re Static Random Access Memory (SRAM) Antitrust Litig.*, Case No.
 07-13-md-1819-CW (N.D. Cal. June 30, 2011) (ECF No. 1370) (“SRAM”) (30%); *Meijer v. Abbott*

1 *Laboratories*, C-07-05985 (N.D. Cal. Aug. 11, 2011) (ECF No. 514) (“*Meijer*”) (33⅓%); *In re*
2 *Dynamic Random Access Memory (DRAM) Antitrust Litig.*, M-02-1486, 2007 WL 2416513 (N.D.
3 Cal. Aug. 16, 2007), at *1 (“*DRAM*”) (25%); *Online DVD*, 2015 WL 846008, at *13.

4 Courts in the Ninth Circuit applying the “percentage of the fund” approach use a twenty-five
5 percent benchmark. *See Paul, Johnson, Alston & Hunt v. Granuly*, 886 F.2d 268, 272 (9th Cir.
6 1989); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir. 2015) (“Under the
7 percentage of- recovery method, the attorneys’ fees equal some percentage of the common settlement
8 fund; in this circuit, the benchmark percentage is 25%”).

9 Here, Class Counsel’s efforts have created a common fund of \$34,590,000. Under either a
10 “percentage-of-the-fund” or “lodestar” method, the requested fees are warranted considering the value
11 of the extensive work performed, the difficulty and risk of the case, and the results achieved. Indeed,
12 the amount requested—exactly 25% of the settlement fund—comports with the Ninth Circuit’s 25%
13 benchmark for class action settlements.

14 **B. The Vizcaino Factors Support the Award Requested**

15 Selection of a percentage of the fund should be supported by findings that consider all the
16 circumstances of the case, including the overall reasonableness of the fee requested. *Vizcaino v.*
17 *Microsoft Corp.*, 290 F.3d 1043, 1048 (9th Cir. 2002). In determining the appropriateness of a fee
18 award, district courts are directed to consider: (1) the results achieved for the class; (2) the complexity
19 of the case and the risk of and expense to counsel of litigating it; (3) the skill, experience, and
20 performance of counsel on both sides; (4) the contingent nature of the fee; and (5) fees awarded in
21 comparable cases. *Id.* at 1048-50; *see also In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. MDL
22 No. 1917, 2016 U.S. Dist. LEXIS 102408, at *62-69 (N.D. Cal. Aug. 3, 2016); *In re: Cathode Ray*
23 *Tube (CRT) Antitrust Litig.*, No. MDL No. 1917, 2016 U.S. Dist. LEXIS 5383, at *171-74 (N.D. Cal.
24 Jan. 14, 2016) (same) (direct purchaser class counsel’s fee motion). The Court may also consider the
25 volume of work performed, counsel’s skill and experience, the complexity of the issues faced, and the
26 reaction of the class. *See, e.g., In re Heritage Bond Litig.*, 02-ML-1475 DT, 2005 WL 1594403, at
27 *18–23 (C.D. Cal. June 10, 2005) (“*Heritage Bond*”). Here, each of the *Vizcaino* factors weigh in
28

1 favor of awarding the requested \$8,647,500, which is twenty-five percent of the Second Settlement
2 Fund.

3 1. Counsel for IPPs Have Achieved an Excellent Recovery for IPPs

4 Courts emphasize that the size of the recovery is an important factor to be considered in
5 determining an appropriate fee award. *See Hensley v. Eckerhart*, 461 U.S. 424, 431 (1983); *Vizcaino*
6 *v. Microsoft Corp.*, 142 F. Supp. 2d 1299, 1303 (W.D. Wash. 2001) *aff'd*, 290 F.3d 1043 (9th Cir.
7 2002) (“*Vizcaino P*”); *In re Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008)
8 (“*Omnivision*”). Here, Interim Class Counsel obtained settlements that confer a substantial benefit to
9 Class Members, especially considering the many risks involved in the action. *See* Dkt. 1844-2
10 (Williams Decl. in Support of Preliminary Approval of Settlements with Hitachi Chemical and
11 Soshin) ¶¶ 6, 9; MDL Dkt. 158-2 (Zapala Declaration in Support of Preliminary Approval of
12 Settlements with Holystone, NCC/UCC, and Rubycon) ¶¶ 3, 5-8, 13, 15, 21. The table below
13 summarizes the excellent results that the Second Round Settlements represent.

15 Defendant Family	15 Settlement Amount	15 Comments
16 Hitachi	\$14,000,000	16 Settlement amount represents approximately 29% of Hitachi’s <i>total</i> sales of capacitors in the United States during the relevant time period. <i>See</i> Dkt. 1844 at 7. The \$14 million amount <i>exceeds</i> the <i>total</i> amount of Hitachi’s sales to distributors in the United States during the relevant period.
19 Soshin	\$590,000	19 Settlement amount represents more than 100% of Soshin’s total sales of standalone capacitors to distributors during the relevant time period. <i>See</i> Dkt. 1844 at 7.
22 Holystone	\$2,000,000	22 Settlement amount represents 67% of Holystone’s <i>total</i> sales of capacitors in the United States during the relevant time period. <i>See</i> Dkt. 2099 at 12.
24 NCC/UCC	\$13,500,000	24 Settlement amount represents 11.4% of NCC/UCC’s total relevant commerce to distributors during the relevant time period. <i>See</i> Dkt. 2099 at 13.
25 Rubycon	\$4,500,000	25 Settlement amount represents 14% of Rubycon’s total sales of standalone capacitors to distributors during the relevant time period. <i>See</i> Dkt. 2099 at 13.

1 As shown above, the settlements are worth more than IPPs' single damages estimate. See
2 Dkt. 1680-5 at 21 (Motion for Class Certification).

3 2. A High Level of Skill Was Required to Prosecute This Case

4 The skill and quality of legal counsel also support the requested fee award. See *Mark v. Valley*
5 *Ins. Co.*, Case No. CV 01-1575-BR, 2004 WL 2260605, at *2 (D. Or. Oct. 6, 2004). Counsel for IPPs
6 are among the nation's most experienced and skilled practitioners in the antitrust class action litigation
7 field—including within this Circuit.

8 Courts have also recognized that the novelty and difficulty of issues in a case are significant
9 factors to be considered in awarding fees. See, e.g., *Vizcaino I*, 142 F. Supp. 2d at 1303, 1306.
10 Antitrust price-fixing conspiracy cases are notoriously complex and difficult to litigate. See, e.g., *In*
11 *re Linerboard Antitrust Litig.*, No. CIV.A. 98-5055, 2004 WL 1221350, at *10 (E.D. Pa. June 2,
12 2004). Not only did Counsel for IPPs effectively manage the logistics of litigating such a complex
13 case, but as described in detail, they successfully tackled many difficult legal and factual issues
14 presented by this case.

15 The caliber of opposing counsel is another important factor in assessing the quality of Class
16 Counsel's work. *Vizcaino I*, 142 F. Supp. 2d at 1303; *In re King Res. Co. Sec. Litig.*, 420 F. Supp.
17 610, 634 (D. Colo. 1976); *Arenson v. Board of Trade*, 372 F. Supp. 1349, 1354 (N.D. Ill. 1974). Here,
18 IPPs have been opposed by attorneys from some of the best and largest firms in the country with near
19 limitless resources at their disposal. Zapala Decl. ¶¶ 8, 10.

20 3. The Risks of this Litigation

21 Risk is an important factor in determining a fair fee award. *Online DVD*, 2015 WL 846008, at
22 *14. "Antitrust litigation in general, and class action litigation in particular, is unpredictable." *In re*
23 *NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 475 (S.D.N.Y. 1998); *In re Superior*
24 *Beverage/Glass Container Consol. Pretrial*, 133 F.R.D. 119, 127 (N.D. Ill. 1990). There is always
25 the risk that the law may change in unfavorable ways. Furthermore, given recent changes in the law,
26 there is always a risk that a class will not be certified. Some large antitrust class actions have been
27 denied certification in recent years. See, e.g., *In re Graphics Processing Units Antitrust Litig.*, 253
28 F.R.D. 478, 508 (N.D. Cal. 2008); *In re Rail Freight Fuel Surcharge Antitrust Litig.*, 725 F.3d 244,

1 255 (D.C. Cir. 2013); *In re Flash Memory Antitrust Litig.*, No. C 07-10 0086 SBA, 2010 WL 2332081,
2 at *19 (N.D. Cal. June 9, 2010); *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-MD-2420 YGR,
3 2017 WL 1391491 (N.D. Cal. Apr. 12, 2017).

4 **4. Contingent Nature of the Fee**

5 The Ninth Circuit has confirmed that a fair fee award should include consideration of the
6 contingent nature of the fee. *See, e.g., Vizcaino II*, 290 F.3d at 1050; *Online DVD*, 2015 WL 846008,
7 at *14 & n.14. It is well-established that attorneys who take on the risk of a contingency case should
8 be compensated for the risk they take. *WPPSS*, 19 F.3d at 1299. Other than the Court's previous
9 award of attorneys' fees (\$3,737,500)—which represented a lodestar cross-check of less than 30% of
10 Class Counsel's reasonable lodestar through only September 30, 2016—Counsel for IPPs have
11 received no compensation during almost four years of litigation. *See* ECF No. 1938; Zapala Decl. ¶
12 5. Class Counsel's total lodestar through March 31, 2018, is \$25,928,960.50. Zapala Decl. ¶ 85, Ex.
13 3. This factor strongly supports the requested fee.

14 **5. The High Quality of the Work Performed**

15 Finally, Class Counsel respectfully submit that the work they have performed has been of high
16 quality and has been of great benefit to the Class. The Court is familiar with the history of this case,
17 having presided over years of contentious litigation.

18 **6. The Lodestar Cross-Check Confirms the Reasonableness of the** 19 **Requested Fee**

20 Finally, a cross-check of the requested fee with Class Counsel's lodestar demonstrates that
21 the proposed fee is more than reasonable. *See Online DVD*, 2015 WL 846008, at *15; *Vizcaino II*,
22 290 F.3d at 1048-50. As summarized in the Zapala Declaration, IPP Counsel have spent a total of
23 64,007.5 hours prosecuting this Action. All of this time was reasonable and necessary for the
24 prosecution of this Action. *Online DVD*, 2015 WL 846008, at *9. Class Counsel also took
25 meaningful steps to ensure that their work was efficient. *See* Zapala Decl. ¶¶ 80-84. Plaintiffs' fee
26 request of \$8,647,500, combined with the Court's prior award of \$3,737,500 (\$12,385,000 total) thus
27 amounts to less than 48% of their cumulative lodestar of \$25,928,960.50. This confirms its
28 reasonableness beyond question. *See Online DVD*, 2015 WL 846008, at *15 (fact that fee sought is

1 less than the lodestar suggests fairness of award); *In re Portal Software, Inc. Sec. Litig.*, No. C-03-
 2 5138 VRW, 2007 WL 4171201, at *16 (N.D. Cal. Nov. 26, 2007); *LCD II*, 2013 WL 149692, at *1.

3 **C. Counsel for IPPs Are Entitled to Reimbursement of Their Reasonable**
 4 **Litigation Expenses**

5 Class Counsel also request reimbursement of litigation costs and expenses incurred on behalf
 6 of the Class in the amount of \$4,715,036.97. Zapala Decl. ¶¶ 86-91. This amount is less than the
 7 amount stated in the notice to the Class. Class Counsel reserves their right to seek further
 8 reimbursement of expenses from future recoveries. This amount consists of the individual expenses
 9 incurred by (1) Interim Class Counsel and Supporting Counsel; and (2) the Litigation Fund which
 10 was created from assessments received from Interim Class Counsel and Supporting Counsel to pay
 11 for common litigation expenses. Attorneys who create a common fund are entitled to reimbursement
 12 of their out-of-pocket expenses so long as they are reasonable, necessary, and directly related to the
 13 prosecution of the Action. *Vincent v. Hughes Air West*, 557 F.2d 759, 769 (9th Cir. 1977);
 14 *OmniVision*, 559 F. Supp. 2d at 1048; *see also*, 1 Alba Conte, *Attorney Fee Awards* § 2.19 (3d ed.
 15 2004). Here, Counsel for IPPs' expenses are detailed in the Zapala Declaration and exhibits. Zapala
 16 Decl. ¶¶ 86-91. These expenses were reasonable and necessary for the prosecution of this action and
 17 are customarily approved by courts as proper litigation expenses.

18 **IV. CONCLUSION**

19 For the foregoing reasons, this Court should award \$8,647,500 in attorneys' fees, totaling
 20 25% of the Second Settlement Fund, and reimbursement of litigation expenses in the amount of
 21 \$4,715,036.97.

22 DATED: August 13, 2018

Respectfully submitted,

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