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9
 10 **UNITED STATES DISTRICT COURT**
 11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 12 **SAN FRANCISCO DIVISION**

13 **IN RE CAPACITORS ANTITRUST**
14 **LITIGATION**

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

15 **THIS DOCUMENT RELATES TO:**
 16 **ALL INDIRECT PURCHASER**
 17 **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

Date: July 6, 2017
 Time: 10:00 a.m.
 Place: Courtroom 11, 19th Floor
 Judge: Honorable James Donato

28 **Indirect Purchaser Plaintiffs’ Motion For Award of Attorneys’ Fees and Reimbursement of Expenses; Case No. 3:14-cv-03264-JD**

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that at 10:00 am on July 6, 2017, in connection with a hearing on final approval of the settlements, Plaintiffs and their counsel (“Class Counsel”) will move, and hereby do move, this Court before the Honorable James Donato, United States District Judge, at the United States Courthouse, 450 Golden Gate Avenue, Courtroom 11 (19th Floor), San Francisco, California, for an award of attorneys’ fees of \$3,737,500.00, totaling 25% of the Settlement Fund, and reimbursement of litigation expenses in the amount of \$2,558,454.00. This motion is brought pursuant to Fed. R. Civ. Proc. 23(h), 54(b) and 54(d)(2).

The motion should be granted because (a) the requested attorneys’ fees are fair and reasonable in light of Class Counsel’s extensive and longstanding efforts to create a Settlement Fund of \$14,950,000; (b) the requested fees comport with Ninth Circuit case law developed in similar common fund litigation; and (c) the expenses for which reimbursement is sought were reasonably and necessarily incurred in connection with the prosecution of this Action.

This motion is based upon this Notice of Motion and Motion; Memorandum of Points and Authorities; the Declaration of Steven N. Williams; the Declarations of Supporting Class Counsel; the [Proposed] Order submitted herewith; and such other records, pleadings, and papers filed in this action the Court may consider; and upon such argument as may be presented to the Court at the hearing on this motion.

DATED: May 17, 2017

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

After over close to three years of hard fought litigation, the Indirect Purchaser Plaintiffs (“IPPs”) have obtained settlements with three¹ of the sixteen capacitor manufacturers named as Defendants in this case. Class Counsel’s efforts have resulted in \$14,950,000 in settlements (the “Settlement Fund”). As reflected in the detailed declarations and exhibits accompanying this Motion, Interim Lead Class Counsel and Supporting Counsel have spent 32,788.9 hours in time and \$3,444,370.13 in expenses incurred during the Relevant Period.² See Declaration of Steven N. Williams in Support of IPPs’ Motion for Reimbursement of Attorneys’ Fees and Expenses (“Williams Decl.”).

Through this Motion, Class Counsel for IPPs seek an interim award of attorneys’ fees in an amount equal to 25% of the Settlement Fund and reimbursement of their litigation expenses in the amount of \$2,558,454.00. Although their expenses during this period are in excess of \$2,558,454.00, Class Counsel are limiting their request to the amount set forth in the notice provided to the Class without prejudice to seeking further recovery of costs in the future. Class Counsel have prosecuted this case on a purely contingent basis. The settlements have been achieved in the face of an immensely hard fought defense by some of the most sophisticated and respected defense firms in the country. The fees Class Counsel seek are eminently fair in light of the extraordinary investment of time and money they have made and the substantial risks that the litigation presented.

To date, Class Counsel for IPPs performed the following work:

- Conducted an initial investigation of this case to develop the theories of liability and the facts that formed the basis of the allegations against Defendants. This research included a review of publicly available information regarding the Capacitor industry and consultation with industry experts and economists;
- Organized and attended several proffer sessions with the Antitrust Criminal Penalty Enhancement and Reform Act (“ACPERA”) applicant to obtain cooperation and learn

¹ Plaintiffs have reached settlements with NEC Tokin Corp. and NEC Tokin America Inc. (together, “NEC Tokin”), Nitsuko Electronics Corporation (“Nitsuko”), and Okaya Electric Industries Co, Ltd. (“Okaya”).

² As set forth in the Declaration of Steven N. Williams, the “Relevant Period” is defined as November 1, 2014 to September 30, 2016.

1 additional liability, class certification and damages information relevant to the case
and Defendants;

- 2
- 3 • Drafted and extensively researched five comprehensive consolidated amended
complaints detailing Defendants’ alleged violations of the antitrust laws, which were
4 initially submitted under seal and later filed in the public record (Dkt. 345-3 (400),
741 (1160), 1057, 1112 (1588), and 1466 (1589));
- 5 • Conducted exhaustive legal research regarding the Class’s claims and the defenses
thereto, particularly with respect to Defendants’ multiple rounds of motions to
6 dismiss and motions for summary judgment based on the Foreign Trade Antitrust
Improvements Act (“FTAIA”);
- 7 • Defended and, on the whole, prevailed after extensive rounds of hard-fought motions
8 to dismiss, totaling 8 motions by Defendants with arguments covering personal
jurisdiction (as well as jurisdictional discovery), the sufficiency of the conspiracy
9 allegations under *Twombly* and *Iqbal*, the sufficiency of the complaint in light of the
numerous state laws under which IPPs sued, amongst several other attacks on the
10 pleadings;
- 11 • Propounded several sets of discovery that – after extensive meet and confers and
12 negotiations with Defendants, including significant motion practice before this Court
– resulted in the identification of hundreds of document custodians and the production
of more than ten million documents (26 million pages and 4.55 terabytes) in addition
13 to approximately 500 gigabytes of electronic transactional data;
- 14 • Drafted, met and conferred, negotiated and entered into agreements with Defendants
over a number of case management documents, such as the Stipulation and Order
15 Concerning the Discovery of Electronically Stored Information (“ESI”) (Dkt. 782)
the Protective Order (Dkt. 563), the Expert Stipulation and Order (Dkt. 540), the
Discovery Limits Stipulation and Order (Dkt. 685) and several other similar
16 documents that contribute to the effective and efficient administration of this
litigation;
- 17 • Engaged in multiple, extended discovery meet and confers with Defendants
18 concerning the appropriate document custodians for each corporate family, the
appropriate English-language search terms, the appropriate Japanese language search
19 terms and other search mechanisms that would assist Defendants in identifying and
producing responsive documents;
- 20 • Organized teams of lawyers that reviewed, searched, and extensively coded and
21 analyzed these documents – most of which were in Japanese and required
translations;
- 22 • Engaged in extensive non-party discovery, including issuing comprehensive
23 subpoenas for documents to non-party distributors of capacitors to obtain their
transactional data for both their purchases of capacitors from Defendants and their
24 sales of capacitors to IPPs. After protracted meeting and conferring, IPPs succeeded
in obtaining approximately 85% of the commerce sold from distributors to the IPPs;
- 25 • Propounded several sets of Interrogatories and Requests for Admission and
26 issued Rule 30(b)(6) deposition notices;
- 27 • Answered several sets of discovery propounded by Defendants, including
28 Requests for Production of Documents, Interrogatories and Requests for
Admission;

- 1 • Contended with near-constant discovery disputes and motions to compel;
- 2 • Prepared for and took the **depositions of 62 fact and 30(b)(6) witnesses** from
- 3 Defendants and one non-party witnesses;
- 4 • Prepared for and defended the depositions of all of the 11 IPP Class
- 5 Representatives;
- 6 • Engaged and consulted extensively with industry experts, economists and
- 7 statisticians on issues pertaining to electronic discovery, liability, summary
- 8 judgment regarding FTAIA, class certification, and damages, throughout the
- 9 course of the Action;
- 10 • Engaged in protracted settlement discussions and mediations with the Settling
- 11 Defendants, *see, e.g.*, Dkt. 1305-2, 1374-2 (Williams Decls. in Support of
- 12 Motion for Preliminary Approval);
- 13 • Documented the settlements with the Settling Defendants, briefed motions for
- 14 preliminary approval, and engaged experts noted in the field of class action
- 15 notice for the purpose of developing a robust notice program to inform the
- 16 Class regarding the pending settlements.

17 All along this near three-year timeline, as reflected in the Williams Declaration ¶ 9, IPPs
 18 faced substantial risks, expended substantial litigation costs without resort to any outside litigation
 19 funders, and have worked without compensation. *Id.* ¶ 5, 7-8,10. In light of the foregoing and in this
 20 context, Plaintiffs’ request for an interim fee award of 25% of the Settlement Fund—the attorneys’
 21 fees benchmark percentage rate in the Ninth Circuit—is fair and reasonable.

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

23 **A. Litigation History**

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

25 Cotchett, Pitre & McCarthy, LLP (“CPM”) filed its first indirect purchaser complaint on
 26 October 17, 2014 in the Northern District of California with its client, Toy-Knowlogy, Inc. This
 27 complaint was the product of many hours of investigation and research by CPM. Williams Decl. ¶
 28 11. CPM filed its second indirect purchaser complaint on October 20, 2014 with its client, CAE
 Sound. *Id.* ¶ 12.

On October 31, 2014, this Court appointed CPM as lead counsel for the indirect purchaser
 plaintiff class. Dkt. 319. Williams Decl. ¶ 13. In its Order, this Court found that CPM “has
 significant experience in handling complex class actions, including cases involving antitrust claims
 of the type at issue here.” Dkt. 319.

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

3 On November 11, 2014, IPPs filed under seal a 128-page, factually-detailed First
4 Consolidated Complaint (“FCC”). Dkt. 345-3. The FCC initially named 15 Defendant families and
5 outlined price-fixing conspiracies with respect to some overlapping Defendants and some
6 independent Defendants regarding electrolytic and film capacitors. This FCC was the result of
7 considerable work. Lead Counsel for IPPs spent significant time researching both legal and factual
8 issues. The initial complaints were supplemented with factual information learned in proffer
9 sessions with the ACPERA applicant. Japanese documents had to be reviewed and translated to
10 supplement factual allegations and to ensure that the classes’ claims survived any challenges under
11 *Twombly*.

12 On December 19, 2014, Defendants collectively and separately moved to dismiss the FCC.
13 Dkt. 474, 475, 478. On May 26, 2016, this Court largely denied Defendants’ motion, finding that
14 IPPs had alleged plausible conspiracy claims. Dkt. 710. The Court also rejected Defendants’
15 arguments regarding statutes of limitations, finding that IPPs had plausibly alleged fraudulent
16 concealment. *Id.* The Court partially granted the motion, finding that IPPs had to further
17 supplement their allegations concerning the involvement of Defendants’ U.S. subsidiaries. *Id.*

18 In response to the Court’s guidance in the order on Defendants’ motions to dismiss, IPPs
19 quickly mobilized a team of Japanese-language document reviewers to review documents and other
20 information that would support additional allegations regarding Defendants’ U.S. subsidiaries. IPPs
21 were successful in locating additional documents and information that tied the U.S. subsidiaries to
22 the conspiratorial conduct. Those allegations were incorporated into IPPs’ Second Consolidated
23 Complaint (“SCC”). IPPs filed their SCC on June 16, 2015. Dkt. 741. After IPPs filed the SCC,
24 Defendants again collectively and separately moved to dismiss on July 6, 2015. Dkt. 791, 793. On
25 December 30, 2015, the Court granted the motion as to non-California claims, but denied it in other
26 respects. Dkt. 1003.

27 On January 27, 2016, IPPs filed their Third Consolidated Complaint (“TCC”), in which IPPs
28 added additional class representatives from non-California states. Dkt. 1057. Pursuant to

1 stipulation, on March 22, 2016, IPPs filed a Fourth Consolidated Complaint (“FCC”) to clarify a
2 factual allegation and avoid further motion to dismiss practice before the Court. Dkt. 1111-4.

3 Additionally, on November 20, 2015, Defendant Nissei Electric Co., Ltd. (“Nissei”) also
4 moved to dismiss, arguing that the successor Nissei entity lacked contacts with the United States
5 sufficient for the exercise of personal jurisdiction. Dkt. 963. The parties were forced to engage in
6 intensive meet and confers regarding jurisdictional discovery, which the Court granted. IPPs
7 conducted extensive factual research concerning Nissei’s contacts with the United States, and
8 reviewed voluminous documents concerning jurisdictional discovery. On April 15, 2016, IPPs
9 opposed Nissei’s motion. Dkt. 1179-5. On March 7, 2017, this Court denied Nissei’s motion and
10 found that the exercise of personal jurisdiction was appropriate. Dkt. 1546.

11 On December 21, 2016, IPPs filed a motion for leave to file the Fifth Consolidated
12 Complaint (“FCC”). Dkt. 1414. IPPs sought to add Holy Stone entities as Defendants to IPPs’
13 complaint and to add AVX Corp., Kemet Corp. and Kemet Electronics Corp. as co-conspirators. *Id.*
14 Holy Stone opposed IPPs’ motion. Dkt. 1416. The Court granted IPPs motion and thereafter IPPs
15 filed the Fifth Consolidated Complaint, the operative complaint in this action. Williams Decl. ¶¶14-
16 22.

17 **B. The Discovery Process**

18 The discovery process in this litigation has been arduous and difficult. The case is
19 unquestionably complex by any measure. The case has involved both substantial amounts of
20 discovery, as well as a multitude of disputes with Defendants. As reflected in the Court’s docket,
21 IPPs have been forced to fight for many categories of discovery that they have sought. As recounted
22 in the Williams Declaration, IPPs propounded several rounds of written discovery on Defendants,
23 including multiple sets of Requests for Production of Documents, Interrogatories, and Requests for
24 Admission. William Decl. ¶¶ 24-28.

25 As a result of the complex nature of discovery in conspiracy cases, the parties held extensive
26 meet and confer negotiations over the scope of the requests, document custodians, and a search term
27 protocol. In many cases, these negotiations required the intervention of the Court through motions
28 to compel. The parties ultimately reached agreement, in many instances after disputed issues were

1 presented to the Court, which resulted in Defendants producing documents from hundreds of
2 document custodians. Williams Decl. ¶¶ 29-31.

3 IPPs also spent significant time and resources in discovery negotiations concerning
4 Defendants' production of transactional sales data. As this Court knows, the transactional data
5 produced in this litigation is enormous. Defendants have produced over 500 gigabytes of sales data,
6 reflecting many millions of transactions. IPPs and their experts spent significant time attempting to
7 understand the data and make use of it. This often required close consultation between IPPs and
8 their experts for purposes of clarifying the data and normalizing it for use by the experts in support
9 of class certification. IPPs propounded multiple sets of questions seeking clarification from
10 Defendants regarding their data. In some cases, this required multiple sets of questions to a single
11 Defendant family. Often answers to IPPs' questions required follow up questions as answers begot
12 more questions. Williams Decl. ¶ 32.

13 The document productions in this case have been enormous. Defendants have produced to
14 IPPs several hundred separate document productions. Thus far, IPPs have received over 10 million
15 documents spanning over 26 million Bates-numbered pages of documents produced by the
16 Defendants, which is a massive amount of document discovery. To make matters more complex, the
17 vast majority of these documents were produced in Japanese. Williams Decl. ¶¶ 37-38. To
18 effectively manage and review this colossal amount of material, IPPs and DPPs have coordinated
19 their document review efforts. Because of the large number of depositions in the case, IPPs and
20 DPPs have had to work together to organize teams of reviewers responsible for prepping counsel for
21 depositions on the horizon. Williams Decl. ¶ 39. These tasks included identifying custodial files,
22 creating "proof charts" and other work product aimed as summarizing the deposition target's best
23 documents. Once this process was complete, IPPs and DPPs worked together to identify those
24 documents that were worthy of obtaining a certified translation for purposes of use in the litigation.
25 Those documents were then identified, culled and sent to outside vendors for certified translations at
26 significant cost. Williams Decl. ¶ 40. The document review was made all the more complex
27 because, as discussed, many of the documents were provided in foreign languages. These
28 documents required review by attorneys fluent in those foreign languages, who then had to

1 determine which documents were sufficiently relevant to the litigation to require full English
2 translations and, in certain cases, certified translations for use in depositions. Though expensive and
3 time consuming, the online database and process developed by IPPs and DPPs permitted Plaintiffs to
4 efficiently prioritize documents and custodians. Williams Decl. ¶ 41.

5 In addition to the offensive discovery outlined above, Plaintiffs were required to respond to
6 discovery and to produce relevant documents to Defendants from the 11 Class Representatives.
7 IPPs' counsel spent significant time responding to Defendants' discovery requests aimed at each of
8 the 11 Class Representatives and in assisting Class Representatives in the search and production of
9 relevant documents. Williams Decl. ¶¶ 44. In addition to responding to Requests for Production of
10 Documents, Defendants also served a total of four sets of interrogatories on the 11 Class
11 Representatives. IPPs spent time and resources with their clients researching and responding to
12 these inquiries. Additionally, IPPs also spent substantial time researching and responding to
13 Defendants' contention interrogatories concerning the FTAIA and supplementing the same.
14 Williams Decl. ¶ 45.

15 C. Substantial Depositions Have Occurred in the Case

16 Lead Counsel for IPPs and Supporting Counsel have also spent significant time preparing for
17 and taking the depositions of Defendants' employees and former employees. Conspiracy cases are
18 document heavy and require a large number of depositions.

19 To date, Plaintiffs have taken 62 depositions of Defendants' employees or former employees
20 in either their Fed. R. Civ. Proc. 30(b)(1) or 30(b)(6) capacity. The vast majority of these
21 depositions have required an interpreter, thus substantially prolonging the length of the deposition.
22 Plaintiffs also took one non-party deposition. Williams Decl. ¶ 47.

23 In many cases, Defendants or their employees refused to appear in the United States for
24 deposition, thus requiring several trips to foreign countries, such as Japan and Hong Kong. Adding
25 to the complexity, deponents in Japan are precluded from appearing voluntarily. IPPs, therefore,
26 were required to file motions with the Court, obtain deposition rooms at the U.S. Consulate or
27 Embassy, and procure a deposition visa after a diplomatic exchange between the United States and
28

1 Japan. Additionally, some former employees refused to appear voluntarily, thus requiring Plaintiffs
2 to file successive motions concerning deposition attendance. Williams Decl. ¶ 48.

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

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

8 IPPs have also engaged in extensive, and protracted, non-party discovery. IPPs have sought
9 documents from over 30 non-party distributors. Williams Decl. ¶ 51. Though additional documents
10 were sought, IPPs were primarily interested in receiving *both* the distributors' purchasing data *and*
11 their sales data to demonstrate pass through to the IPP classes. Counsel for IPPs spent significant
12 time meeting and conferring with representatives of the distributors. In some cases, IPPs were
13 forced to resort to filing miscellaneous actions in courts across the country to enforce the subpoenas
14 and obtain the needed transactional data. Over the course of 2 years, IPPs were successful in
15 obtaining useable transactional data from the vast majority of the subpoena recipients. Williams
16 Decl. ¶¶ 51-54.

17 **E. IPPs Have Expended Significant Time and Resources on Other Litigation**
18 **Events**

19 On October 1, 2015, Defendants moved for summary judgment on one slice of commerce
20 that IPPs contend is not barred by the FTAIA: sales from foreign manufacturers to foreign
21 distributors who resell those capacitors to purchasers in the United States. *See* Dkt. 911. In support
22 of their motion, Defendants submitted fact declarations from 19 declarants. On November 23, 2015,
23 IPPs filed their Opposition to Defendants' summary judgment motion. In the Opposition, IPPs
24 argued that the FTAIA did not bar claims based on purchases from foreign distributors. Dkt. 965.
25 On September 30, 2016, the Court issued an Order regarding the summary judgment motions. In it,
26 the Court expressed its desire for additional briefing as to whether any of IPPs' state law claims had
27 a narrower reach than the FTAIA. On November 4, 2016 Defendants submitted their supplemental
28 briefing on the IPP motion, arguing that the extraterritorial reach of New York and Florida law were

1 narrower than the reach of the Sherman Act. Dkt. 1372. On December 2, 2016, IPPs submitted their
 2 Opposition brief, providing extensive authority showing that the extraterritorial reach of state law
 3 was at least coterminous with that of federal law. Dkt. 1407. That motion remains under submission.
 4 Williams Decl. ¶¶ 55-61.

5 In addition to the foregoing, even within the Relevant Period³, Lead Counsel for IPPs have
 6 spent significant time and resources consulting with their experts and economists in support of class
 7 certification and merits related issues. Williams Decl. ¶ 62-63.

8 As the Court would expect, IPPs have also invested substantial time and effort to settle the
 9 case against appropriate Defendants. Each settlement reached includes a substantial cash
 10 component, and a commitment by the Settling Defendant to provide cooperation to benefit IPPs'
 11 continued prosecution of the case. *See* Williams Decl. ¶¶ 64-68.

12 **III. ARGUMENT**

13 **A. The Ninth Circuit Recognizes the Common Fund Doctrine and a** 14 **Percentage-of-the-Recovery as the Predominant Method for Determining** **Attorneys' Fees in Class Action Cases**

15 As the Supreme Court has explained, “this Court has recognized consistently that a litigant or
 16 a lawyer who recovers a common fund for the benefit of persons other than himself or his client is
 17 entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S.
 18 472, 478 (1980); *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 392–93 (1970); *Central R.R. & Banking*
 19 *Co. v. Pettus*, 113 U.S. 116, 123 (1885); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d
 20 1291, 1300 (9th Cir. 1994) (“*WPPSS*”).

21 The Supreme Court has repeatedly recognized that private antitrust litigation is essential to the
 22 effective enforcement of the antitrust laws. *See, e.g., Pillsbury Co. v. Conboy*, 459 U.S. 248, 262–63
 23 (1983); *Reiter v. Sonotone Corp.*, 442 U.S. 330, 331 (1979); *Hawaii v. Standard Oil Co.*, 405 U.S.
 24 251, 266 (1972); *Perma Life Mufflers, Inc. v. Int’l Parts Corp.*, 392 U.S. 134, 139 (1968); *WPPSS*,
 25 19 F.3d at 1296. The district court has discretion in a common fund case to choose either the
 26 “percentage-of-the-fund” or the “lodestar” method in calculating fees. *Vizcaino v. Microsoft Corp.*,

27 ³ As reflected in the Williams Declaration, the time period for submission of attorneys’ fees,
 28 as established by Lead Counsel for IPPs, is November 1, 2014 through September 30, 2016.
 Williams Decl. ¶ 62.

1 290 F.3d 1043, 1047 (9th Cir. 2002) (“*Vizcaino IP*”); *In re Online DVD-Rental Antitrust Litig.*, No.
 2 12-15705, 2015 WL 846008, at *9 (9th Cir. Feb. 27, 2015) (“*Online DVD*”). Most district courts in
 3 the Ninth Circuit have exhibited a clear preference for the percentage-of-the-fund method. Virtually
 4 all of the major recent antitrust class actions in the Northern District of California have applied the
 5 percentage-of-the-fund approach. *See, e.g., In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-
 6 1827 SI, 2011 WL 7575003, at *1–2 (N.D. Cal. Dec. 27, 2011) (“*LCD I*”) (30%); *In re TFT-LCD*
 7 (*Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2013 WL 149692, at *1–2 (N.D. Cal. Jan. 14, 2013)
 8 (“*LCD IP*”) (30%); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2013 WL
 9 1365900, at *7–8 (N.D. Cal. Apr. 3, 2013) (“*LCD IIP*”) (28.6%); *In re Static Random Access Memory*
 10 (*SRAM) Antitrust Litig.*, Case No. 07-13-md-1819-CW (N.D. Cal. June 30, 2011) (ECF No. 1370)
 11 (“*SRAM*”) (30%); *Meijer v. Abbott Laboratories*, C-07-05985 (N.D. Cal. Aug. 11, 2011) (ECF No.
 12 514) (“*Meijer*”) (33⅓%); *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, M-02-
 13 1486, 2007 WL 2416513 (N.D. Cal. Aug. 16, 2007), at *1 (“*DRAM*”) (25%); *Online DVD*, 2015 WL
 14 846008, at *13.

15 Courts in the Ninth Circuit applying the “percentage of the fund” approach use a twenty-five
 16 percent benchmark. *See Paul, Johnson, Alston & Hunt v. Granuly*, 886 F.2d 268, 272 (9th Cir.
 17 1989). *See also In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir. 2015) (“Under
 18 the percentage of- recovery method, the attorneys’ fees equal some percentage of the common
 19 settlement fund; in this circuit, the benchmark percentage is 25%”).

20 Here, Counsel for IPPs’ efforts have created a common fund of \$14,950,000. Under either a
 21 “percentage-of-the-fund” or “lodestar” method, the requested fees are warranted in light of the value
 22 of the extensive work performed, the difficulty and risk of the case, and the results achieved. Indeed,
 23 the amount requested—exactly 25% of the settlement fund—comports with the Ninth Circuit’s 25%
 24 benchmark for class action settlements.

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

26 Selection of a percentage of the fund must be supported by findings that take into account all
 27 of the circumstances of the case, including the overall reasonableness of the fee requested. *Vizcaino*
 28 *v. Microsoft Corp.*, 290 F.3d 1043, 1048 (9th Cir. 2002). In determining the appropriateness of a fee

1 award, district courts are directed to consider: (1) the results achieved for the class; (2) the
 2 complexity of the case and the risk of and expense to counsel of litigating it; (3) the skill, experience,
 3 and performance of counsel on both sides; (4) the contingent nature of the fee; and (5) fees awarded
 4 in comparable cases. *Id.* at 1048-50; *see also In re Cathode Ray Tube (CRT) Antitrust Litig.*, No.
 5 MDL No. 1917, 2016 U.S. Dist. LEXIS 102408, at *62-69 (N.D. Cal. Aug. 3, 2016); *In re: Cathode*
 6 *Ray Tube (CRT) Antitrust Litig.*, No. MDL No. 1917, 2016 U.S. Dist. LEXIS 5383, at *171-74 (N.D.
 7 Cal. Jan. 14, 2016) (same) (direct purchaser class counsel’s fee motion). The Court may also
 8 consider the volume of work performed, counsel’s skill and experience, the complexity of the issues
 9 faced, and the reaction of the class. *See, e.g., In re Heritage Bond Litig.*, 02-ML-1475 DT, 2005 WL
 10 1594403, at *18–23 (C.D. Cal. June 10, 2005) (“*Heritage Bond*”).

11 **1. Counsel for IPPs Have Achieved an Excellent Recovery for IPPs**

12 Courts emphasize that the recovery is an important factor to be considered in determining an
 13 appropriate fee award. *See Hensley v. Eckerhart*, 461 U.S. 424, 431 (1983); *Vizcaino v. Microsoft*
 14 *Corp.*, 142 F. Supp. 2d 1299, 1303 (W.D. Wash. 2001) *aff’d*, 290 F.3d 1043 (9th Cir. 2002)
 15 (“*Vizcaino P*”); *In re Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008)
 16 (“*Omnivision*”). Here, Interim Class Counsel obtained settlements that confer a substantial benefit to
 17 Class Members, especially in light of the many risks involved in the action. Williams Preliminary
 18 Approval Decl. ¶ 6, Dkt. 1305-2.

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

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

24 Courts have also recognized that the novelty and difficulty of issues in a case are significant
 25 factors to be considered in awarding fees. *See, e.g., Vizcaino I*, 142 F. Supp. 2d at 1303, 1306.
 26 Antitrust price-fixing conspiracy cases are notoriously complex and difficult to litigate. *See, e.g., In*
 27 *re Linerboard Antitrust Litig.*, No. CIV.A. 98-5055, 2004 WL 1221350, at *10 (E.D. Pa. June 2,
 28 2004). Not only did Counsel for IPPs effectively manage the logistics of litigating such a complex

1 case, but as described in detail, they successfully tackled many difficult legal and factual issues
2 presented by this case.

3 The caliber of opposing counsel is another important factor in assessing the quality of Class
4 Counsel's work. *Vizcaino I*, 142 F. Supp. 2d at 1303; *In re King Res. Co. Sec. Litig.*, 420 F. Supp.
5 610, 634 (D. Colo. 1976); *Arenson v. Board of Trade*, 372 F. Supp. 1349, 1354 (N.D. Ill. 1974).
6 Here, IPPs have been opposed by attorneys from some of the best and largest firms in the country
7 with near limitless resources at their disposal. Williams Decl. ¶¶ 8, 10.

8 **3. The Risks of this Litigation**

9 Risk is an important factor in determining a fair fee award. *Online DVD*, 2015 WL 846008, at
10 *14. "Antitrust litigation in general, and class action litigation in particular, is unpredictable." *In re*
11 *NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 475 (S.D.N.Y. 1998); *In re Superior*
12 *Beverage/Glass Container Consol. Pretrial*, 133 F.R.D. 119, 127 (N.D. Ill. 1990). There is always
13 the risk that the law may change in unfavorable ways. Furthermore, given recent changes in the law,
14 there is always a risk that a class will not be certified. Several large antitrust class actions have been
15 denied certification in recent years. *See, e.g., In re Graphics Processing Units Antitrust Litig.*, 253
16 F.R.D. 478, 508 (N.D. Cal. 2008); *In re Rail Freight Fuel Surcharge Antitrust Litig.*, 725 F.3d 244,
17 255 (D.C. Cir. 2013); *In re Flash Memory Antitrust Litig.*, No. C 07-10 0086 SBA, 2010 WL
18 2332081, at *19 (N.D. Cal. June 9, 2010).

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

20 The Ninth Circuit has confirmed that a fair fee award must include consideration of the contingent
21 nature of the fee. *See, e.g., Vizcaino II*, 290 F.3d at 1050; *Online DVD*, 2015 WL 846008, at *14 &
22 n.14. It is well-established that attorneys who take on the risk of a contingency case should be
23 compensated for the risk they take. *WPPSS*, 19 F.3d at 1299. Counsel for IPPs have received no
24 compensation during the almost three years of litigation. Williams Decl. ¶ 5. This factor strongly
25 supports the requested fee.

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

27 Finally, Counsel for IPPs respectfully submit that the work they have performed has been of high
28 quality and has been of great benefit to the Class. The Court is familiar with the history of this case,

1 having presided over three years of contentious litigation.

2 **6. The Lodestar Cross-Check Confirms the Reasonableness of the**
 3 **Requested Fee**

4 Finally, a cross-check of the requested fee with Class Counsel's lodestar demonstrates that
 5 the proposed fee is more than reasonable. *See Online DVD*, 2015 WL 846008, at *15; *Vizcaino II*,
 6 290 F.3d at 1048-50. As summarized in the Williams Declaration, Counsel for IPPs have spent
 7 32,788.9 hours prosecuting this Action. All of this time was reasonable and necessary for the
 8 prosecution of this Action. *Online DVD*, 2015 WL 846008, at *9. Class Counsel also took
 9 meaningful steps to ensure that their work was efficient. *See generally*, Williams Decl. ¶¶ 73-77.
 10 Plaintiffs' fee request of \$3,737,500 thus amounts to less than 30% of their lodestar of \$13,139,375
 11 for the Relevant Time Period. This confirms its reasonableness beyond question. *See Online DVD*,
 12 2015 WL 846008, at *15(fact that fee sought is less than the lodestar suggests fairness of award); *In*
 13 *re Portal Software, Inc. Sec. Litig.*, No. C-03-5138 VRW, 2007 WL 4171201, at *16 (N.D. Cal. Nov.
 14 26, 2007); *LCD II*, 2013 WL 149692, at *1.

15 **C. Counsel for IPPs Are Entitled to Reimbursement of Their Reasonable**
 16 **Litigation Expenses**

17 Counsel for IPPs also request reimbursement of litigation costs and expenses they incurred
 18 on behalf of the Class in the amount of \$2,558,454.00. Williams Decl. ¶ 78-82. This amount does
 19 not constitute all litigation expenses incurred during the Relevant Period, but is instead capped at the
 20 amount in the class notice. Class counsel reserve their right to seek further reimbursement of
 21 expenses from future recoveries. This amount consists of the individual expenses incurred by (1)
 22 Interim Class Counsel and Supporting Counsel; and (2) the Litigation Fund which was created from
 23 assessments received from Interim Class Counsel and Supporting Counsel. *See Williams Decl.* ¶ 81.
 24 While IPP counsel had additional expenses over the course of the case, in accord with Plaintiffs'
 25 Class Notice Program at this time Counsel for IPPs only seeks this amount in reimbursement from
 26 the settlement fund. Attorneys who create a common fund are entitled to reimbursement of their
 27 out-of-pocket expenses so long as they are reasonable, necessary and directly related to the
 28 prosecution of the Action. *Vincent v. Hughes Air West*, 557 F.2d 759, 769 (9th Cir. 1977);

1 *OmniVision*, 559 F. Supp. 2d at 1048; *see also*, 1 Alba Conte, *Attorney Fee Awards* § 2.19 (3d ed.
2 2004). Here, Counsel for IPPs' expenses are detailed in the Williams Declaration and exhibits. *Id.*
3 ¶¶ 73-83. These expenses were reasonable and necessary for the prosecution of this action and are
4 customarily approved by courts as proper litigation expenses.

5 **IV. CONCLUSION**

6 For the foregoing reasons, this Court should award \$3,737,500.00 in attorneys' fees, totaling
7 25% of the Settlement Fund, and reimbursement of litigation expenses in the amount of
8 \$2,558,454.00.

9 DATED: May 17, 2017

Respectfully submitted,

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