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8 *Interim Lead Class Counsel for Indirect Purchaser Plaintiffs*

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

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

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

DECLARATION OF ADAM J. ZAPALA IN
SUPPORT OF INDIRECT PURCHASER
PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR AN AWARD OF
ATTORNEYS' FEES AND
REIMBURSEMENT OF EXPENSES

19
 20 Final Approval Hr'g: October 18, 2018

Time: 10:00 a.m.

Place: Courtroom 11, 19th Floor

21 Judge: Hon. James Donato

1 I, Adam J. Zapala, declare as follows:

2 1. I am an attorney duly licensed to practice law in the State of California and admitted to
3 practice in this Court and the courts of the State of California. I am a partner with Cotchett, Pitre &
4 McCarthy, LLP (“CPM”), and Interim Lead Counsel for the Indirect Purchaser Plaintiffs (“IPPs” or
5 “Lead Counsel for IPPs”). The matters described herein are based on my personal knowledge, and if
6 called as a witness, I could and would testify competently thereto. I make this declaration pursuant
7 to 28 U.S.C. § 1746.

8 2. I make this declaration in support of IPPs’ motion for attorneys’ fees and
9 reimbursement of litigation expenses.

10 3. I have reviewed and remained particularly cognizant of the Court’s October 31, 2014
11 Order Appointing Interim Lead Class Counsel (Dkt. 319) (“Order”), including in particular the
12 Order’s provisions regarding fees, costs and expenses. The Firm has strictly adhered to that Order’s
13 requirements.

14 4. I, or members of my law firm, have been involved in every aspect of this case since its
15 inception. I have personally overseen the vast majority of the work performed in this litigation on
16 behalf of the IPP Class. This Court appointed CPM Interim Lead Class Counsel on October 31, 2014
17 (Dkt. No. 319).

18 5. Lead Counsel for IPPs has prosecuted this litigation solely on a contingent-fee basis,
19 and has been at risk that it would not receive any compensation for prosecuting the claims against
20 Defendants. While CPM has devoted its time and resources to this matter, it has foregone other legal
21 work for which it would have been compensated.

22 6. The purpose of this declaration is to summarize (a) the factual and procedural history
23 of the litigation, (b) the work performed by Lead Counsel for IPPs and Supporting Counsel¹, (c) the
24 time expended in prosecuting this Action, (d) the costs and expenses for which counsel seek
25 reimbursement, and (e) the steps Lead Counsel for IPPs employed to ensure the efficient management
26 of this complex litigation.

27 ¹ “Supporting Counsel” refers to a number of attorneys and law firms that assisted Lead Counsel
28 for IPPs in the prosecution of this litigation. Declarations and exhibits attesting to the amount of time
and expenses Supporting Counsel incurred can be found at Exhibits 7-16 to this Declaration.

- 1 • Engaged in multiple, extended discovery meet and confers with Defendants
2 concerning the appropriate document custodians for each corporate family, the
3 appropriate English-language search terms, the appropriate Japanese-language search
4 terms and other search mechanisms that would assist Defendants in identifying and
5 producing responsive documents;
- 6 • Organized teams of lawyers that reviewed, searched, and extensively coded and
7 analyzed these documents—most of which were in Japanese and required
8 translations;
- 9 • Engaged in extensive non-party discovery, including issuing comprehensive
10 subpoenas for documents to non-party distributors of capacitors to obtain their
11 transactional data for both their purchases of capacitors from Defendants and their
12 sales of capacitors to IPPs. After protracted meeting and conferring, IPPs succeeded
13 in obtaining data regarding approximately 85% of the commerce sold from
14 distributors to the IPPs;
- 15 • Propounded several sets of Interrogatories and Requests for Admission and
16 issued Rule 30(b)(6) deposition notices;
- 17 • Answered several sets of discovery propounded by Defendants, including
18 Requests for Production of Documents, Interrogatories and Requests for
19 Admission;
- 20 • Contended with near-constant discovery disputes and motions to compel;
- 21 • Prepared for and took the **depositions of 133 fact and 30(b)(6) witnesses** from
22 Defendants and one non-party witnesses;
- 23 • Prepared for and defended the depositions of the 11 IPP Class Representatives;
- 24 • Engaged and consulted extensively with industry experts, economists, and
25 statisticians on issues pertaining to electronic discovery, liability, summary
26 judgment regarding FTAIA, class certification, and damages, throughout the
27 course of the Action;
- 28 • Engaged in protracted settlement discussions and mediations with the Settling
Defendants, *see, e.g.*, Dkts. 1305-2, 1374-2 (Williams Decls. in Support of
Motion for Preliminary Approval), Dkt. 2099-2 (Zapala Decl. in Support of
Motion for Preliminary Approval);
- 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;
- Engaged in extensive preparations with experts regarding class certification,
expert deposition preparation, and Defendants' *Daubert* motion;
- 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
- Opposed Defendants' *Daubert* motion.

- 1 10. Through this arduous litigation, IPPs have faced substantial risks. Plaintiffs have
2 faced:
- 3 • The risk of litigating against some of the largest and most sophisticated law firms in
4 the world with seemingly limitless resources;
 - 5 • The risk that the consolidated complaints would not withstand the extensive
6 individual and joint motions to dismiss;
 - 7 • The risk that even if IPPs were able to obtain a favorable settlement or judgment, that
8 the financial condition or bankruptcy of a Defendant would materially change or
9 lessen the amount of the settlement;
 - 10 • The risk that Defendants would, and in fact have, vehemently contested their
11 participation in the alleged conspiracy;
 - 12 • The risk that Defendants would prevail on their arguments at summary judgment or
13 any other phase of this litigation;
 - 14 • The risk that each Defendant would successfully argue that despite the existence of an
15 antitrust conspiracy, IPPs suffered no “antitrust impact” and no damages were caused
16 as a result;
 - 17 • The risk of not achieving class certification;
 - 18 • The risk of trying this antitrust case when several courts have commented that such a
19 task is “notoriously complex”, *Weseley v. Spear, Leeds & Kellogg*, 711 F. Supp. 713,
20 719 (E.D.N.Y. 1989); and
 - 21 • The changing landscape of the law with respect to civil antitrust actions, proving
22 damages and class actions generally.

17 **CONSOLIDATED COMPLAINTS AND MOTIONS TO DISMISS**

18 11. Cotchett, Pitre & McCarthy, LLP. (“CPM”) filed its first indirect purchaser complaint
19 on October 17, 2014 in the Northern District of California with its client, Toy-Knowlogy, Inc. This
20 complaint was the product of many hours of investigation and research by CPM.

21 12. CPM filed its second indirect purchaser complaint on October 20, 2014 with its client,
22 CAE Sound.

23 13. On October 31, 2014, this Court appointed CPM as lead counsel for the indirect
24 purchaser plaintiff class. Dkt. 319.

25 14. On November 11, 2014, IPPs filed under seal a 128-page, factually-detailed First
26 Consolidated Complaint (“FCC”). Dkt. 345-3. The FCC initially named 15 Defendant families and
27 outlined price-fixing conspiracies with respect to some overlapping Defendants and some
28 independent Defendants regarding electrolytic and film capacitors.

1 15. This FCC was the result of considerable work. Lead Counsel for IPPs spent significant
2 time researching both legal and factual issues. The initial complaints were supplemented with
3 information learned in proffer sessions with the ACPERA applicant. Japanese documents had to be
4 reviewed and translated to supplement factual allegations and to ensure that the classes' claims
5 survived any challenges under *Twombly*.

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

12 17. In response to the Court's guidance in the order on Defendants' motions to dismiss,
13 IPPs added substantial additional factual allegations. Those allegations were incorporated into IPPs'
14 Second Consolidated Complaint ("SCC") filed on June 16, 2015. Dkt. 741.

15 18. During this time, IPPs also responded to Defendant Nippon Chemi-Con's ("NCC")
16 motion to dismiss based on a purported lack of personal jurisdiction. Dkt. 478. NCC's motion
17 required jurisdictional discovery, additional factual investigation, and additional briefing. *See* Dkt.
18 635-4. The Court ultimately denied NCC's motion, finding that the exercise of personal jurisdiction
19 over it was appropriate. Dkt. 738.

20 19. After IPPs filed the SCC, Defendants again collectively and separately moved to
21 dismiss on July 6, 2015. Dkt. 791, 793. On December 30, 2015, the Court granted the motion as to
22 non-California claims, but denied it in other respects. Dkt. 1003.

23 20. On January 27, 2016, IPPs filed their Third Consolidated Complaint ("TCC"), in which
24 IPPs added additional class representatives from non-California states. Dkt. 1057. Pursuant to
25 stipulation, on March 22, 2016, IPPs filed a Fourth Consolidated Complaint ("FCC") to clarify a
26 factual allegation and avoid further motion to dismiss practice before the Court. Dkt. 1111-4.

27 21. Additionally, on November 20, 2015, Defendant Nissei Electric Co., Ltd. ("Nissei")
28 also moved to dismiss, arguing that the successor Nissei entity lacked contacts with the United States

1 sufficient for the exercise of personal jurisdiction. Dkt. 963. The parties were forced to engage in
2 intensive meet and confers regarding jurisdictional discovery, which the Court granted. IPPs
3 conducted extensive factual research concerning Nissei's contacts with the United States, and
4 reviewed voluminous documents concerning jurisdictional discovery. On April 15, 2016, IPPs
5 opposed Nissei's motion. Dkt. 1179-5. On March 7, 2017, this Court denied Nissei's motion and
6 found that the exercise of personal jurisdiction was appropriate. Dkt. 1546.

7 22. On December 21, 2016, IPPs filed a motion for leave to file the Fifth Consolidated
8 Complaint ("FCC"). Dkt. 1414. IPPs sought to add Holy Stone entities as Defendants to IPPs'
9 complaint and to add AVX Corp., Kemet Corp. and Kemet Electronics Corp. as co-conspirators. *Id.*
10 Holy Stone opposed IPPs' motion. Dkt. 1416. The Court granted IPPs' motion and thereafter IPPs
11 filed the Fifth Consolidated Complaint, the operative complaint in this action.

12 THE DISCOVERY PROCESS

13 23. This case is unquestionably complex. It has involved both substantial amounts of
14 discovery, as well as a multitude of disputes with Defendants. As reflected in the Court's docket,
15 IPPs have been forced to fight for many categories of discovery that they have sought.

16 **A. Written Discovery**

17 24. On January 27, 2015, IPPs and DPPs served a joint First Request for Production of
18 Documents. This RFP included 32 requests and sought a comprehensive set of financial,
19 organizational, conspiracy-related and transactional documents.

20 25. On February 25, 2015, IPPs served their First Set of Interrogatories on Defendants,
21 requiring that Defendants identify information relevant to the FTAIA and product attributes.

22 26. On September 15, 2015, IPPs served a Second Set of Interrogatories on Defendants,
23 also requiring that Defendants identify additional information relevant to FTAIA.

24 27. IPPs assisted DPPs in drafting their Third Set of Interrogatories on Defendants,
25 requiring them to identify conspiratorial meetings and communications.

26 28. In addition to the foregoing, and as explained in more detail *infra*, IPPs engaged in
27 substantial non-party discovery in this litigation. IPPs propounded Rule 45 document subpoenas on
28 over 30 non-party capacitor distributors. These document subpoenas sought information concerning

1 the third-party distributors' purchases of capacitors from Defendants and their sales of capacitors to
2 the IPP class.

3 **B. The Meet and Confer Process and Motion Practice Before the Court**

4 29. After the service of the aforementioned discovery and multiple rounds of objections
5 from Defendants, the parties held extensive meet and confer negotiations over the scope of the
6 requests, document custodians, a search term protocol, an ESI protocol, and a discovery
7 limitations/plan protocol. In many cases, these negotiations required the intervention of the Court
8 through motions to compel.

9 30. IPPs reached agreement with the various Defendants for them to search and collect
10 from hundreds of document custodians' files. IPPs also negotiated and reached agreement with
11 Defendants after extensive discussions concerning English and Japanese ESI search terms. The
12 parties also reached agreement concerning an ESI Stipulation and Order.

13 31. As this Court knows, there has been extensive motion practice regarding a wide range
14 of discovery issues. In most cases, IPPs have tried to coordinate to the extent practicable with DPPs
15 regarding these disputes. The disputes ranged from whether Plaintiffs were entitled to jurisdictional
16 discovery, Dkt. 570, 572, 1179-5, to disputes about search terms, Dkt. 850, to disputes concerning
17 depositions locations and the witnesses' invocations of the 5th Amendment, Dkt. 1068, to disputes
18 with NCC concerning document custodians, Dkt. 748, to disputes concerning English translations
19 of documents produced to government investigative authorities, Dkt.1108, to disputes about
20 Plaintiff discovery, Dkt. 1504, and disputes about absent class member discovery, Dkt. 1641. The
21 foregoing are only a sampling of the discovery disputes that have taken place before this Court.

22 32. IPPs also spent significant time and resources in discovery negotiations concerning
23 Defendants' production of transactional sales data. By any measure, the transactional data produced
24 in this litigation is enormous. Defendants and third-parties have produced over 500 gigabytes of sales
25 data, reflecting many millions of transactions. IPPs and their experts spent significant time attempting
26 to understand the data and make use of it. This process often required close consultation between
27 IPPs and their experts for purposes of clarifying the data and normalizing it for use by the experts in
28 support of class certification. IPPs propounded multiple sets of questions seeking clarification from

1 Defendants regarding their data. In some cases, this required multiple sets of questions to a single
2 Defendant family. Often answers to IPPs' questions required follow up questions as answers required
3 more questions.

4 33. In addition to the foregoing, IPPs were forced to file a miscellaneous action in the
5 Northern District of Texas to compel documents from a non-party capacitor distributor. That effort
6 was successful as the non-party ultimately produced the needed information. IPPs efforts with respect
7 to non-party discovery are explained more fully, *infra*.

8 **C. ESI, Expert Discovery, and Protective Orders**

9 34. The parties also spent significant time and effort setting forth the ground rules for this
10 complex litigation. The parties negotiated, and the Court entered, a Stipulation and Order Regarding
11 the Production of Electronically-Stored Information ("ESI"), Dkt. 782, a Stipulation and Order
12 Regarding Expert Discovery, Dkt. 687, and a Protective, Order Dkt. 563

13 35. In addition to the foregoing, the parties also negotiated several case management
14 agreements, such as the Stipulation and Order Concerning Discovery Limits. Dkt. 687.

15 36. In some instances, IPPs were forced to return to the Court to seek modifications to the
16 foregoing documents due to changed circumstances.

17 **D. Defendants' Document Productions and Plaintiffs' Review Efforts**

18 37. The document productions in this case have been large, even when compared to similar
19 complex antitrust cases. Defendants have produced to IPPs several hundred separate document
20 productions. All of these productions have required indexing, logging, processing and uploading to
21 IPPs/DPPs' document review platform.

22 38. Thus far, IPPs have received over 11 million documents spanning over 28 million
23 Bates-numbered pages of documents produced by the Defendants. This is an enormous amount of
24 document discovery. To make matters more complex, the vast majority of these documents were
25 produced in Japanese.

26 39. To effectively manage and review this colossal amount of material, IPPs and DPPs
27 have coordinated their document review efforts. This process is ongoing and started with production
28 of the ACPERA applicant's documents back in 2014. IPPs, in concert with DPPs, have had to

1 establish teams of reviewing attorneys to attack the document review. In doing so, IPP counsel
2 drafted, edited, and circulated for review a document review manual. This manual informed the
3 reviewers about the facts of the case, the review platform and the workflow procedure for the review
4 itself. Given the iterative nature of any document review, these protocols and workflows have had to
5 be altered over time because of lessons learned or the status of the review at any point in time. The
6 document review teams typically have calls on a weekly basis to coordinate efforts and discuss
7 findings.

8 40. Because of the large number of depositions in the case, IPPs and DPPs have had to
9 work together to organize teams of reviewers responsible for prepping counsel for depositions on the
10 horizon. These tasks included identifying custodial files, creating “proof charts” and other work
11 product aimed at summarizing the deposition target’s best documents. Once this process was
12 complete, IPPs and DPPs worked together to identify those documents that were worthy of obtaining
13 a certified translation for purposes of a deposition exhibit. Those documents were then identified,
14 culled and sent to outside vendors for a certified translation at significant cost.

15 41. This aforementioned process identified the important evidence in this case. The
16 process was made even more complex because, as discussed, many of the documents were produced
17 in foreign languages. These documents required review by attorneys fluent in those foreign
18 languages, who then had to determine which documents were sufficiently relevant to the litigation to
19 require full English translations and, in certain cases, certified translations for use in depositions.
20 Though expensive and time consuming, the online database and process developed by IPPs and DPPs
21 permitted Plaintiffs to efficiently prioritize documents and custodians.

22 42. In order to contain costs and maintain resources for the benefit of the Class, IPPs made
23 the decision that no English language document reviewer could bill at a rate higher than \$300 per
24 hour for initial document review. Foreign language document reviewers were given a cap of \$350
25 per hour.

26 43. During the initial discovery phase and particularly in the deposition phase, the
27 document review required daily commitment. The process involved significant communications with
28 IT specialists to manage, load and assist in the rolling document productions. Although the ESI

1 protocols were negotiated and agreed to by all parties, IPPs experienced numerous issues related to
2 the loading of data onto the database. While these issues were technical in nature, they required meet
3 and confers with the Defendants.

4 **E. Plaintiffs' Document Collection and Productions**

5 44. In addition to the offensive discovery outlined above, Plaintiffs were required to
6 respond to discovery and to produce relevant documents to Defendants from the 11 Class
7 Representatives. IPPs made their first production of documents on June 1, 2015 and made subsequent
8 productions on July 16, 2015, August 10, 2015, October 9, 2015, August 22, 2016, September 7,
9 2016, February 9, 2017, and February 25, 2017. IPPs' counsel spent significant time responding to
10 Defendants' discovery requests aimed at each of the 11 Class Representatives and in assisting Class
11 Representatives in the search and production of relevant document.

12 45. In addition to responding to Requests for Production of Documents, Defendants also
13 served a total of four sets of interrogatories on the 11 Class Representatives. IPPs spent time and
14 resources with their clients researching and responding to these inquiries. Additionally, IPPs also
15 spent substantial time research and responding to Defendants' contention interrogatories concerning
16 the FTAIA and supplementing the same.

17 **F. Depositions**

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

21 47. To date, Plaintiffs have taken 133 depositions of Defendants' employees or former
22 employees in either their Fed. R. Civ. Proc. 30(b)(1) or 30(b)(6) capacity. Of these 133 depositions,
23 the clear majority have required an interpreter, thus substantially prolonging the length of the
24 deposition. Plaintiffs also took one non-party deposition.

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

1 Embassy, and procure a deposition visa after a diplomatic exchange between the United States and
2 Japan. Additionally, some former employees refused to appear voluntarily, thus requiring Plaintiffs
3 to file successive motions concerning deposition attendance.

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

8 50. The above-numbers only apply to the taking of depositions. But IPPs were also
9 required to defend 11 class representative depositions. Defendants deposed all the Class
10 Representatives. This process required IPPs to prepare their Class Representatives for the deposition,
11 often necessitating substantial travel and preparation over a number of days.

12 **G. Non-Party Discovery**

13 51. IPPs have also engaged in extensive, and protracted, non-party discovery. On June 30,
14 2015, Plaintiffs served an initial tranche of Rule 45 subpoenas seeking documents and transactional
15 data from non-party capacitor distributors. Obtaining this discovery was critical to IPPs' case for
16 purposes of demonstrating pass-through of the overcharge. On June 29, 2016, July 1, 2016, July 8,
17 2016, and July 19, 2016 Plaintiffs served Rule 45 subpoenas to additional non-party capacitor
18 distributors seeking the same information.

19 52. Though additional documents were sought, IPPs were primarily interested in receiving
20 *both* the distributors' purchasing data *and* their sales data to demonstrate pass-through to the IPP
21 classes.

22 53. Counsel for IPPs spent significant time meeting and conferring with representatives of
23 the non-party distributors. In some cases, IPPs were forced to resort to filing miscellaneous actions
24 in courts across the country to enforce the subpoenas and obtain the needed transactional data.

25 54. Over the course of 2 years, IPPs were successful in obtaining useable transactional from
26 the vast majority of the subpoena recipients. As reflected in the IPPs' Expert Report of Dr. Russell
27 Lamb in Support of Class Certification, IPPs obtained approximately 85% of the *entire market* for
28

1 distributor data. In Class Counsel’s experience, this is a remarkable amount of data obtained from
2 non-party sources for purposes of an indirect purchaser case.

3 **SUMMARY JUDGMENT PROCEEDINGS REGARDING THE FOREIGN TRADE**
4 **ANTITRUST IMPROVEMENT ACT (“FTAIA”)**

5 55. Early in the litigation, in order to streamline the claims and class certification, the Court
6 stated its desire to address issues involving the FTAIA early. IPPs (and the other parties) devoted
7 substantial time and resources to this effort.

8 56. IPPs and Defendants met on several occasions to informally discuss their views on
9 what types of commerce were included in IPPs’ claims. In addition to this informal discovery, the
10 parties engaged in significant formal discovery, including propounding Interrogatories and taking
11 depositions of witnesses pursuant to Rule 30(b)(1) and Rule 30(b)(6).

12 57. On October 1, 2015, Defendants moved for summary judgment on one slice of
13 commerce that IPPs contend is not barred by the FTAIA: sales from foreign manufacturers to foreign
14 distributors who resell those capacitors to purchasers in the United States. *See* Dkt. 911. In support
15 of their motion, Defendants submitted fact declarations from 19 declarants.

16 58. Thereafter, IPPs took 17 depositions of Defendants’ declarants or persons most
17 qualified to provide testimony in a compressed timeframe.

18 59. On November 23, 2015, IPPs filed their Opposition to Defendants’ summary judgment
19 motion. In the Opposition, IPPs argued that the FTAIA did not bar claims based on purchases from
20 foreign distributors. Dkt. 965.

21 60. On January 13, 2016, the Court heard oral argument on Defendants’ motions. And on
22 September 30, 2016, the Court issued an Order regarding the summary judgment motions. In it, the
23 Court expressed its desire for additional briefing as to whether any of IPPs’ state law claims had a
24 narrower reach than the FTAIA. In doing so, the Court appears to have agreed with IPPs and
25 concluded that the FTAIA does not bar IPPs’ claims. Dkt. 1302.

1 65. On March 29, 2016, IPPs settled with Nitsuko. This settlement required Nitsuko to pay
2 \$800,000 for the benefit of the IPP class. In addition to the cash component, Nitsuko would provide
3 certain cooperation to IPPs to assist them in further prosecution of the case.

4 66. On April 15, 2016, IPPs settled with Okaya. This settlement required Okaya to pay
5 \$900,000 for the benefit of the IPP class. In addition to the cash component, Okaya would provide
6 certain cooperation to IPPs to assist them in further prosecution of the case.

7 67. On July 15, 2016, IPPs settled with NEC TOKIN. The NEC TOKIN settlement
8 provides \$13,250,000 to the IPP class. This settlement was reached after protracted negotiations and
9 an in-person, all-day mediation with former federal district court judge, Hon. Layn Phillips (Ret.).
10 Through efforts made at and after the mediation, the parties were able to fully settle the case against
11 NEC TOKIN. In addition to the cash component, NEC TOKIN must provide certain cooperation to
12 IPPs to assist them in further prosecution of the case.

13 68. On October 30, 2017, the Court granted final approval of the foregoing settlements.
14 Dkt. 1934.

15 69. On June 30, 2017, IPPs settled with Soshin. This settlement requires Soshin to pay
16 \$590,000 for the benefit of the IPP class. In addition to the cash component, Soshin must provide
17 certain cooperation to IPPs to assist them in further prosecution of the case.

18 70. On July 21, 2017, IPPs settled with Hitachi Chemical. This settlement requires Hitachi
19 Chemical to pay \$14,000,000 for the benefit of the IPP class. In addition to the cash component,
20 Hitachi Chemical must provide certain cooperation to IPPs to assist them in further prosecution of
21 the case.

22 71. On September 8, 2017, IPPs sought preliminary approval of the foregoing settlements.
23 Dkt. 1844. On October 10, 2017, the Court granted preliminary approval of the settlements. Dkt.
24 1888.

25 72. On February 12, 2018, IPPs settled with Nippon Chemi-Con Corp and United Chemi-
26 Con. (together, "NCC"). This settlement requires NCC to pay \$13,500,000 for the benefit of the IPP
27 class. In addition to the cash component, NCC must provide certain cooperation to IPPs to assist
28 them in further prosecution of the case.

1 73. On April 12, 2018, IPPs settled with Holy Stone. This settlement requires Holy Stone
2 to pay \$2,000,000 for the benefit of the IPP class. In addition to the cash component, Holy Stone
3 must provide certain cooperation to IPPs to assist them in further prosecution of the case.

4 74. On March 7, 2018, IPPs settled with Rubycon. This settlement requires Rubycon to pay
5 \$4,500,000 for the benefit of the IPP class. In addition to the cash component, Rubycon must provide
6 certain cooperation to IPPs to assist them in further prosecution of the case.

7 75. On April 24, 2018, IPPs sought preliminary approval of the foregoing settlements. Dkt.
8 2099. On May 25, 2018, the Court granted preliminary approval of the settlements. MDL Dkt. 266.

9 **NOTICE TO CLASS MEMBERS AND CLASS MEMBER RESPONSES**

10 76. Counsel for IPPs consulted with and engaged recognized experts in the class action
11 notice field, AB Data, for the purpose of providing the class with notice of the proposed settlements.

12 77. The Notice Program, developed in consultation with AB Data, provided for (1)
13 individual mailed notice to Class Members who could be identified through reasonable efforts (*i.e.*,
14 individual notice); (2) multiple and targeted publications of the class notice in those paid media outlets
15 most likely to inform potential class members about the settlements (*i.e.*, publication notice); (3)
16 press releases (*i.e.*, earned media) that were uniquely targeted to potential Class Members; (4) the
17 placement of the class notice on internet banner advertisements, including through social media
18 outlets; (4) the establishment of a settlement website that provided notice of the settlements; and (5)
19 a toll free telephone support line to service class members' inquiries regarding the notice, which in
20 turn, permitted them to request a copy of the notice delivered via direct mail. *See, e.g.*, May 24, 2018
21 Declaration of Linda V. Young in Support of Motion for Approval of Class Notice Program, MDL
22 Dkt. 159-2.

23 78. On May 10, 2018, this Court approved IPPs' Notice Program. MDL Dkt. 211.

24 79. Thus far, IPPs have received no objections to any of the settlements, the Notice
25 Program, to the request for attorneys' fees or to the request for reimbursement of litigation
26 expenses, which were all outlined in the notices.

1 **ATTORNEYS' FEES AND EXPENSES**

2 **A. IPP Counsel's Attorneys' Fees and Expenses**

3 80. Lead Counsel for IPPs have employed many measures to ensure that the lodestar figure
4 presented herein is not improperly inflated. As an initial matter, Lead Counsel for IPPs have strictly
5 complied with this Court's Order Appointing Interim Lead Counsel. *See* Dkt. 319. Section V of that
6 Order set forth guidelines that IPPs were to follow for purposes of attorneys' fees and litigation
7 expenses. Lead Counsel for IPPs not only followed those Rules closely for themselves but
8 disseminated those rules to any Supporting Counsel and informed them that their time would not be
9 considered by Lead Counsel for IPPs unless Supporting Counsel also strictly followed those Rules.
10 Accordingly, Lead Counsel for IPPs required regular reporting of detailed time records from
11 Supporting Counsel. In doing so, Lead Counsel for IPPs required detailed backup time to ensure that
12 Supporting Counsel were not duplicating efforts or billing for time that was not directed by Lead
13 Counsel for IPPs.

14 81. In addition to the requirements set forth in this Court's Order (Dkt. 319), Lead Counsel
15 for IPPs also employed other efforts and safeguards to ensure that billings were reasonable and not
16 duplicative. For example, Lead Counsel for IPPs have (1) capped the hourly rate for attorney
17 document review to \$300 per hour and \$350 per hour for foreign language document review,
18 regardless of years of experience; (2) to avoid duplication of effort and achieve other efficiencies,
19 provided strict guidelines to Supporting Counsel that they were only to work on the case at the
20 direction Lead Counsel for IPPs and that only time authorized would be included in an application to
21 the Court; and (3) required Supporting Counsel to at regular periodic intervals submit
22 contemporaneous time records to ensure compliance with Lead Counsel for IPPs' guidelines.

23 82. The hourly rates for the attorneys, paralegals and law clerks at my firm included in
24 **Exhibit 1** are the usual and customary hourly rates charged by CPM on a historical rate basis. The
25 total number of hours spent by my firm during the relevant time period of time was 11,316.1 hours,
26 with a corresponding historical lodestar of \$4,676,817.50. This summary was prepared from
27 contemporaneous, daily time records regularly prepared and maintained by my firm.
28

