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8
9 **UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12 **IN RE CAPACITORS ANTITRUST**
13 **LITIGATION**

MDL No. 3:17-md-02801-JD
Case No. 3:14-cv-03264-JD

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

INDIRECT PURCHASER PLAINTIFFS’
NOTICE OF MOTION AND MOTION
FOR ATTORNEYS’ FEES, EXPENSES,
AND SERVICE AWARDS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT

Date: January 23, 2020
Time: 10:00 a.m.
Place: Courtroom 11, 19th Floor
Judge: Hon. James Donato

1 **NOTICE OF MOTION AND MOTION**

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

3 **PLEASE TAKE NOTICE** that the Honorable James Donato will hear this Motion at the
4 United States District Court for the Northern District of California, 450 Golden Gate Avenue,
5 Courtroom 11, 19th Floor, San Francisco, California, on January 23, 2020 at 10:00 a.m.

6 Pursuant to Federal Rules of Civil Procedure (“Rules”) 23(h), 54(b) and 54(d)(2), and in
7 connection with the proposed settlements with Elna Corporation, Ltd. and Elna America, Inc.
8 (“ELNA”), Matsuo Electric Corporation, Ltd. (“Matsuo”), Nichicon Corporation and Nichicon
9 America Corporation (“Nichicon”), and Panasonic Corporation (“Panasonic”), Indirect Purchaser
10 Plaintiffs (“IPPs”) seek entry of an order granting an award of attorneys’ fees of \$7,737,500, or 25%
11 of the Round 3 Settlements totaling \$30,950,000, reimbursement of litigation expenses of
12 \$905,071.23,¹ and a service award of \$5,000 to each of the 10 Class Representatives.

13 The Court should grant this Motion because (a) the attorneys’ fees request is fair and
14 reasonable considering Class Counsel’s² extensive and longstanding efforts to create a cumulative
15 settlement fund totaling \$80,490,000, which includes the aforementioned settlements; (b) the request
16 comports with Ninth Circuit case law developed in similar common fund cases and constitutes a
17 negative multiplier on Class Counsel’s time; (c) the expenses for which IPPs seek reimbursement
18 were reasonably and necessarily incurred in connection with the prosecution of this action (“Action”);
19 and (d) service awards to Class Representatives for their efforts on behalf of the classes are warranted
20 and appropriate.

21 This Motion is based upon this Notice of Motion and Motion, the following Memorandum of
22 Points and Authorities, the accompanying Declaration of Adam J. Zapala and exhibits attached
23 thereto, including the Declarations of Class Counsel, the Declarations of Class Representatives, the
24

25
26 ¹ This figure could change based on the as-yet unfinished work of Special Master Monica Ip in
27 connection with IPPs’ request for reimbursement of litigation expenses in connection with the Round
28 2 settlements (ECF No. 903). If any adjustments to this figure are necessary, or are somehow impacted
by Special Master Ip’s report, IPPs will advise the Court in a future filing.

² “Class Counsel” collectively refers to Lead Counsel and the law firms and attorneys that assisted
Lead Counsel in the prosecution of this Action.

1 [Proposed] Order submitted herewith, argument by counsel at the hearing before this Court, any
2 papers filed in reply, and all papers and records on file in the Action.

3
4 DATED: November 15, 2019

Respectfully submitted,

5 /s/ Adam J. Zapala

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STATEMENT OF ISSUE TO BE DECIDED

Whether the Court should grant an award of reasonable attorneys’ fees of \$7,737,500, or 25% of the Round 3 Settlements of \$30,950,000, reimbursement of reasonably incurred expenses of \$905,071.23, and a service award of \$5,000 to each of the 10 Class Representatives after five years of hard-fought litigation—resulting in settlements with all but two Defendants totaling \$80,490,000—pursuant to Rules 23(h), 54(b) and 54(d)(2).

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

IPPs brought this antitrust class action five years ago on a solely contingent basis to recover overcharge damages from sophisticated foreign actors preying on victims in the United States. The nature of the Action assured Class Counsel would have to carry millions of dollars in out-of-pocket expenses at the outset at risk of total loss. Success meant overcoming difficult questions of proof at every stage leading up to trial, with no guarantee of any recovery for the classes and no guarantee of any payment whatsoever for Class Counsel.

On a cumulative basis, IPPs have achieved settlements worth \$80,490,000 with 12 of the 16 Defendant Groups in this Action to date.³ In October 2017, the Court granted final approval of Round 1 Settlements totaling \$14,950,000 and awarded attorneys' fees in the amount of 25% of the settlement fund (Case No. 3:14-cv-03264, ECF No. 1938).⁴ In June 2019, the Court granted final approval of the Round 2 Settlements totaling \$34,590,000, again awarding attorneys' fees of 25% of the settlement fund (ECF No. 700). IPPs have now reached settlements with four Defendants—ELNA, Matsuo, Nichicon, and Panasonic—totaling \$30,950,000. Through this Motion, IPPs seek attorneys' fees of \$7,737,500, or 25% of the Round 3 Settlements of \$30,950,000, reimbursement of litigation expenses of \$905,071.23, and 10 service awards totaling \$50,000.

IPPs have reached settlements in the face of an immensely hard-fought defense by some of the leading firms in the country. The attorneys' fees request is eminently fair given the complex nature of this Action, the excellent results obtained, the array of defenses Defendants raised, the substantial

³ IPPs have settled with NEC Tokin Corp. and NEC Tokin America Inc. (together, "NEC Tokin"), Nitsuko Electronics Corporation ("Nitsuko"), and Okaya Electric Industries Co, Ltd. ("Okaya") (collectively, "Round 1 Settlements"); 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"), Nippon Chemi-Con Corp. and United Chemi-Con Corp. (together, "NCC/UCC"), Rubycon Corp. and Rubycon America Inc. (together, "Rubycon"), and Soshin Electric Co., Ltd. ("Soshin") (collectively, "Round 2 Settlements"); and ELNA, Matsuo, Nichicon, and Panasonic ("Round 3 Settlements").

IPPs have not resolved with Shinyei Technology Co., Ltd., Shinyei Capacitor Co., Ltd., (together, "Shinyei") and Taitsu Corporation ("Taitsu").

The Court entered the default of Toshin Kogyo and indicated it would do the same with respect to Nissei (ECF No. 540).

⁴ All ECF references are to the MDL Docket, Case No. 3:17-md-02801, unless otherwise noted.

1 fact and expert discovery, the significant investment of time and resources, and the substantial
2 preparation leading up to class certification and summary judgment proceedings. *See* Declaration of
3 Adam J. Zapala in Support of IPPs’ Motion for Reimbursement of Attorneys’ Fees and Expenses ¶¶
4 5-87 (“Zapala Decl.”) (Ex. A). As detailed in the Zapala Declaration, the attorneys’ fees request is
5 reasonable and reflects the challenging nature of this complex international cartel litigation.

6 The accompanying Declarations reflect the fact that Class Counsel have devoted a total of
7 70,603.5 hours and incurred \$28,872,571 in lodestar from the appointment of leadership through
8 August 12, 2019. *Id.* ¶ 92. From April 1, 2018 through August 12, 2019, Class Counsel spent 6,596
9 hours and incurred \$2,943,610.50 in lodestar. *Id.* ¶ 91. The 25% attorneys’ fees request is fair and
10 reasonable, amounting to only 46.93% of Class Counsel’s unreimbursed lodestar of \$16,487,571.⁵
11 *Id.* ¶ 96. Indeed, the Court has granted attorneys’ fees awards of the same percentage in connection
12 with the prior settlement rounds. If the Court were to grant the attorneys’ fees request on the Round
13 3 Settlements, the total attorney fee award would equal \$20,122,500, or 25% of the cumulative
14 settlement fund totaling \$80,490,000 and constituting a negative cumulative multiplier of 0.6969. *Id.*
15 ¶ 97.

16 The expense request of \$905,071.23 is also fair and reasonable. Class Counsel reasonably and
17 necessarily incurred unreimbursed, individual firm expenses of \$51,759.81 and unreimbursed
18 Capacitors Litigation Fund (“Litigation Fund”) expenses of \$1,044,152.27 for a total of
19 \$1,095,912.08, though IPPs are limiting their expense request to \$905,071.23 at this time (ECF No.
20 836-2) because the class notice provides that Class Counsel would only seek reimbursement of
21 expenses of up to this amount in connection with the Round 3 Settlements. *Id.* ¶ 101. This expense
22 request is separate and apart from the prior expense request in connection with the Round 2
23 Settlements, which remains pending before the Court.⁶ IPPs request the Court grant the reasonable
24 expense request of \$905,071.23 in connection with the Round 3 Settlements.

25 ⁵ In connection with the Round 1 Settlements, this Court awarded \$3,737,500 in attorneys’ fees
26 (25% of the settlement fund of \$14,950,000). In connection with the Round 2 Settlements, this Court
27 awarded \$8,647,500 in attorneys’ fees (25% of the settlement fund of \$34,590,000). The Court has
28 therefore awarded \$12,385,000 in attorneys’ fees thus far on a cumulative settlement fund of
\$49,540,000 (ECF No. 628; Case No. 3:14-cv-03264-JD, ECF No. 1938).

⁶ The Court granted reimbursement of litigation expenses of \$2,558,454 in connection with the
Round 1 Settlements (Case No. 3:14-cv-03264, ECF No. 1938).

1 Likewise, IPPs' request for a service award of \$5,000 for each of the 10 Class Representatives
2 is appropriate and warranted. IPPs have not previously requested service awards for the Class
3 Representatives. If awarded, the service awards total \$50,000 or 0.00062% to be deducted from the
4 cumulative settlement fund of \$80,490,000.

5 **II. STATEMENT OF RELEVANT FACTS**

6 Although the Court is fully aware of the work performed by Class Counsel in this Action, a
7 full recitation of the work performed throughout this litigation may be found in the Zapala
8 Declaration. *Id.* ¶¶ 5-87, and in prior Zapala Declarations submitted in support of IPPs' requests for
9 attorneys' fees. This Action has been difficult and expensive, with an outcome that was often
10 uncertain since the litigation began five years ago. IPPs have faced a succession of challenges and
11 undertaken substantial risks. IPPs effectively defended their consolidated complaint against multiple
12 rounds of motions to dismiss; engaged in significant foreign discovery, including taking 144
13 depositions and obtaining over 500 gigabytes of transactional data and over 15 million documents;
14 opposed summary judgment motions relating to Foreign Trade Antitrust Improvements Act (FTAIA);
15 moved for class certification after rigorous expert analysis and discovery; consulted with economists
16 and responded to other experts' merits reports; and opposed summary judgment motions relating to
17 the merits. *Id.* ¶¶ 5-65. All the while, IPPs negotiated settlements with a dozen Defendants and
18 obtained cooperation to assist them in prosecuting the remaining Defendants. *Id.* ¶¶ 66-82.

19 IPPs filed the first complaint before the announcement of any charges or plea agreements in
20 the criminal action. IPPs developed evidence of a conspiracy far broader than the one targeted by the
21 government. IPPs developed evidence of a price-fixing conspiracy on electrolytic and film capacitors
22 and, combined with cutting-edge work by industry and economic experts, developed proof of an
23 overcharge on capacitors sold to distributors that was passed through to class members. The extensive
24 work for Class Counsel made this possible.

25 **III. ARGUMENT**

26 The attorneys' fees request of \$7,737,500 is equivalent to 25% of the Round 3 Settlements.
27 Applying a lodestar cross-check, this represents 46.93% of Class Counsel's unreimbursed lodestar of
28 \$16,487,571 and a cumulative negative multiplier of 0.6969.

1 **A. Class Counsel’s Attorneys’ Fees Request Is Fair and Reasonable**

2 Class Counsel have created a benefit for the settlement classes—\$30,950,000—which creates
3 a common fund totaling \$80,490,000. District courts may award reasonable attorneys’ fees and
4 expenses under Rules 54(d)(2) and 23(h). The Supreme Court has explained “a litigant or a lawyer
5 who recovers a common fund for the benefit of persons other than himself or his client is entitled to
6 a reasonable attorneys’ fee from the fund as a whole.”⁷ This doctrine recognizes “those who benefit
7 from the creation of the fund should share the wealth with the lawyers whose skill and effort helped
8 create it.”⁸ The 25% attorney fee award sought here compensates Class Counsel for its vigorous
9 litigation on behalf class members in the United States victimized by Defendants’ illegal conduct.
10 The Supreme Court described such work as critical to the effective enforcement of the antitrust laws.⁹

11 Courts in the Ninth Circuit award fees in common fund cases under either the “percentage-
12 of-recovery” method or the “lodestar” method.¹⁰ The clear trend in antitrust class actions is to award
13 attorneys’ fees based on a percentage-of-the-recovery method, which “directly aligns the interests of
14 the class and its counsel and provides a powerful incentive for the efficient prosecution and early
15 resolution of litigation[.]”¹¹ Indeed, most courts in this Circuit prefer the percentage-of-recovery
16 method, with all of the recent, major antitrust class actions in this District applying it.¹² This Court
17 also followed the percentage-of-the-recovery method in awarding fees for the prior settlement rounds
18

19 ⁷ *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Staton v. Boeing Co.*, 327 F.3d 938, 967
20 (9th Cir. 2003) (same) (“*Staton*”).

21 ⁸ *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994) (“*WPPSS*”).

22 ⁹ *Pillsbury Co. v. Conboy*, 459 U.S. 248, 262-63 (1983); *Reiter v. Sonotone Corp.*, 442 U.S. 330,
331 (1979); *Hawaii v. Stand. Oil Co.*, 405 U.S. 251, 266 (1972).

23 ¹⁰ *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir. 2015) (“*Online DVD*”);
Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1047 (9th Cir. 2002) (“*Vizcaino IP*”); *WPPSS*, 19 F.3d at
24 1296.

25 ¹¹ *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (“*Wal-Mart*”).

26 ¹² *See, e.g., In re Capacitors Antitrust Litig.*, No. 14-cv-3264, ECF No. 1714 (N.D. Cal. June 27,
27 2017); *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. C-07-5944 JST, 2016 WL 4126533, at *1 (N.D.
28 Cal. Aug. 3, 2016); *In re TFT-LCD Antitrust Litig.*, No. M 07-1827 SI, 2011 WL 7575003, at *1 (N.D.
Cal. Dec. 27, 2011); *In re TFT-LCD Antitrust Litig.*, No. M 07-1827 SI, 2013 WL 149692, at *1-2
(N.D. Cal. Jan. 14, 2013) (“*Flat Panel P*”); *In re TFT-LCD Antitrust Litig.*, No. M 07-1827 SI, 2013
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(*SRAM*) *Antitrust Litig.*, No. 07-md-1819 CW (N.D. Cal. June 30, 2011), ECF No. 1370; *Meijer v.*
Abbott Labs., C 07-05985 CW (N.D. Cal. Aug. 11, 2011), ECF No. 514 (“*Meijer*”); *In re Dynamic*
Random Access Memory (DRAM) Antitrust Litig., M-02-1486, 2007 WL 2416513 (N.D. Cal. Aug.
16, 2007), at *1 (“*DRAM*”) (25%); *Online DVD*, 2015 WL 846008, at *13.

1 (ECF No. 700; Case No. 3:14-cv-03264-JD, ECF No. 1938). Regardless of the method, this Circuit
2 encourages “a cross-check using the other method.”¹³ Both methods support the request.

3 The “benchmark” in the Ninth Circuit is 25% of the gross common fund.¹⁴ Class Counsel are
4 only seeking the benchmark percentage from the Round 3 common fund of \$30,950,000. Under either
5 a “percentage-of-the-recovery” or “lodestar” method, the request is warranted considering the value
6 of the extensive work performed, the difficulties and risks, and the results achieved.

7 **B. The Fee Request Is Reasonable Under the Percentage-of-Recovery Method**

8 The Ninth Circuit has directed district courts to “consider[] all of the circumstances” to
9 “reach[] a reasonable percentage.”¹⁵ The percentage must be appropriate based on the facts.¹⁶ Courts
10 may consider the following factors in making an award: (1) whether counsel achieved exceptional
11 results for the class; (2) whether the case was risky; (3) whether counsel generated benefits beyond
12 the cash settlement fund; (4) the market rate for the particular field of law; (5) the litigation burdens;
13 and (6) whether the case was handled on a contingency basis.¹⁷ Courts may also consider the volume
14 of work performed, counsel’s skill and experience, the complexity of the issues faced, and the class’s
15 reaction.¹⁸ Each of the foregoing factors supports IPPs’ request.

16 **1. Class Counsel Achieved Excellent Results for the Classes**

17 The Round 3 settlement fund of \$30,950,000 constitutes an excellent result for the settlement
18 classes given the immense challenges and risks posed. Courts emphasize that the recovery size is an
19 important factor to be considered in determining an appropriate fee award.¹⁹ Performing quality work
20 on the legal issues, developing the extensive factual record, defending against Defendants’

21 ¹³ *Online DVD*, 779 F.3d at 949.

22 ¹⁴ *Paul, Johnson, Alston & Hunt v. Granulity*, 886 F.2d 268, 272 (9th Cir. 1989); *Online DVD*,
23 779 F.3d at 949 (“Under the percentage of- recovery method, the attorneys’ fees equal some
percentage of the common settlement fund; in this circuit, the benchmark percentage is 25%”).

24 ¹⁵ *Vizcaino II*, 290 F.3d at 1048.

25 ¹⁶ *Id.*; see also *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993).

26 ¹⁶ *de Mira v. Heartland Employment Serv., LLC*, No. 12-CV-04092 LHK, 2014 WL 1026282, at
27 *1 (N.D. Cal. Mar. 13, 2014) (quoting *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1047
(N.D. Cal. 2008) (“*Omnivision*”).

28 ¹⁷ *Online DVD*, 779 F.3d at 954-55; *Vizcaino II*, 290 F.3d at 1048-50.

¹⁸ See, e.g., *In re Heritage Bond Litig.*, 02-ML-1475 DT, 2005 WL 1594403, at *18-23 (C.D. Cal.
June 10, 2005) (“*Heritage Bond*”).

¹⁹ See *Hensley v. Eckerhart*, 461 U.S. 424, 431 (1983); *Vizcaino v. Microsoft Corp.*, 142 F. Supp.
2d 1299, 1303 (W.D. Wash. 2001), *aff’d*, 290 F.3d 1043 (9th Cir. 2002) (“*Vizcaino I*”); *Omnivision*,
559 F. Supp. 2d at 1046.

1 affirmative defenses, and successfully navigating the complex issues raised by the substantial expert
 2 discovery allowed IPPs to successfully prosecute this Action and to maximize the recovery obtained
 3 thus far. All of the work performed throughout the Action has led to the results achieved. Class
 4 Counsel persevered for five years. As a consequence, IPPs will likely be able to distribute the
 5 settlement funds to class members years earlier than they otherwise would have had the Action
 6 against Elna, Matsuo, Nichicon, or Panasonic continued to trial and likely appeals.

7 Class Counsel obtained settlements that confer a substantial benefit on class members,
 8 especially considering the many risks involved in the Action.²⁰ The table below summarizes the
 9 excellent results that the Round 3 Settlements represent:

Defendant Family	Settlement Amount	Comments
ELNA	\$2,250,000	The settlement amount represents 69.23% of ELNA's sales of capacitors to U.S. distributors totaling only \$3,250,600.00 (ECF No. 698-1 at ¶ 8) and 734.65% of the estimated damages attributable to ELNA (ECF No. 698 at 6).
Matsuo	\$2,500,000	The settlement amount represents 49.99% of Matsuo's sales of capacitors to U.S. distributors totaling only \$5,000,647.00 (ECF No. 698-1 ¶ 9) and 567.13% of the estimated damages attributable to Matsuo (ECF No. 698 at 6).
Nichicon	\$21,500,000	The settlement amount represents 9.95% of Nichicon's sales of capacitors to U.S. distributors totaling \$216,099,900 (ECF No. 698-1 at ¶ 7) and 106.72% of the estimated damages attributable to Nichicon (ECF No. 698 at 6).
Panasonic	\$4,700,000	The settlement amount represents 4.4% of Panasonic's affected sales of capacitors to U.S. distributors totaling \$107,233,527 (ECF No. 698-1 at ¶ 17) and 47.13% of the estimated damages against Panasonic (ECF No. 698 at 6).

21 As shown above, all settlements except the Panasonic settlement are worth more than IPPs'
 22 estimated single damages attributable to that Defendant. With respect to Panasonic, their ACPERA
 23 status makes them differently situated, as did other defenses unique to them (ECF No. 698).

24 ²⁰ See Declaration of Steven N. Williams in Support of IPPs' Motion for Preliminary Approval
 25 of Class Action Settlements with Defendants NEC Tokin, Nitsuko, and Okaya, ¶ 6 (Case No. 3:14-
 26 cv-03264, ECF No. 1305-2); Declaration of Steven N. Williams in Support of IPPs' Motion for
 27 Preliminary Approval of Settlements with Defendants Hitachi Chemical and Soshin, ¶ 6 (Case No.
 28 3:14-cv-03264, ECF No. 1844-2); Declaration of Adam J. Zapala in Support of IPPs' Motion for
 Preliminary Approval of Settlements with Holy Stone, NCC/UCC, and Rubycon and for Approval of
 the Plan of Allocation, ¶ 3 (ECF No. 158-2); Declaration of Adam J. Zapala in Support of IPPs'
 Motion for Preliminary Approval of Settlements with Panasonic, Nichicon, ELNA, and Matsuo
 Defendants and for Approval of the Plan of Allocation, ¶ 3 (ECF No. 698-1).

2. Class Counsel Faced Enormous Risks in this Highly Complex Action

The complex issues and enormous risks in this Action favor the request. Potentially dispositive issues and defenses lurk throughout this litigation. If any were successful, it could have effectively resulted in a dispositive ruling. Risk is an important factor in determining a fee award.²¹ Likewise, the novelty, difficulty, and complexity of the issues involved are significant factors in such a determination.²² Courts recognize the “antitrust class action is arguably the most complex action to prosecute.”²³ “Antitrust litigation in general, and class action litigation in particular, is unpredictable.”²⁴ Even if IPPs meet their liability burden, there is the very real risk that they could “recover[] no damages, or only negligible damages, at trial, or on appeal.”²⁵ Furthermore, given recent changes in the law, there is always a risk that the Court fails to certify the classes. The risk that the law may change unfavorably is also omnipresent. Several factors made this Action especially complex and risky:

First, IPPs were forced to oppose multiple motions to dismiss and summary judgment motions since the Action began five years ago. Zapala Decl. ¶¶ 7, 9-20, 52-57, 64-65. IPPs also moved to certify two classes after extensive and protracted expert analysis. *Id.* ¶¶ 7, 58-60. At every turn, Defendants attempted to narrow the scope of, or effectively end, the Action.

Second, this is an intrinsically difficult case due to the length, scope, and partially overlapping nature of the conspiracies and the complexities associated with proving antitrust impact, overcharges,

²¹ *Online DVD*, 779 F.3d at 955; *In re Superior Beverage/Glass Container Consol. Pretrial*, 133 F.R.D. 119, 127 (N.D. Ill. 1990) (“*Superior Beverage*”); see Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 J. EMPIRICAL LEGAL STUD. 27, 77 (2004) (“*Empirical Study*”) (noting that “complexity is correlated with higher fees” and that “fees as a percentage of recovery tend to be higher in high-risk cases”).

²² *Heritage Bond*, 2005 WL 1594403, at *20-21.

²³ *In re Linerboard Antitrust Litig.*, No. Civ. A. 98-5055, 2004 WL 1221350, at *10 (E.D. Pa. June 2, 2004) (“*Linerboard*”) (quoting *In re Motorsports Merch. Antitrust Litig.*, 112 F. Supp. 2d 1329, 1337 (N.D. Ga. 2000)); see also *In re Auto. Refinishing Paint Antitrust Litig.*, 617 F. Supp. 2d 336, 341 (E.D. Pa. 2007) (the “antitrust class action is arguably the most complex action to prosecute[;] [t]he legal and factual issues involved are always numerous and uncertain in outcome.”); *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 475 (S.D.N.Y. 1998) (“Antitrust litigation in general, and class action litigation in particular, is unpredictable.”) (“*NASDAQ*”).

²⁴ *NASDAQ*, 187 F.R.D. at 475; *Superior Beverage*, 133 F.R.D. at 127.

²⁵ *Wal-Mart*, 396 F.3d at 118 (“Indeed, the history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at trial, or on appeal.” (citation omitted); see also *Superior Beverage*, 133 F.R.D. at 127 (“The ‘best’ case can be lost and the ‘worst’ case can be won, and juries may find liability but no damages. None of these risks should be underestimated.”).

1 and pass-through. Given the allegations, IPPs had to engage in extensive foreign discovery and
 2 depositions. *Id.* ¶¶ 7, 21-51. The resulting document productions required IPPs to review over 15
 3 million documents, most of which were largely foreign language documents. *Id.* ¶¶ 7, 36. Further,
 4 defense counsel hailed from some of the most respected law firms in the country. In completing the
 5 foregoing and more, IPPs also brought to bear their substantial experience from other international
 6 cartel cases, and the classes benefited enormously as a result (*see* Lead Counsel’s resume (Ex. 1 to
 7 Zapala Decl.)). In light of the complex issues and significant risks, the nine-figure settlement fund
 8 achieved demonstrates Class Counsel’s high level of skill and of work performed.

9 **3. Class Counsel Generated Benefits Beyond the Cash Settlement Fund**

10 In addition to the \$80,490,000, Class Counsel generated non-monetary benefits for the
 11 classes. Nonmonetary benefits conferred by the litigation are relevant to determining a reasonable fee
 12 amount in common fund awards.²⁶ Here, Class Counsel generated non-monetary benefits in that each
 13 settlement agreement included cooperation provisions. Zapala Decl. ¶¶ 66-82. These cooperation
 14 provisions were critical to effectively prosecuting the Action against the other Defendants later and
 15 contributed to the recoveries Class Counsel were able to obtain from later-settling Defendants.

16 **4. The Market Rate for Antitrust Class Action Attorneys with Similar** 17 **Experience Favors the Attorney Fee Request**

18 Attorney fee awards for antitrust class action lawyers with Lead Counsel’s breadth of
 19 experience also supports the 25% attorneys’ fees request. As IPPs explain in Section II.A, *supra*,
 20 courts in antitrust class actions have routinely awarded attorneys’ fees of 25% of the common fund,
 21 which is the benchmark in this Circuit. Several cases and studies have even found that 25% merely
 22 represents the “starting point” for the analysis.²⁷ District courts across the country often award
 23 attorneys’ fees of around 30% to 33% of the common fund.²⁸ Here, Lead Counsel is only requesting

24 ²⁶ *Vizcaino II*, 290 F.3d at 1049, citing *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir.
 25 1995).

26 ²⁷ *Online DVD*, 779 F.3d at 949, 955; *Vizcaino II*, 290 F.3d at 1048; *cf. In re Activision Sec. Litig.*,
 723 F. Supp. 1373, 1378 (N.D. Cal. 1989) (“[I]n most recent cases the benchmark is closer to 30%.”)

27 ²⁸ This is so even in so-called “mega fund” cases where the common fund exceeds \$100 million,
 28 an approach not adopted in the Ninth Circuit. *See, e.g., Allapattah Servs., Inc. v. Exxon Corp.*, 454 F.
 Supp. 2d 1185, 1210 (S.D. Fla. 2006) (awarding 31.33% fee on \$1.075 billion settlement fund);
accord In re Urethane Antitrust Litig., 2016 WL 4060156, at *6, *8 (D. Kan. July 29, 2016) (awarding
 33.33% fee on \$835 million settlement; “Counsel’s expert has identified 34 megafund cases with

1 the benchmark percentage and nothing more. Lead Counsel has a national reputation for excellence
 2 and success in complex antitrust litigation. Lead Counsel has been at the forefront of private antitrust
 3 enforcement, successfully leading the prosecution of antitrust cases in various markets, including
 4 consumer electronics, air transportation, cargo and logistics, energy and natural gas, financial
 5 markets, automobiles, and office equipment.²⁹ Furthermore, the request is lower than the non-
 6 contingent market rates charged in this district by attorneys of reasonably comparable experience,
 7 skill, and reputation for reasonably comparable services.³⁰ The attorneys' fees request is therefore
 8 more than reasonable given awards in other class actions in this Circuit.

9 **5. Class Counsel's Significant Litigation Burdens Warrant the Attorney** 10 **Fee Request**

11 The Ninth Circuit instructs district courts to consider the burdens counsel experienced while
 12 litigating the case, such as its cost, duration, and the opportunity costs associated with foregoing other
 13 work.³¹ All of these factors strongly support the request. This Action has been pending for five years.
 14 Class Counsel has advanced substantial sums out-of-pocket with only partial reimbursement to date.
 15 Indeed, the Court has not yet ruled on Class Counsel's request for reimbursement of expenses in
 16 connection with its prior fee motion (ECF No. 307). Class Counsel, particularly Lead Counsel, have
 17 also devoted substantial time to this Action—70,603.5 hours for a lodestar of \$28,872,571 over the
 18 past five years—and substantially foregone other work while litigating this Action. Zapala Decl. ¶¶

19 settlements of at least \$100 million in which the court awarded fees of 30 percent or higher.”); *In re*
 20 *Se. Milk Antitrust Litig.*, No. 2:07-CV 208, 2013 U.S. Dist. LEXIS 70167, at *34 (E.D. Tenn. May
 21 17, 2013) (awarding one-third of \$158 million settlement fund) (“*Se. Milk*”); *In re Initial Pub.*
 22 *Offering Sec. Litig.*, 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (awarding 33.3% fee on \$510 million
 23 settlement fund); *In re Vitamins Antitrust Litig.*, 2001 WL 34312839, at *10 (D.D.C. July 16, 2001)
 24 (awarding 34.6% fee on \$360 million settlement fund); *Vizcaino II*, 290 F.3d at 1047-48 (rejecting
 the “increase-decrease rule” for a “mega fund” case and instead finding that “fund size is one relevant
 circumstance to which courts must refer...”); *In re TFT-LCD Antitrust Litig.*, No. 07-md-01827 SI,
 2013 U.S. Dist. LEXIS 49885, at *72-74 & n.11 (N.D. Cal. Apr. 1, 2013) (expressly rejecting the
 suggestion that fees should be reduced based on the “mega fund” concept).

25 ²⁹ For more background on Lead Counsel's experience, please refer to Notice of Motion and
 Motion of Plaintiffs' Toy-Knowlogy Inc. and CAE Sound to Appoint Interim Co-Lead Counsel for
 the Proposed First-Level Indirect Purchaser Class (Case No. 3:14-cv-03264, ECF No. 253) and Lead
 Counsel's resume (Ex. 1 to Zapala Decl.).

26 ³⁰ See *Empirical Study* at 35 (“[s]ubstantial empirical evidence indicates that a one-third fee is a
 27 common benchmark in private contingency fee cases.”); *Std. Iron Works v. Arcelormittal*, No. 08-C-
 5214, 2014 U.S. Dist. LEXIS 162557, *7-8 (N.D. Ill. Oct. 22, 2014) (\$163.9 million settlement; one-
 28 third fee found to be the prevailing market rate for similar legal services in similar cases).

³¹ *Online DVD*, 779 F.3d at 954-55.

1 4, 92. IPPs' litigation burdens have been substantial. These efforts included, but were not limited to,
2 the following:

- 3 • Extensively researched and drafted five comprehensive consolidated amended
4 complaints detailing Defendants' violations of the antitrust laws (Case No. 3:14-cv-
03264, ECF Nos. 345-3 (400), 741 (1160), 1057, 1112 (1588), and 1466 (1589));
- 5 • Opposed and largely prevailed after multiple rounds of hard-fought motions to dismiss;
- 6 • Exhaustively researched and successfully opposed multiple rounds of summary
7 judgment motions based on the Foreign Trade Antitrust Improvements Act (FTAIA);
- 8 • Propounded several sets of discovery that—after extensive negotiations with
9 Defendants and motion practice before this Court—resulted in the production of over
10 15 million documents and approximately 500 gigabytes of transactional data;
- 11 • Organized teams of lawyers that reviewed, searched, and extensively coded and
12 analyzed these documents, most of which were in Japanese and required translations;
- 13 • Prepared for and took the depositions of 144 fact and 30(b)(6) witnesses from
14 Defendants and nonparties as well as prepared for and defended the depositions of the
15 10 IPP Class Representatives;
- 16 • Engaged in substantial class certification briefing and expert work;
- 17 • Consulted industry experts, economists, and statisticians on issues pertaining to
18 electronic discovery, liability, summary judgment, class certification, and damages;
- 19 • Extensively researched and drafted IPPs' Opposition to Film-Only Defendants' Joint
20 Motion for Summary Judgment (ECF No. 795); and
- 21 • Engaged in protracted settlement discussions and mediations with the settling
22 Defendants, documented settlements with them, briefed preliminary approval and final
23 approval motions, and engaged class action notice experts to develop a robust notice
24 program, amongst many other tasks.

25 **6. Class Counsel Handled This Action on a Contingency Basis**

26 Attorneys who take on a contingency case should be compensated for their risk and for delay
27 in payment.³² The Ninth Circuit has confirmed that a fair attorney fee award includes consideration of
28 the contingent nature of the fee.³³ As noted, in the private marketplace, the standard contingency fee
percentage is approximately 33% of the recovery. Here, the 25% attorneys' fee request is 8% less
than the standard contingency fee percentage, highlighting its reasonableness.³⁴ Since 2014, IPPs

³² See, e.g., *WPPSS*, 19 F.3d at 1299.

³³ See, e.g., *Online DVD*, 779 F.3d at 954-55 & n. 14; *Vizcaino II*, 290 F.3d at 1050.

³⁴ *Vizcaino II*, 290 F.3d at 1049 (explaining that fees requested were at or below “the standard contingency fee for similar cases,” supporting the reasonableness of the request); see, e.g., Lester Brickman, *ABA Regulation of Contingency Fees: Money Talks, Ethics Walks*, 65 *Fordham L. Rev.* 247, 248 (1996) (noting that “standard contingency fees” are “usually thirty three percent to forty

1 have undertaken significant financial risks in prosecuting this Action, an inherently complex and
 2 risky case against 16 Defendants represented by sophisticated defense firms. IPPs devoted an
 3 enormous number of hours and millions of dollars of their own financial resources. Class Counsel’s
 4 contingency engagement incentivized counsel to achieve excellent results for the classes efficiently.
 5 A 25% fee award reasonably compensates Class Counsel for the financial burdens of this long and
 6 risky Action.³⁵ This factor strongly supports the request.

7 **7. Class Counsel Performed a High Volume of Quality Work in Litigating**
 8 **This Complex Indirect Purchaser Action**

9 Class Counsel respectfully submit that they have performed a significant amount of work that has
 10 been of substantial value to the classes, which supports the request. The Court is familiar with the
 11 history of this Action, having presided over years of contentious litigation. The “prosecution and
 12 management of a complex national class action requires unique legal skills and abilities.”³⁶ Courts
 13 have recognized that the novelty and difficulty of issues in a case are significant factors to be
 14 considered in awarding attorneys’ fees.³⁷ High skill and quality of work merit an upward adjustment
 15 from the benchmark percentage,³⁸ though IPPs are only seeking the benchmark percentage. The
 16 quality of Class Counsel’s effort, experience, and skill is demonstrated in the results achieved.³⁹

17 Lead Counsel are among the nation’s most experienced and skilled practitioners in class
 18 actions and have successfully litigated multiple antitrust class actions, including many within this

19
 20 percent of gross recoveries” (emphasis omitted)); F. Patrick Hubbard, *Substantive Due Process Limits*
 21 *on Punitive Damages Awards: “Morals Without Technique”?*, 60 FLA. L. REV. 349, 383 (2008)
 22 (discussing “the usual 33-40 percent contingent fee” (quoting *Mathias v. Accor Econ. Lodging, Inc.*,
 23 347 F.3d 672, 677 (7th Cir. 2003))); Herbert M. Kritzer, *The Wages of Risk: The Returns of*
 24 *Contingency Fee Legal Practice*, 47 DEPAUL L. REV. 267, 286 (1998) (reporting the results of a
 25 survey of Wisconsin lawyers, which found that “[o]f the cases with a [fee calculated as a] fixed
 26 percentage [of the recovery], a contingency fee of 33% was by far the most common, accounting for
 27 92% of those cases”).

28 ³⁵ See, e.g., *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *3
 (N.D. Cal. Feb. 6, 2013) (awarding 30% fee because the “case was conducted on an entirely
 contingent fee basis against a well-represented Defendant”).

³⁶ *Heritage Bond*, 2005 WL 1594403, at *19, citing *Edmonds v. U.S.*, 658 F. Supp. 1126, 1137
 (D.S.C.1987).

³⁷ See, e.g., *Vizcaino I*, 142 F. Supp. 2d at 1303, 1306; *Mark v. Valley Ins. Co.*, Case No. CV 01-
 1575-BR, 2004 WL 2260605, at *2 (D. Or. Oct. 6, 2004) (“*Mark*”).

³⁸ See *Mark*, 2004 WL 2260605, at *2.

³⁹ See *Heritage Bond*, 2005 WL 1594403, at *19, citing *Behrens v. Wometco Enters., Inc.*, 118
 F.R.D. 534, 547–48 (S.D. Fla. 1988).

1 District and Circuit. Not only did Lead Counsel effectively manage the Action, but they successfully
 2 tackled the varied legal and factual issues presented. The Court is all too familiar with the case history,
 3 having presided over almost half a decade of litigation represented by over 2,400 entries in the docket.
 4 The caliber of opposing counsel is another important factor in assessing the quality of Class Counsel's
 5 work.⁴⁰ Here, IPPs were opposed by attorneys from some of the best and largest firms in the country
 6 with near limitless resources at their disposal. Zapala Decl. ¶¶ 6, 8.

7 **8. The Classes' Reaction Supports the Fee Request**

8 The absence of objections supports the attorneys' fees request. The existence of objections to
 9 the request is a factor in determining the appropriate fee award.⁴¹ Here, the Court approved a class
 10 notice sent to possible class members stating that Class Counsel will seek up to 30% attorneys' fees
 11 of the Round 3 Settlements, though Class Counsel are now seeking substantially less (ECF Nos. 836,
 12 836-2). The notice also informed class members of their ability to object to Class Counsel's request
 13 or opt-out of the classes and pursue their claims individually (ECF No. 836-2). To date, no class
 14 member has objected to the request, and IPPs only received 25 exclusion requests. Zapala Decl. ¶ 87.

15 **9. The Lodestar Cross-Check Confirms the Reasonableness of the Fee** 16 **Request**

17 Finally, a cross-check of the request with Class Counsel's lodestar demonstrates the request's
 18 reasonableness beyond question.⁴² Class Counsel have spent a total of 70,603.5 hours prosecuting
 19 this Action from the appointment of leadership through August 12, 2019. Zapala Decl. ¶¶ 92. This
 20 time was reasonable and necessary to the prosecution of this Action.⁴³ Class Counsel also took
 21 meaningful steps to ensure that their work was efficient. *Id.* ¶¶ 5, 89. The request of \$7,737,500,
 22 combined with the Court's prior awards totaling \$12,385,000 in connection with the Rounds 1 and 2
 23 Settlements (Case No. 3:14-cv-03264, ECF Nos. 1938, 2364), amount to \$20,122,500, or only
 24

25
 26 ⁴⁰ *Vizcaino I*, 142 F. Supp. 2d at 1303; *In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 634 (D.
 Colo. 1976); *Arenson v. Board of Trade*, 372 F. Supp. 1349, 1354 (N.D. Ill. 1974).

27 ⁴¹ *Heritage Bond*, 2005 WL 1594403, at *21, citing *Cullen v. Whitman Med. Corp.*, 197 F.R.D.
 136, 148-49 (E.D. Pa. 2000).

28 ⁴² *See Online DVD*, 2015 WL 846008, at *15; *Vizcaino II*, 290 F.3d at 1048-50.

⁴³ *Online DVD*, 2015 WL 846008, at *9.

1 69.69% of Class Counsel’s cumulative lodestar of \$28,872,571, which constitutes a significant
2 negative multiplier. The lodestar cross-check confirms the request’s reasonableness.⁴⁴

3 **C. Reimbursement of Class Counsel’s Reasonable Litigation Expenses Is**
4 **Appropriate**

5 Class Counsel request reimbursement of litigation expenses incurred on behalf of the classes
6 in the amount of \$905,071.23. Zapala Decl. ¶ 101. Class Counsel have actually incurred unreimbursed
7 expenses of \$1,095,912.08, though they are limiting their expense request to \$905,071.23 as set forth
8 in the class notice (ECF No. 836-2). The expense request consists of individual firm expenses incurred
9 by Class Counsel and expenses incurred by the Litigation Fund, which Lead Counsel created from
10 assessments received from Class Counsel to pay for common litigation expenses. Attorneys who
11 create a common fund are entitled to reimbursement of their out-of-pocket expenses so long as they
12 are reasonable, necessary, and directly related to the prosecution of the Action.⁴⁵ Here, Class
13 Counsel’s expenses are detailed in the Zapala Declaration and exhibits. Zapala Decl. ¶¶ 98-104. These
14 expenses were reasonable and necessary for the prosecution of this action and are customarily
15 approved by courts as proper litigation expenses. As noted, this figure could change based on the as-
16 yet unfinished work of Special Master Monica Ip in connection with IPPs’ request for reimbursement
17 of litigation expenses in connection with the Rounds 2 settlements (ECF No. 903). If any adjustments
18 to this figure are necessary, or are somehow impacted by Special Master Ip’s report, IPPs will advise
19 the Court in a future filing.

20 **D. Class Representative Service Awards Are Warranted**

21 Class Counsel finally request the Court grant each of the 10 Class Representative a service
22 award of \$5,000. Service awards are payments to class representatives for their service to the class in
23 bringing a lawsuit and are routinely awarded by courts overseeing complex litigation.⁴⁶ Although
24 discretionary, service awards are “fairly typical in class actions” and “intended to compensate class
25

26 ⁴⁴ See *Online DVD*, 2015 WL 846008, at *15 (fact that fee sought is less than the lodestar suggests
27 fairness of award); *In re Portal Software, Inc. Sec. Litig.*, No. C-03-5138 VRW, 2007 WL 4171201,
28 at *16 (N.D. Cal. Nov. 26, 2007); *Flat Panel II*, 2013 WL 149692, at *1.

⁴⁵ *Vincent v. Hughes Air West*, 557 F.2d 759, 769 (9th Cir. 1977); *Omnivision*, 559 F. Supp. 2d at
1048; see also, 1 Alba Conte, *Attorney Fee Awards* § 2.19 (3d ed. 2004).

⁴⁶ *Radcliffe v. Experian Info. Sols. Inc.*, 715 F.3d 1157, 1163 (9th Cir. 2013).

1 representatives for work done on behalf of the class, to make up for financial or reputational risk
2 undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private
3 attorney general.”⁴⁷ Here, each Class Representative submits a declaration describing its
4 responsibilities and work performed and specifying its time spent on various tasks (Exs. B-K). The
5 declarations outline the Class Representatives’ involvement in the Action and their respective
6 justifications for the service awards in accordance with the Procedural Guidance for Class Action
7 Settlements, Final Approval ¶ 1. The Class Representatives’ active participation in the Action for
8 many years warrants a service award.

9 In *Staton v. Boeing Co.*, the Ninth Circuit described the relevant factors in determining a
10 service award as “the actions the plaintiff has taken to protect the interests of the class, the degree to
11 which the class has benefitted from those actions, [and] the amount of time and effort the plaintiff
12 expended in pursuing the litigation[.]”⁴⁸ These factors favor service awards for the Class
13 Representatives. Here, in addition to collecting and producing data and documents (and responding
14 to questions related thereto), the Class Representatives prepared and appeared for depositions (which
15 required them to forgo work and commute to the deposition site); reviewed multiple complaints and
16 sets of written discovery (including responses thereto); and remained in communication with Class
17 Counsel and up-to-date on the Action for years. At each stage of litigation, the Class Representatives
18 protected the classes’ interests and the classes benefitted in the form of a total settlement fund of over
19 \$80 million, which would have been impossible *but for* the Class Representatives’ participation.

20 Class Counsel recognize that this Court has “expressed skepticism about settlements in which
21 named plaintiffs do appreciably better than rank-and-file class members[.]”⁴⁹ As an initial matter,
22 there is nothing in the settlements themselves that expressly treat the Class Representatives any
23 differently than the absent class members. Zapala Decl. ¶ 108. The settlements are silent as to
24 incentive awards. *Id.* The settlements therefore reflect no favoritism to the Class Representatives or
25 to any other members or subsets of the class for that matter. *Id.* Class Counsel also assure the Court

26 ⁴⁷ *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (citations omitted).

27 ⁴⁸ *Staton*, 327 F.3d at 977.

28 ⁴⁹ *Sullivan v. Dolgen Cal., Ltd. Liab. Co.*, No. 3:15-cv-01617-JD, 2017 U.S. Dist. LEXIS 119946,
at *6-7 (N.D. Cal. July 31, 2017) (Donato, J.), citing *Myles v. AlliedBarton Sec. Servs., LLC*, No. 12-
cv-05761-JD, 2014 U.S. Dist. LEXIS 159790, 2014 WL 6065602, at *6 (N.D. Cal. Nov. 12, 2014).

1 there has never been collusion or conflict between Class Counsel and the Class Representatives. *Id.*
 2 ¶ 105. Class Counsel have never represented to the Class Representatives that Class Counsel would
 3 request, or that Class Representatives would receive, service awards for bringing this lawsuit. *Id.*

4 Additionally, many Class Representatives are businesses that had to expend time and
 5 resources to search for, collect, and produce transactional data and documents; respond to discovery
 6 relating to their businesses; and prepare and sit for a deposition. *Id.* ¶ 109. Likewise, Class
 7 Representatives that are individuals had to search for, collect, and produce documents; respond to
 8 discovery relating to their purchases; and take time off to prepare and sit for a deposition. *Id.*
 9 Moreover, while the Class Representatives may receive more than some class members, IPPs' class
 10 also includes many large businesses that purchase their capacitors through distributors rather than the
 11 Defendants themselves. *Id.* ¶ 110. These businesses will benefit greatly from recovery through the
 12 settlements that only could have been achieved with the participation of Class Representatives.
 13 Finally, another factor that supports approval of the incentive awards is that they collectively total
 14 only \$50,000, or 0.00062% of the total settlement fund of \$80,490,000 and would not materially
 15 reduce the class recovery. ¶ 107.

16 IV. CONCLUSION

17 For the foregoing reasons, this Court should award attorneys' fees of \$7,737,500, litigation
 18 expenses of \$905,071.23, and a service award of \$5,000 to each of the 10 Class Representatives.

19
 20 DATED: November 15, 2019

Respectfully submitted,

21 /s/ Adam J. Zapala

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