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16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA
 18 SAN FRANCISCO DIVISION

19 IN RE OPTICAL DISK DRIVE
 20 ANTITRUST LITIGATION

Case No. 3:10-md-02143 RS

MDL No. 2143

21 This Document Relates to:
 22 ALL DIRECT PURCHASER ACTIONS

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

Date: April 14, 2016
 Time: 1:30 p.m.
 Judge: Hon. Richard Seeborg
 Courtroom: 3

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that at 1:30 p.m. on April 14, 2016, Direct Purchaser Plaintiffs (“DPPs”) and their counsel (“Class Counsel”) will, and hereby do move before the Honorable Richard Seeborg, United States District Judge, at the United States Courthouse, 450 Golden Gate Avenue, Courtroom 3, San Francisco, California, for an award of attorneys’ fees in the amount of \$11,100,000 (30% of the \$37 million settlement fund) plus interest, reimbursement of litigation expenses in the amount of \$320,951.30, and incentive awards to the Class Representatives of \$5,000 for their time and effort representing the Class throughout the litigation. This motion is brought pursuant to Fed. R. Civ. P. 23(h), 54(b) and 54(d)(2).

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

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Direct Purchaser Plaintiffs (“DPPs”) and their counsel (“Class Counsel”) respectfully submit this Memorandum of Points and Authorities in Support of Plaintiffs’ Second Motion for an Award of Attorneys’ Fees, Reimbursement of Expenses, and Class Representative Incentive Awards.

Plaintiffs have now achieved settlements with all Defendants totaling \$74,900,000. This amount is comprised of \$37,900,000 from the first group of settlements plus \$37,000,000 from settlements with all remaining defendants.

In its first award (the “Interim Award”), the Court awarded DPPs and Class Counsel \$11,370,000, which was 30% of the \$37.9 million in settlements DPPs had obtained at that time.¹ Order Granting DPPs’ Motion for an Award of Attorneys’ Fees, Reimbursement of Expenses, and Class Representative Incentive Awards (July 23, 2015) (ECF No. 1658) (“Interim Fee Order”). The Court found that DPPs’ lodestar of \$24,811,762.75 was reasonable, and that the multiplier indicated by the lodestar cross-check—less than 0.5—confirmed the reasonableness of the percentage award. *See id.* at ¶ 3.

By this motion, DPPs and Class Counsel seek an additional fee award based on the \$37 million in settlement proceeds they have obtained on behalf of class members since the Interim Award. DPPs and Class Counsel again seek an award of 30% of the addition to the settlement fund, or \$11,100,000. This would result in a total fee award of \$22,470,000, still substantially less than Class Counsel’s lodestar of \$27,021,052.25.

DPPs and Class Counsel also seek reimbursement of an additional \$320,951.30 in expenses. The Court awarded Class Counsel \$1,687,905.17 as reimbursement for litigation expenses in the Interim Award, and approved \$1,593,268.18 in expenditures of settlement proceeds for litigation expenses. Interim Fee Order ¶¶ 8–9.

¹ DPPs had obtained final approval of three settlements totaling \$37.9 million at the time of their first motion: (1) Hitachi-LG Data Storage, Inc. and Hitachi-LG Data Storage Korea, Inc.; LG Electronics, Inc. and LG Electronics USA (“LG”); and Hitachi, Ltd. (“Hitachi”) (collectively “HLDS”)—\$26 million; (2) Panasonic Corporation and Panasonic Corporation of North America (collectively “Panasonic”)—\$5,750,000; and (3) NEC Corporation (“NEC”)—\$6,150,000.

1 Finally, DPPs and Class Counsel seek additional incentive awards in the amount of \$5,000
2 for the six Class Representatives named in the Third Consolidated Amended Complaint—JLK
3 Systems Group, Inc. and Jeff Kozik; Meijer, Inc. and Meijer Distribution, Inc.; Paul Nordine;
4 Seneca Data Distributors, Inc.; Gregory Starrett; and Ashley Tremblay—to compensate them for
5 their assistance to Class Counsel since the Interim Award and to recognize their essential role in
6 securing Class Members’ recoveries. The Court awarded these class representatives \$10,000 in the
7 Interim Award; the award DPPs’ and Class Counsel now seek would result in a total award of
8 \$15,000 each.

9 As the Court is aware, Class Counsel have prosecuted this case on a purely contingent
10 basis. The settlements were achieved in the face of powerful opposition from sophisticated law
11 firms supported by Defendants’ near limitless resources. The settlements confer substantial benefits
12 to the class and the fees Class Counsel seek are fair in light of the investment of time and money
13 they have made, the risks this case presented and the quality of their work. As noted, Class Counsel
14 seek less than the lodestar they have incurred.

15 In this context, DPPs’ request for a further fee award of 30% of the increase in settlement
16 funds since the Interim Award is fair and reasonable. As the Court is aware, while the benchmark
17 for attorneys’ fees in the Ninth Circuit is 25%, in practice, awards are generally closer to 30%.
18 Many courts have awarded 30%, or higher, where, as here, the litigation posed substantial risks
19 and/or the multiplier is low.

20 Class Counsel should also be reimbursed for the additional expenses they have advanced on
21 behalf of the class. All were reasonable and necessary. It is also appropriate that the six Class
22 Representatives receive additional awards for their service to the Class.

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

24 **A. Litigation History**

25 **1. Work Performed Prior to January 1, 2015**

26 DPPs’ provided a detailed description of their work on the case through December 31, 2014
27 in their application for an interim award of fees, expenses and incentive awards. DPPs’ Motion for
28 an Award of Attorneys’ Fees, Reimbursement of Expenses, and Class Representative Incentive

1 Awards (Mar. 16, 2015) (ECF No. 1535) (“Interim Fee Motion”).²

2 Among other things, prior to January 1, 2015, Class Counsel: investigated the case and
 3 drafted a consolidated complaint; defended against two rounds of motions to dismiss; drafted two
 4 additional amended complaints; engaged in extensive discovery, including review of millions of
 5 documents, and numerous depositions; engaged in extensive discovery motion practice; drafted a
 6 motion for class certification, which included over two hundred exhibits and a lengthy expert
 7 report; and engaged in settlement negotiations, documented three settlements, and briefed
 8 preliminary and final approval for the first three settlements. Interim Fee Motion, at pp. 2–3; First
 9 Zirpoli Decl. ¶¶ 10–59.

10 As noted, the Court found that DPPs’ lodestar of \$24,811,762.75 for this period was
 11 reasonable: “The Court finds that Class Counsel’s reasonable lodestar was \$24,811,762.75 based
 12 on historic hourly rates for the period from the appointment of lead counsel until December 31,
 13 2014.” Interim Fee Order ¶ 3.

14 **2. Work Since January 1, 2015**

15 Since January 1, 2015, the work of Class Counsel has focused on three areas: (1) settlement
 16 negotiations with the seven remaining defendant groups; (2) the preparation of a renewed motion
 17 for class certification; and (3) discovery. DPPs also performed various other tasks, including
 18 settlement administration, preparation of a motion for preliminary approval of settlements,
 19 providing notice of the settlements to class members, general case management, and other tasks.
 20 Second Zirpoli Decl. ¶ 6. DPPs’ lodestar for work from January 1, 2015 through December 31,
 21 2015, at historical rates, is \$2,209,289.50. Saveri Decl. ¶ 18 & Ex. 3. Their total lodestar for the
 22 case—i.e., including work before January 1, 2015—is \$27,021,052.25.

23 **a. Discovery**

24 DPPs—in coordination with Indirect Purchaser Plaintiffs (“IPPs”)—have continued to press

25
 26 ² To avoid repetition, and because DPPs believe the Court is familiar with the case, DPPs will not
 27 repeat that description, but will incorporate it here by reference. The Interim Fee Motion, and the
 28 supporting declaration of Cadio Zirpoli are attached to the Declaration of Cadio Zirpoli in Support
 of DPPs’ Second Motion for an Award of Fees, Expenses and Incentive Awards (“Second Zirpoli
 Decl.”) as Exhibits 1 and 2.

1 Defendants and non-parties to ensure the production of relevant evidence. DPPs also spent
 2 substantial time enforcing a subpoena of FBI recordings from the U.S. Department of Justice
 3 (“DOJ”) Antitrust Division that was vigorously opposed by Defendant TSST-Korea and one of its
 4 non-party employees who was a subject of the recordings, “John Doe 1.”

5 **Document and Data Discovery:** DPPs reviewed and analyzed additional document and
 6 data discovery obtained from the PLDS, Pioneer, and Toshiba Defendants, as well as Direct Action
 7 Plaintiffs (“DAPs”) HP and Dell. Second Zirpoli Decl. ¶¶ 24–29. Defendants, HP, and Dell have
 8 made the following productions since January 1, 2015:

- 9 • In January 2015, HP and Dell produced transactional data. *Id.* ¶ 25–26.
- 10 • Between March 2015 and May 2015, the Pioneer Defendants made productions
 11 comprising over 56,000 additional pages of documents and data in response to previous
 requests for production of documents. *Id.* ¶ 27.
- 12 • Between April 2015 and June 2015, Defendant Toshiba Corp. produced data pursuant to
 13 the Court’s Order Regarding Joint Discovery Letter Re: Production of Toshiba PC
 Component Cost Data (ECF No. 1592). *Id.* ¶ 28.
- 14 • In August 2015, HP produced transactional data. *Id.* ¶ 26.
- 15 • Between October 2015 and December 2015, the PLDS defendants made three
 productions of transactional data. *Id.* ¶ 29.
- 16 • In December 2015, HP produced transactional data. *Id.* ¶ 26.

17 Class Counsel internally hosted all of the document productions on their web-based,
 18 electronic data and transcript review platform located on servers at the Saveri & Saveri office.
 19 Class Counsel continued to use the coding system developed for the case to identify important
 20 documents. *Id.* ¶¶ 30–31.

21 **Subpoena of DOJ Tape Recordings:** DPPs, along with IPPs, spent substantial time
 22 enforcing DPPs’ July 2014 subpoena to the DOJ Antitrust Division seeking production of secret
 23 government recordings of alleged ODD conspirators. The matter was the subject of several rounds
 24 of motion practice before Magistrate Judge Spero, two sets of briefs and one oral argument in the
 25 Ninth Circuit, and extensive negotiation with Defendants and the DOJ regarding a protective order
 26 that would apply to the recordings. *Id.* ¶¶ 19–23.³

27
 28 ³ See e.g., ECF Nos. 1524, 1529, 1595, 1600, 1602, 1604, 1605, 1710.

families. In several instances, the negotiations took months to finalize. DPPs also negotiated escrow agreements related to each settlement. *Id.* ¶¶ 11–12. DPPs have executed substantially similar settlement agreements with the remaining Defendants in the following amounts:

DEFENDANT GROUP	AMOUNT
BenQ	\$875,000
Pioneer	\$4,200,000
PLDS	\$15,000,000
QSI	\$400,000
Sony	\$6,000,000
TEAC	\$1,325,000
Toshiba/Samsung	\$9,200,000
Total:	\$37,000,000

Id. ¶ 7.

DPPs filed their motion for certification of settlement classes, preliminary approval of the settlements with the remaining Defendants, and directing notice to the Class on November 3, 2015 (ECF No. 1724); the Court granted the motion on December 15, 2015 (ECF No. 1758). This motion and the supporting declaration provides further information regarding the settlements. *Id.* ¶ 13.

III. ARGUMENT

DPPs’ requests: (1) for an award of attorneys’ fees in the amount of 30% of the Settlement Fund; (2) for reimbursement of expenses Class Counsel have incurred on behalf of the class; and (3) for incentive awards for the class representatives are reasonable and appropriate and should be approved.

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

1. The Ninth Circuit Recognizes the Common Fund Doctrine

Counsel who represent a class and produce a benefit for class members are entitled to compensation. As the Supreme Court has explained, “this Court has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). *See also Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 392–93 (1970); *Central R.R. & Banking Co. v. Pettus*, 113 U.S. 116, 123 (1885). The Supreme Court has also recognized that under the “common fund doctrine” a reasonable fee may be based “on a

1 percentage of the fund bestowed on the class.” *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984).
 2 The purpose of this doctrine is that “those who benefit from the creation of the fund should share
 3 the wealth with the lawyers whose skill and effort helped create it.” *In re Wash. Pub. Power Supply*
 4 *Sys. Sec. Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994) (“WPPSS”); *see also Paul, Johnson, Alston &*
 5 *Hunt v. Graulity*, 886 F.2d 268, 271 (9th Cir. 1989) (“Paul, Johnson”) (well-settled that lawyer who
 6 helps create common fund should be allowed to share in the award).

7 As the Supreme Court has repeatedly recognized, private antitrust litigation is essential to
 8 the effective enforcement of the antitrust laws. *See, e.g., Pillsbury Co. v. Conboy*, 459 U.S. 248,
 9 262–63 (1983); *Reiter v. Sonotone Corp.*, 442 U.S. 330, 331 (1979); *Hawaii v. Standard Oil Co.*,
 10 405 U.S. 251, 266 (1972); *Perma Life Mufflers, Inc. v. Int’l Parts Corp.*, 392 U.S. 134, 139 (1968).
 11 Substantial fee awards in successful cases encourage meritorious class actions, and thereby
 12 promote private enforcement of—and compliance with—the antitrust laws. As noted by the Second
 13 Circuit in *Alpine Pharmacy, Inc. v. Charles Pfizer & Co., Inc.*, 481 F.2d 1045, 1050 (2d Cir.), *cert.*
 14 *denied*, 414 U.S. 1092 (1973), “[i]n the absence of adequate attorneys’ fee awards, many antitrust
 15 actions would not be commenced”

16 Since the Interim Award, Class Counsel’s efforts have created an additional common fund
 17 of \$37 million for the benefit of the class. Under either a “percentage-of-the-fund” or “lodestar”
 18 method, Class Counsel’s requested fee is warranted in light of the value of the extensive work
 19 performed, the difficulty and risk of the case, and the results achieved, among other things.

20 **2. Percentage-of-the-Recovery Approach Is the Predominant Method for** 21 **Determining Attorneys’ Fees Under Ninth Circuit Law**

22 The amount of the award of reasonable attorneys’ fees and expenses is within the sound
 23 discretion of the district court. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998);
 24 *WPPSS*, 19 F.3d at 1296. In the Ninth Circuit, the district court has discretion in a common fund
 25 case to choose either the “percentage-of-the-fund” or the “lodestar” method in calculating fees.
 26 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (“*Vizcaino II*”); *In re Online*
 27 *DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir. 2015) (“*Online DVD*”). Virtually all of
 28 the major recent antitrust class actions in the Northern District of California have applied the

percentage-of-the-fund approach. *See, e.g., In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. C-07-5944 JST, 2016 WL 183285, at *2–3 (N.D. Cal. Jan. 14, 2016) (“*CRT*”); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2011 WL 7575003, at *1–2 (N.D. Cal. Dec. 27, 2011) (“*LCD I*”); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2013 WL 149692, at *1–2 (N.D. Cal. Jan. 14, 2013) (“*LCD II*”); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2013 WL 1365900, at *7–8 (N.D. Cal. Apr. 3, 2013) (“*LCD III*”); *In re Static Random Access Memory (SRAM) Antitrust Litig.*, Case No. 07-md-1819-CW (N.D. Cal. June 30, 2011) (ECF No. 1370) (“*SRAM*”) (30%); *Meijer v. Abbott Laboratories*, C-07-05985 (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*”).

This Court has used the percentage-of-the-fund approach with a lodestar cross-check in recent cases, including in its Interim Fee Award. Interim Fee Award, ¶ 2–3. *See also, e.g., In re SunPower Sec. Litig.*, Case No. 09-cv-5473-RS ¶ 6 (N.D. Cal. July 3, 2013) (ECF No. 270) (“*SunPower*”); *In re Warner Music Group Corp. Digital Downloads Litig.*, Case No. 12-cv-559-RS ¶ 3 (N.D. Cal. Jan. 12, 2015) (ECF No. 116) (“*Digital Downloads*”).

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

“[I]n this circuit, the benchmark percentage is 25%.” *Online DVD*, 779 F.3d at 949. However, “[t]he 25% benchmark rate, although a starting point for analysis, may be inappropriate in some cases.” *Vizcaino II*, 290 F.3d at 1048. *Vizcaino II* makes clear that it is not sufficient to arbitrarily apply a percentage; rather the district court must show why that percentage and the ultimate award are appropriate based on the facts of the case. *Id.* Several factors may be considered:

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

1 *Online DVD*, 779 F.3d at 954–55 (citations omitted). In addition, the Court may consider other
 2 factors including the volume of work performed, counsel’s skill and experience, the complexity of
 3 the issues faced, and the reaction of the class. *See, e.g., In re Heritage Bond Litig.*, 02-ML-1475
 4 DT, 2005 WL 1594403, at *18–23 (C.D. Cal. June 10, 2005) (“*Heritage Bond*”).

5 As a practical matter, fee awards tend to approximate 30%. *See, e.g., In re Activision Sec.*
 6 *Litig.*, 723 F. Supp. 1373, 1378 (N.D. Cal. 1989) (“*Activision*”) (“[T]his court finds that in most
 7 recent cases the benchmark is closer to 30%.”). In other large electronics antitrust class actions in
 8 this district over the past decade, the court, with one exception, has awarded a fee of 30% or near
 9 30%. *See, e.g., CRT*, 2016 WL 183285, at *2–3 (30%); *LCD I*, 2011 WL 7575003 (30%); *LCD II*,
 10 2013 WL 149692 (30%); *LCD III*, 2013 WL 1365900 (28.6%); *SRAM*, Case No. 07-md-1819-CW
 11 (N.D. Cal. June 30, 2011) (ECF No. 1370) (30%); *DRAM*, 2007 WL 2416513 (25%).⁴

12 In its Interim Award, the Court has already found that an award of 30% was appropriate in
 13 the circumstances of this case:

14 The Court finds that DPPs’ requested fee award of \$11,370,000—30% of the
 15 Settlement Fund—is fair and reasonable under the percentage-of-the-recovery
 16 method based upon the following factors: (1) the results obtained by Class Counsel
 17 in this case; (2) the risks and complex issues involved in this case, which were
 18 significant and required a high level of skill and high-quality work to overcome; (3)
 19 that the attorneys’ fees requested were entirely contingent upon success—Class
 20 Counsel risked time and effort and advanced costs with no ultimate guarantee of
 21 compensation; (4) that the range of awards made in similar cases justifies an award
 of 30% here; and (5) that the class members have been notified of the requested fees
 and had an opportunity inform the Court of any concerns they have with the request.
 These factors justify an upward adjustment of the Ninth Circuit’s 25% benchmark.
 As such, the Court finds that the requested fee award comports with the applicable
 law and is justified by the circumstances of this case.

22 Interim Fee Order ¶ 2.

23 Finally, fee awards of less than 30%, unlike this case, often involve substantial

24 ⁴ A 2008 study of the effectiveness of private antitrust enforcement reviewed “forty of the largest
 25 recent successful private antitrust cases.” Robert H. Lande & Joshua P. Davis, *Benefits from*
 26 *Private Antitrust Enforcement: An Analysis of Forty Cases*, 42 U.S.F. L. Rev. 879 (2008). In cases
 27 with recoveries of less than \$100 million, eleven of sixteen cases involved fee awards of at least
 28 30%, with seven awards of 33.3%. *Id.* at 911 tbl.7A. Consistent with the Supreme Court’s
 emphasis on the importance of private enforcement of the antitrust laws, the authors also found that
 “private litigation provides more than four times the deterrence of the criminal fines.” *Id.* at 893.

1 multipliers—*i.e.*, counsel receive a multiple of their hourly rate. *See, e.g., DRAM*, 2007 WL
 2 2416513 (multiplier of 2.3). Conversely, fees in excess of 30% often involve cases presenting
 3 substantial risk, again, as here. *See, e.g., See, e.g., In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379
 4 (9th Cir. 1995) (“*Pac. Enters.*”) (award of 33% justified because of complexity and risk).

5 In this context, the 30% fee award DPPs seek is in line with recoveries awarded in other
 6 major class action cases. Consideration of the *Vizcaino* factors continues—as in DPPs’ first
 7 application—to confirm the appropriateness of the fee requested.

8 **1. Class Counsel Obtained an Excellent Recovery for the Class**

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

13 Here, DPPs have obtained an additional \$37 million in cash for the class. The settlements
 14 confer a substantial and immediate benefit to class members, and represent an excellent recovery,
 15 especially in light of the risks involved in the action, as detailed below.

16 **2. A High Level of Skill Was Required to Prosecute This Case and Class 17 Counsel Are Highly Qualified**

18 As with DPPs’ first application, the skill and quality of legal counsel also support the
 19 requested fee award. *See Mark v. Valley Ins. Co.*, Case No. CV 01-1575-BR, 2004 WL 2260605, at
 20 *2 (D. Or. Oct. 6, 2004). Class Counsel are among the nation’s most experienced and skilled
 21 practitioners in the antitrust litigation field.⁵

22 This was a complex case that required DPPs to confront novel and/or difficult legal and
 23 factual issues. Courts have recognized that this is a significant factor to be considered in making a
 24 fee award. *See, e.g., Vizcaino I*, 142 F. Supp. 2d at 1303, 1306. Antitrust price-fixing conspiracy
 25 cases are notoriously complex and difficult. *See, e.g., In re Linerboard Antitrust Litig.*, No. CIV.A.
 26 98-5055, 2004 WL 1221350, at *10 (E.D. Pa. June 2, 2004) (“antitrust class action is arguably the

27 ⁵ *See, e.g., DRAM*, MDL No. 1482; *SRAM*, MDL No. 1819; *LCD*, MDL No. 1827; *CRT*, MDL No.
 28 1917. *See also* Exhibit 1 to ECF Nos. 1535-1, 1535-3 through 1535-37.

1 most complex action to prosecute”). Class Counsel effectively and efficiently managed the case
 2 with more than thirty plaintiffs’ firms, scores of able defense counsel, and thirteen defendant groups
 3 (both foreign and domestic), and they successfully tackled many difficult legal and factual issues.

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

9 3. The Risks of This Litigation

10 Risk is an important factor in determining a fair fee award. *Online DVD*, 779 F.3d at 954–
 11 55. Ninth Circuit courts have recognized that risk is a reason to increase a fee award above the 25%
 12 benchmark. *Vizcaino I*, 142 F. Supp. 2d at 1303–04. Consistent with the complexity and difficulty
 13 of antitrust class actions in general, this case presented substantial risk. DPPs address some of the
 14 risks below.

15 a. Defendants Have Tremendous Resources

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

19 b. Antitrust Class Actions Are Unpredictable

20 “Antitrust litigation in general, and class action litigation in particular, is unpredictable.” *In*
 21 *re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 475 (S.D.N.Y. 1998). “The ‘best’ case
 22 can be lost and the ‘worst’ case can be won, and juries may find liability but no damages. None of
 23 these risks should be underestimated.” *In re Superior Beverage/Glass Container Consol. Pretrial*,

24 _____
 25 ⁶ By way of example of the resources available to the Defendants, Latham & Watkins
 26 (Toshiba/TSST’s counsel) employs over 2,100 attorneys in 33 offices worldwide. *See*
 27 <http://www.lw.com>.

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

1 133 F.R.D. 119, 127 (N.D. Ill. 1990). Moreover, there is always the risk that the law may change in
 2 unfavorable ways.

3 **c. The Risk that Class Certification Will Be Denied**

4 As demonstrated by the Court's denial of DPPs' class certification motion, there was a
 5 substantial risk that a class would not have been certified, even though the Court granted DPPs
 6 leave to file another motion. Several large antitrust class actions have been denied certification in
 7 recent years. *See, e.g., In re Graphics Processing Units Antitrust Litig.*, 253 F.R.D. 478, 508 (N.D.
 8 Cal. 2008) (denying certification of indirect purchaser class and certifying a direct purchaser class
 9 that was much smaller than requested); *In re Rail Freight Fuel Surcharge Antitrust Litig.*, 725 F.3d
 10 244, 255 (D.C. Cir. 2013) (vacating District Court's granting of class certification and remanding
 11 for further proceedings in light of *Comcast*, 133 S. Ct. 1426); *In re Flash Memory Antitrust Litig.*,
 12 No. C 07-0086 SBA, 2010 WL 2332081, at *19 (N.D. Cal. June 9, 2010).

13 **d. The Risk of Not Being Able to Establish Liability**

14 Many large antitrust cases do not make it past summary judgment. *See, e.g., In re Online*
 15 *DVD-Rental Antitrust Litig.*, 779 F.3d 914, 918 (9th Cir. 2015) (affirming district court's granting
 16 of summary judgment against plaintiffs); *In re Citric Acid Antitrust Litig.*, 191 F.3d 1090, 1093,
 17 1108 (9th Cir. 1999), *cert. denied sub nom. Gangi Bros. Packing Co. v. Cargill, Inc.*, 529 U.S.
 18 1037 (2000) (Ninth Circuit affirmed grant of summary judgment in favor of Cargill, the only
 19 defendant not to settle).

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

24 Additionally, there is no guarantee that DPPs will be able to obtain evidence of the alleged
 25 conspiracy. For example, several witnesses, including some of the ringleaders of the conspiracy,
 26 have invoked their Fifth Amendment right against self-incrimination and refused to testify, thereby
 27 potentially depriving DPPs of usable evidence. First Zirpoli Decl. ¶¶ 52–53.

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

1 such harm. Both of these issues are complex and difficult to prove, and, again, success is not
2 guaranteed.

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

4 As DPPs explained in their Interim Fee Motion, the Ninth Circuit has confirmed that a fair
5 fee award must include consideration of the contingent nature of the fee, where there is no
6 assurance of attorneys' fees or reimbursement of expenses. *See, e.g., Vizcaino II*, 290 F.3d at 1050;
7 *Online DVD*, 779 F.3d at 954–55 & n.14. It is well-established that attorneys who take on the risk
8 of a contingency case should be compensated for the risk they take:

9 It is an established practice in the private legal market to reward attorneys for taking
10 the risk of non-payment by paying them a premium over their normal hourly rates
11 for winning contingency cases. *See* Richard Posner, *Economic Analysis of Law*
12 § 21.9, at 534–35 (3d ed. 1986). Contingent fees that may far exceed the market
13 value of the services if rendered on a non-contingent basis are accepted in the legal
profession as a legitimate way of assuring competent representation for plaintiffs
who could not afford to pay on an hourly basis regardless whether they win or lose.

14 *WPPSS*, 19 F.3d at 1299.

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

18 Class Counsel received no compensation during the first five-years of the litigation. They
19 have incurred over \$27 million in time and \$2 million in expenses, and took the chance that they
20 might never be compensated. This factor strongly supports the requested fee.

21 **5. High Quality of Work Performed**

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

1 Zirpoli Declaration at paragraphs 10 through 59 and the Second Zirpoli Declaration at paragraphs
 2 10 through 38. The amount and quality of the work of Class Counsel also strongly supports the fee
 3 they seek.

4 **6. The Lodestar Cross-Check Confirms the Reasonableness of the**
 5 **Requested Fee**

6 Finally, a cross-check of the requested fee with Class Counsel’s lodestar demonstrates that
 7 the proposed fee is more than reasonable, because it amounts to less than the value of the time Class
 8 Counsel invested in the case. *See Online DVD*, 779 F.3d at 949; *Vizcaino II*, 290 F.3d at 1048–50.

9 As summarized in the Saveri Declaration (and ECF No. 1535-1), Class Counsel have spent—
 10 through December 31, 2015—60,214.95 hours prosecuting this Action. All of this time was
 11 reasonable and necessary for the prosecution of this action. *Online DVD*, 779 F.3d at 949 (“The
 12 lodestar method requires multiplying the number of hours the prevailing party reasonably expended
 13 on the litigation (as supported by adequate documentation) by a reasonable hourly rate for the region
 14 and for the experience of the lawyer.” (quotation marks omitted)). The Court has already found that
 15 Class Counsel lodestar of \$24,811,762.75 through December 31, 2014 was reasonable. Interim Fee
 16 Order ¶ 3. The additional \$2,209,289.50 lodestar Class Counsel have accrued since January 1, 2015
 17 is also reasonable. As described above, and in the Second Zirpoli Declaration, the work was
 18 necessary and conferred substantial benefits on the class. Class Counsel’s work on the renewed class
 19 motion, and their continuing work on discovery, was necessary to prepare for the possibility that
 20 DPPs would not secure satisfactory settlements with some or all of the Defendants. Their work
 21 negotiating the settlements was also essential and resulted in substantial benefits to the class.

22 As with their work before January 1, 2015, Class Counsel implemented measures to ensure
 23 that their work was efficient. Work was assigned by Saveri & Saveri, Inc. among a small group of
 24 firms to avoid duplication; as required by CMO 1, counsel continued to keep contemporaneous
 25 time records and periodically reported their time to Saveri & Saveri, Inc.; and, wherever possible,
 26 DPPs continued to coordinate with the Indirect Purchaser Plaintiffs to avoid duplication of effort.
 27 First Zirpoli Decl. ¶¶ 14, 27, 29–30, 33–36, 40, 46, 49, 67; Second Zirpoli Decl. ¶¶ 16, 18–23, 35.

28 Further, considered as a whole, DPPs’ lodestar continues to materially understate the work

1 performed by Class Counsel because it does not include time spent by counsel before the
2 appointment of the executive committee, and therefore excludes substantial work by counsel in
3 connection with their pre-filing investigation of the case, the JPML proceeding, and the
4 organization of counsel. First Zirpoli Decl. ¶¶ 7, 67. It also does not include future settlement
5 administration work.

6 At the historic hourly rates of class counsel—i.e., those in place at the time the work was
7 performed—the additional time results in a lodestar of \$2,209,289.50. *See* Saveri Decl., Ex. 3; *see*
8 *also* declarations from all other Class Counsel firms filed herewith. As with DPP’s Interim
9 Application, the record demonstrates that Class Counsel’s hourly rates are reasonable. Each firm’s
10 declaration avers that the rates charged are that firm’s usual and customary rates at the time the
11 work was performed. *See* declarations of Class Counsel filed herewith and Class Counsel
12 declarations filed with the First Fee Motion (ECF Nos. 1535-1, 1535-2 through 1535-37).
13 Additionally, as explained in the Interim Application, in connection with one of the largest tasks
14 they undertook, if not the largest—the initial review and coding of the millions of pages of
15 documents produced in the case—Class counsel capped the allowable hourly rate at \$350. First
16 Zirpoli Decl. ¶¶ 42, 67.

17 For all of these reasons, it is plain that Class Counsel’s additional lodestar is reasonable,
18 and, combined with their previous lodestar, result in a total reasonable lodestar of \$27,021,052.25.
19 *See In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-MD-1775 JG VVP, 2015 WL
20 5918273, at *6 (E.D.N.Y. Oct. 9, 2015) (“*Air Cargo*”) (using total lodestar and total fees awarded,
21 including previous interim fee awards, to determine multiplier for lodestar cross-check). DPPs’
22 present fee request, if granted, would result in a total fee of \$22,470,000—or only 83.2% of Class
23 Counsel’s lodestar. As with DPPs’ Interim Fee Motion, the negative multiplier confirms the
24 reasonableness of the fee requested. *See In re Portal Software, Inc. Sec. Litig.*, No. C-03-5138
25 VRW, 2007 WL 4171201, at *16 (N.D. Cal. Nov. 26, 2007) (fact that fee sought is less than the
26 lodestar suggests fairness of award); *LCD II*, 2013 WL 149692, at *1 (fact that fee sought is less
27 than the lodestar “serves to confirm the reasonableness of the fees requested.”); *Online DVD*, 779
28 F.3d at 955 (“[W]here, as here, the lodestar amount was *three times* the benchmark, it was not an

1 abuse of discretion for the district court to accept the benchmark using a quick cross-check of class
 2 counsel’s lodestar summary figures.”); *CRT*, 2016 WL 183285, at *3 (“[M]ost importantly, the
 3 Court has cross-checked this award against DPPs’ lodestar. . . . [T]he fee multiplier is 0.8823. This
 4 multiplier confirms the reasonableness of the award.”).

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

7 Class Counsel also request reimbursement of litigation expenses they incurred on behalf of
 8 the class in the amount of \$320,951.30. Saveri Decl. ¶ 21. Attorneys who create a common fund for
 9 the benefit of a class are entitled to be reimbursed for their out-of-pocket expenses incurred in
 10 creating the fund so long as the submitted expenses are reasonable, necessary and directly related
 11 to the prosecution of the action. *Vincent v. Hughes Air West*, 557 F.2d 759, 769 (9th Cir. 1977);
 12 *OmniVision*, 559 F. Supp. 2d at 1048 (“Attorneys may recover their reasonable expenses that
 13 would typically be billed to paying clients in non-contingency matters.”). Reasonable reimbursable
 14 litigation expenses include: those for document production, experts and consultants, depositions,
 15 translation services, notice, claim administration. *See, e.g.*, 1 Alba Conte, *Attorney Fee Awards* §
 16 2.19 (3d ed. 2004) (“*Attorney Fee Awards*”).

17 Here Class Counsel’s reasonable expenses incurred from January 1, 2015 through December
 18 31, 2015 are: (i) document management system and database expenses of \$5,715; (ii) translation
 19 services of \$1,075; (iii) experts fees of \$300,000; (iv) federal express expenses of \$330.15; (v)
 20 transcript expenses of \$600; (vi) online legal and factual research of \$4,090.29; (vii) messenger and
 21 delivery expenses of \$128.46; (viii) in-house copy charges (capped at 20 cents per page) of
 22 \$7,316.28; (ix) postage charges of \$39.34; (x) telephone and facsimile charges of \$1,048.02; and (xi)
 23 travel and meal charges of \$608.76. Saveri Decl. ¶ 22 & Exs. 2–4. These expenses were reasonable
 24 and necessary for the prosecution of this action and are customarily approved by courts as proper
 25 litigation expenses. *See In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal.
 26 1995) (Court fees, experts/consultants, service of process, court reporters, transcripts, deposition
 27 costs, computer research, photocopies, postage, telephone/fax); *Thornberry v. Delta Air Lines*, 676
 28 F.2d 1240, 1244 (9th Cir. 1982), *remanded on other grounds*, 461 U.S. 952 (1983) (travel, meals and

lodging); *Redding v. Fairman*, 717 F.2d 1105, 1119 (9th Cir. 1983); *Attorney Fee Awards* § 2.19.

Accordingly, Class Counsel respectfully request (1) Court approval of the expenses and (2) reimbursement of the \$320,951.30 that Class Counsel have incurred on behalf of the class. Saveri Decl. ¶ 21.

D. Payments to the Class Representatives Are Appropriate

Courts often approve incentive awards to class representatives for their service to the Class. *Online DVD.*, 779 F.3d at 947–48 (approving incentive awards of \$5,000 per class representative and noting that they were “relatively small, well within the usual norms of ‘modest compensation’ paid to class representatives for services performed in the class action”); *In re Lorazepam & Chlorazepate Antitrust Litig.*, 205 F.R.D. 369, 400 (D.D.C. 2002) (approving incentive awards of \$25,000 and \$10,000, a total of 0.3% of each class’s recovery); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (affirming \$5,000 incentive awards to class representatives). *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 959 (9th Cir. 2009) (“Incentive awards are fairly typical in class action cases.”). Incentive awards are intended “to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as private attorneys general.” *Rodriguez*, 563 F.3d at 958–59.

DPPs seek additional awards of \$5,000 per Class Representative in the TCAC, which would increase the total awards to each of these Class Representatives to \$15,000. The additional \$30,000 DPPs seek now amounts to 0.08% of the addition to the settlement fund since January 1, 2015; the total of \$105,000 in incentive awards would amount to 0.14% of the total recovery in the action. Such awards would be well within the amounts Ninth Circuit courts find acceptable. *See, e.g., In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. C-07-5944 JST, 2016 WL 153265, at *3 (N.D. Cal. Jan. 13, 2016) (approving incentive awards of \$25,000, amounting to 0.196% of settlement fund and noting that “the incentive awards here are well within the range of incentive awards granted by other courts”); *Online DVD.*, 779 F.3d at 947–48 (approving incentive awards of \$5,000, amounting to 0.17% of settlement fund); *Air Cargo*, 2015 WL 5918273, at *6 (approving incentive awards of \$90,000, amounting to 0.06% of settlement fund); *Presley v. Carter Hawley Hale Profit Sharing*

1 *Plan*, No. C9704316SC, 2000 WL 16437, at *2 (N.D. Cal. 2000) (approving \$25,000 incentive
2 awards); *In re McKesson HBOC, Inc. ERISA Litig.*, 391 F. Supp. 2d 844, 851 (N.D. Cal. 2005)
3 (approving \$5,000 incentive awards); *In re Sorbates Direct Purchaser Antitrust Litig.*, No. 99-
4 1358MMC, 2002 WL 31655191, at *3 (N.D. Cal. Nov. 15, 2002) (approving \$7,500 incentive
5 award).

6 Here, the class representatives each expended substantial time and effort as named
7 plaintiffs. Among other things, they spent time reviewing and responding to multiple sets of
8 document requests and interrogatories, including collecting responsive documents; reviewing briefs
9 and pleadings; and consulting with class counsel regarding litigation strategy, settlement
10 negotiations, and other matters. First Zirpoli Decl. ¶¶ 68–80. In addition, the TCAC Class
11 Representatives spent significant time preparing for and being deposed. First Zirpoli Decl. ¶ 73–78.
12 Finally, since December 31, 2014, the TCAC Class Representatives have consulted with Class
13 Counsel regarding settlements and some prepared additional declarations for submission in support
14 of DPPs’ revised motion for class certification. Second Zirpoli Decl. ¶¶ 39–47.

15 In addition, the Class Representatives also faced the prospect of retaliation from Defendants
16 by denying future sales or allocations of ODDs or other products necessary for the representative’s
17 business and other potential reputational harm. *Glass v. UBS Fin. Servs., Inc.*, No. C-06-4068
18 MMC, 2007 WL 221862, at *17 (N.D. Cal. Jan. 26, 2007) *aff’d*, 331 F. App’x 452 (9th Cir. 2009)
19 (\$25,000 to representatives placing themselves at reputational risk by suing large brokerage
20 houses); *Air Cargo*, 2015 WL 5918273, at *5 (“by alleging antitrust violations on behalf of
21 themselves and the class, the class representatives conceivably put their businesses in risk of
22 potential retaliation by air cargo suppliers”).

23 By shouldering the burdens associated with this litigation, each Class Representative has
24 made a significant contribution to the recovery obtained for the class. In light of the benefits
25 conferred by the settlements reached in this case, the important role of the representatives should
26 be acknowledged with a reasonable payment to compensate them for their time and expense and to
27 reward them for the benefits their efforts have helped confer on the other class members, many of
28 whom will receive substantial sums.

1 **IV. CONCLUSION**

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

5 Dated: February 18, 2016

/s/ R. Alexander Saveri

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