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13 *Interim Co-Lead Counsel for Direct Purchaser Plaintiffs*

14
15 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION

17 IN RE: LITHIUM ION BATTERIES
18 ANTITRUST LITIGATION

Case No. 13-md-02420-YGR
MDL No. 2420

**DECLARATION OF JOSEPH J.
TABACCO, JR. IN SUPPORT OF CO-
LEAD COUNSEL FOR DIRECT
PURCHASER PLAINTIFFS' MOTION
FOR AN AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES AND
SERVICE AWARDS**

19
20 This Document Relates To:
21 ALL DIRECT PURCHASER ACTIONS

22 Date: May 8, 2018
23 Time: 2:00 p.m.
24 Courtroom: 1, 4th Floor
Judge: Hon. Yvonne Gonzalez Rogers

GLOSSARY OF DEFINED TERMS

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ACPERA	Antitrust Criminal Penalty Enhancement and Reform Act
CAC	DPPs’ Consolidated Amended Complaint (July 11, 2013), ECF No. 234
Cell or cell	Lithium Ion Battery Cells as defined in SCAC, as defined below, ¶3
Class Period	January 1, 2000 through May 31, 2011
Class Representatives	Named plaintiffs in the SCAC: Automation Engineering LLC; Charles Carte; Alfred H. Siegel, not individually, but acting solely in capacity as the Liquidating Trustee of Circuit City Stores, Inc. Liquidating Trust (“Circuit City”); First Choice Marketing, Inc.; James O’Neil; Alfred T. Giuliano, as the Chapter 7 Trustee of Ritz Camera & Image, LLC (“Ritz Camera & Image, LLC” or “Ritz”); The Stereo Shop; Univisions-Crimson Holding, Inc.; and Terri Walner
Co-Lead Counsel	R. Alexander Saveri of the firm Saveri & Saveri, Inc.; Bruce L. Simon of the firm Pearson, Simon & Warshaw LLP; and Joseph J. Tabacco, Jr. of the firm Berman Tabacco
Compendium or Comp.	Compendium of Plaintiffs’ Counsel Declarations in Support of Co-Lead Counsel for Direct Purchaser Plaintiffs’ Motion For An Award of Attorneys’ Fees, Reimbursement of Expenses and Service Awards, filed herewith
DAPs	Direct Action Plaintiffs
DOJ	Department of Justice
DPP or DPPs	Direct Purchaser Plaintiffs (also referred to as “Class Representatives,” defined above) and the named plaintiffs in the SCAC (defined below) and proposed Settlement Class Representatives, and were the proposed Class Representatives on DPPs’ Motion for Class Certification
DPP Class	Settlement Class of direct purchasers defined as: All persons and entities that purchased a Lithium Ion Battery or Lithium Ion Battery Product from any Defendant, or any division, subsidiary or affiliate thereof, or any co-conspirator in the United States during the Class Period, from January 1, 2000 through May 31, 2011. Excluded from the Class are Defendants, their parent companies, subsidiaries and affiliates, any Co-Conspirators, federal governmental entities and instrumentalities of the federal government, states and their subdivisions, agencies and instrumentalities, and any judge or jurors assigned to this case.
Defendants	Defendants which have settled the DPP action: LG Chem, Ltd.; LG Chem America, Inc.; Samsung SDI Co., Ltd.; Samsung SDI America, Inc.; Panasonic Corporation; Panasonic Corporation of North America; Sanyo Electric Co., Ltd.; Sanyo North America Corporation; Sony Corporation; Sony Energy Devices Corporation; Sony Electronics, Inc.; Hitachi Maxell, Ltd.; Maxell Corporation of America; NEC Corporation; NEC TOKIN Corporation; and Toshiba Corporation
ESI	Electronically Stored Information

1	Hitachi Maxell	Hitachi Maxell Ltd. and Maxell Corporation of America, or either of them
2	IPPs	Indirect Purchaser Plaintiffs
3	JPML	Judicial Panel on Multidistrict Litigation
4	LG Chem	LG Chem, Ltd. and LG Chem America, Inc., or either of them
5	Liaison Counsel	Judith A. Zahid of Zelle LLP
6	LiB	Cylindrical, prismatic, or polymer batteries that are rechargeable and use lithium ion technology.
7	LiB Products	Products manufactured, marketed, and/or sold by Defendants, their divisions, subsidiaries or affiliates, or their co-conspirators that contain one or more LiB cells manufactured by Defendants or their co-conspirators. LiB Finished Products include notebook computers, cellular (mobile) phones, digital cameras, camcorders, power tools, and other devices.
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10	Modified Pretrial Order No. 1	Modified Pretrial Order No. 1 (May 24, 2013), ECF No. 202
11	NEC Corp.	NEC Corporation
12	NEC Tokin	Tokin Corporation (f/k/a NEC TOKIN Corporation)
13	OSKR	OSKR, LLC (f/k/a C&A Economics), an economics analysis firm that Co-Lead Counsel retained to provide supporting economic services to Dr. Roger Noll, DPPs' economic expert
14		
15	Panasonic	Panasonic Corporation (f/k/a Matsushita Electric Industrial Co., Ltd.), and Panasonic Corporation of North America (f/k/a Matsushita Electric Corporation of America), or either of them
16		
17	Party or Parties	DPPs and the Defendants
18	Plaintiffs' Counsel	Co-Lead Counsel and all counsel listed in DPPs' accompanying Compendium, defined above
19	Samsung SDI	Samsung SDI Co., Ltd. and Samsung SDI America, Inc., or either of them
20	Sanyo	Sanyo Electric Co., Ltd., Sanyo North America Corporation, or any of them
21		
22	Saveri Decl.	Declaration of R. Alexander Saveri in Support of Direct Purchaser Plaintiffs' Motion For An Award of Attorneys' Fees, Reimbursement of Expenses, and Incentive Awards, attached as Exhibit C to the Compendium
23		
24	SCAC or SCAC ¶	DPPs' Second Consolidated Amended Complaint (Apr. 8, 2014), ECF No. 415
25	Settlements	Settlement Agreements reached with Defendants: Sony (\$19 million); NEC Corp. (\$1 million); Hitachi Maxell (\$3.45 million); Panasonic/Sanyo (\$42.5 million); Toshiba (\$2.9 million); LG Chem (\$41 million); Samsung SDI (\$24.5 million); NEC Tokin (\$4.95 million)
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27	Settlement Fund	Total cash recovery of all the settlements combined in the amount of \$139,300,000
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Simon Decl.	Declaration of Bruce L. Simon in Support of Co-Lead Counsel for Direct Purchaser Plaintiffs Motion For An Award of Attorneys' Fees, Reimbursement of Expenses and Service Awards, attached as Exhibit B to the Compendium
SKUs	Stock keeping units
Sony	Sony Corporation, Sony Electronics, Inc., Sony Energy Devices Corporation, or any of them
Toshiba	Toshiba Corporation, including its wholly-owned subsidiaries
UL	Underwriters Laboratories
Zahid Decl.	Declaration of Judith A. Zahid In Support of Co-Lead Counsel For Direct Purchaser Plaintiffs' Notice of Motion And Motion For An Award of Attorneys' Fees, Reimbursement of Expenses and Service Awards, attached as Exhibit D to the Compendium

1 I, Joseph J. Tabacco, Jr., declare:

2 1. I am a partner of Berman Tabacco¹ (“BT”). I submit this declaration in support of Co-
3 Lead Counsel for Direct Purchaser Plaintiffs’ Motion for an Award of Attorneys’ Fees,
4 Reimbursement of Expenses and Service Awards. Except as otherwise noted, I make this declaration
5 of my own personal knowledge, and if called upon to do so, could and would testify competently to
6 the facts contained herein.

7 2. I, or members of my firm, have been involved in almost every aspect of this case since
8 its inception. On May 17, 2013, the Court appointed R. Alexander Saveri of the firm Saveri & Saveri,
9 Inc., Bruce L. Simon of the firm Pearson, Simon & Warshaw LLP, and Joseph J. Tabacco, Jr. of the
10 firm BT as Interim Lead Counsel for the DPP Class (referred to herein as “Co-Lead Counsel”). ECF
11 No. 194.

12 3. My declaration provides a comprehensive description of the history of the litigation
13 and efforts of Plaintiffs’ Counsel. The work that BT attorneys performed is included as a part of the
14 case litigation summaries below.

15 **I. LITIGATION EVENTS**

16 **A. Commencement of the Case**

17 4. This multidistrict litigation arises from an alleged worldwide conspiracy to fix prices
18 of LiBs. LiBs are components of LiB camcorders, digital cameras, and laptop computers. The alleged
19 conspiracy involved some of the largest companies in the world—Sony, Samsung SDI, Panasonic,
20 Sanyo, LG Chem, Toshiba, Hitachi Maxell, and NEC Corp.

21 5. Co-Lead Counsel began investigating this case years before filing the first DPP
22 complaint in late 2012. *See, e.g.*, Saveri Decl. ¶6; Simon Decl. ¶¶10-11. The investigation entailed
23 retaining consultants to perform an economic analysis of the relevant market and researching the
24 nature of purchases by various potential direct purchasers.² Simon Decl. ¶11.

25
26 _____
27 ¹ Berman Tabacco was formerly named Berman DeValerio.

28 ² None of the attorney and professional time generated before the Court’s appointment of
Co-Lead Counsel in May 2013, which is not insubstantial, is included in the lodestar presented on
this Motion.

1 6. After the DOJ announced its investigation into the conspiracy in May of 2011, a total
2 of 26 DPP class action complaints were ultimately filed alleging a violation of Section 1 of the
3 Sherman Act, 15 U.S.C. § 1, and Section 4 of the Clayton Act, 15 U.S.C. § 15.³ *See* ECF No. 95.

4 7. DPPs commenced proceedings before the JPML and, on February 6, 2013, the JPML
5 transferred all related actions to this Court. ECF No. 51. On May 17, 2013, the Court appointed BT,
6 Pearson, Simon & Warshaw LLP, and Saveri & Saveri, Inc. as Co-Lead Counsel for the putative
7 nationwide class of direct purchasers. ECF No. 194. The Court's order tasked Co-Lead Counsel with
8 making sure the DPP action was prosecuted in an efficient manner, and required, among other things,
9 the periodic collection of time and expenses from Plaintiffs' Counsel, and coordination of the work
10 of Plaintiffs' Counsel.

11 8. During this time, DPPs effected service of their complaints on Defendants. As to
12 several Defendants, DPPs were required to utilize the procedures for international service of process
13 set forth in The Hague Service Convention. This was a lengthy, time consuming, and, in certain
14 instances, expensive endeavor requiring the appointment of a special international process server.

15 9. On July 10, 2013, the Court granted DPPs' Application For Appointment of Plaintiffs'
16 Steering Committees. ECF No. 229. The following individuals were appointed to the DPPs' Steering
17 Committee: Steven A. Asher of Weinstein Kitchenoff & Asher LLC; Jeffrey Gittleman of Barrack,
18 Rodos & Bacine; Susan G. Kupfer of Glancy Prongay & Murray LLP;
19 Douglas A. Millen of Freed Kanner London & Millen LLC; Linda P. Nussbaum of Nussbaum Law
20 Group, P.C.; Daniel D. Owen of Polsinelli PC; and Elizabeth C. Pritzker of Pritzker Levine LLP.⁴

21
22 ³ On September 3, 2013, Sanyo Electric Co., Ltd. pled guilty to one count of conspiring to fix
23 prices in violation of Section 1 of the Sherman Act. The conspiracy to which Sanyo Electric Co., Ltd.
24 pled guilty was one to fix the prices of cylindrical LiB cells sold in the United States and elsewhere
25 for use in notebook computer battery packs from about April 2007 to about September 2008. *See*
26 *United States v. Sanyo Electric Co., Ltd.*, No. 13-cr-0472 YGR (N.D. Cal.), Plea Agreement (ECF
27 No. 15-1) (Sept. 3, 2013), Criminal Minutes (ECF No. 32) (Sept. 20, 2013). On October 10, 2013,
28 LG Chem, Ltd. pled guilty to one count of conspiring to fix prices in violation of Section 1 of the
Sherman Act. The conspiracy to which LG Chem, Ltd. pled guilty was one to fix the prices of
cylindrical LiB cells sold in the United States and elsewhere for use in notebook computer battery
packs from about April 2007 to about September 2008. *See United States v. LG Chem, Ltd.*, No. 13-
cr-0473 YGR (N.D. Cal.), Plea Agreement (ECF No. 13-1) (Sept. 3, 2013), Criminal Minutes (ECF
No. 28) (Oct. 10, 2013).

⁴ The firm names identified here are the current firms where these individuals now litigate.

1 The Court established this Steering Committee to contribute those skills and abilities necessary to
2 ensure the just and efficient conduct of this case. Throughout the litigation, Co-Lead Counsel
3 supervised the Steering Committee and assigned work to Steering Committee members as required
4 by the demands of the case.

5
6 **B. DPPs File Their Consolidated Complaint; Defendants File Motions To Dismiss;
DPPs Eliminate Affirmative Defenses from Defendants' Answers**

7 10. Shortly after Court appointment, Co-Lead Counsel conferred on a number of occasions
8 with the ACPERA amnesty applicant and obtained several proffers from the ACPERA amnesty
9 applicant to gather facts to support allegations in DPPs' CAC. For the most part, the ACPERA
10 proffers were limited to the 18-month time period identified in the guilty pleas (April 2007-September
11 2008) and, thus, provided DPPs with very narrow assistance. In the same three-month compressed
12 time period between the appointment of Co-Lead Counsel and DPPs filing the CAC, and over
13 Defendants' objections, DPPs obtained documents that certain Defendants produced as a part of their
14 DOJ investigation. The vast majority of these documents were foreign language documents, which
15 required DPPs and IPPs to work together to review, analyze, translate, and understand them in order
16 to draft supporting allegations in their respective CACs. Led by Co-Lead Counsel, a team of
17 Plaintiffs' Counsel synthesized the new evidence and strategized regarding the nature and scope of
18 the conspiracy that would be alleged.

19 11. In July 2013, DPPs filed their CAC alleging an over-arching horizontal conspiracy
20 among the Defendants and their co-conspirators to fix prices, restrict production, and to allocate
21 markets and customers for the sale of LiB Products in the United States during the Class Period. ECF
22 No. 234. The CAC alleged, *inter alia*, that DPPs and members of the DPP Class were direct
23 purchasers of LiBs and/or LiB Products from Defendants and/or their subsidiaries and were injured
24 because they paid more for LiBs and/or LiB Products than they would have absent the conspiracy. *Id.*
25 DPPs sought, *inter alia*, treble damages pursuant to Section 4 of the Clayton Act, 15 U.S.C. §§ 15 and
26 22. CAC ¶¶12-14 & 62:25-63:25, § XI.

27 12. Co-Lead Counsel, with assistance of other Plaintiffs' Counsel, took the lead in drafting
28 the CAC. Plaintiffs' Counsel also spent substantial time reviewing documents and other materials,

1 including documents obtained as a part of the DOJ investigation, as a basis for the allegations of the
2 CAC.

3 13. On September 16, 2013, beginning a process that would take almost a year to complete,
4 and after submitting Court-ordered pre-motion letters, Defendants filed a massive set of motions to
5 dismiss the CAC. Defendants filed a joint motion to dismiss and five individual motions to dismiss
6 on September 16, 2013 and corresponding reply briefs on November 6, 2013. ECF Nos. 284-85, 289-
7 97, 321-29. Their papers included over 150 pages of briefing, along with supporting declarations and
8 other material. *See id.* Defendants argued, *inter alia*, that the CAC failed to allege a plausible
9 conspiracy, that DPPs lacked antitrust standing, that Defendants' U.S.-based subsidiaries were not
10 properly named as Defendants, and that DPPs had failed to allege fraudulent concealment of the
11 conspiracy sufficient to avoid the bar of the statute of limitations.

12 14. On October 16, 2013, DPPs filed their opposition to Defendants' motions—over 60
13 pages of briefing, along with supporting declarations and other material. ECF Nos. 306-311, 315. On
14 January 21, 2014, the Court granted Defendants' initial round of motions to dismiss with leave to
15 amend for lack of DPP antitrust standing. ECF No. 361. DPPs filed their SCAC on April 8, 2014.
16 ECF No. 415.

17 15. On April 25, 2014, Defendants filed a second joint motion to dismiss and seven
18 individual motions to dismiss and corresponding reply briefs on June 17, 2014. ECF Nos. 424-31,
19 461-68. Defendants' papers included over 100 pages of briefing, along with supporting declarations
20 and other materials. *See id.* Defendants argued that DPPs lacked antitrust standing. DPPs opposed
21 this second round of motions to dismiss with over 70 pages of briefing on May 27, 2014 (ECF Nos.
22 451-458). On October 2, 2014, Court denied all seven separate individual motions to dismiss on their
23 conspiracy participation and denied the joint motion, with the exception of plaintiff Circuit City's
24 alleged purchases of Hitachi Maxell's batteries and camcorders. ECF No. 512.

25 16. Finally, on November 7, 2014, Defendants moved to certify the Court's order for an
26 interlocutory appeal. ECF No. 541. DPPs filed their opposition on December 5, 2014. ECF No. 594.
27 On January 26, 2015, the Court denied the motion to certify the order for an interlocutory appeal. ECF
28 No. 642.

1 17. To oppose the veritable mountain of defense briefing, Co-Lead Counsel assigned teams
2 of Plaintiffs' Counsel to work on various issues and discrete topics presented in the motions to dismiss.
3 Co-Lead Counsel took the lead in preparing DPPs' briefing in regard to these motions. Co-Lead
4 Counsel drafted substantial parts of DPPs' briefs and assigned other parts of the briefing to other
5 Plaintiffs' Counsel. Co-Lead Counsel also spent substantial time editing and incorporating the drafts
6 of Plaintiffs' Counsel into the final briefing. Co-Lead Counsel attended the hearings and I argued the
7 motions, along with other Co-Lead Counsel.

8 18. When Defendants each answered the operative complaint, Co-Lead Counsel led a
9 small team of Plaintiffs' Counsel to analyze the dozens of affirmative defenses and draft a motion to
10 strike most of them. Through laborious meeting-and-conferring with a team of defense counsel
11 counterparts, Plaintiffs' Counsel succeeded in causing substantial amendment of the answers by
12 Defendants in the form of eliminating dozens of the affirmative defenses asserted in Defendants'
13 answers. Had this action not settled, this work would have translated into more streamlined summary
14 judgment and trial phases. *See* ECF Nos. 694-705, 801.

15 **C. Defendant Toshiba Summary Judgment Motion**

16 19. On June 8, 2015, the Court issued an order permitting Defendant Toshiba to file an
17 early summary judgment motion. ECF. No. 727.

18 20. On June 30, 2015, Defendant Toshiba moved for summary judgment against DPPs,
19 arguing that Toshiba's sale and disposal of its LiB cell manufacturing equipment constitutes
20 withdrawal from any conspiracy as a matter of law and that DPPs' federal and state law claims are
21 time-barred because they were not filed within the applicable statute of limitation periods after
22 Toshiba's withdrawal. ECF. No. 735.

23 21. On November 13, 2015, DPPs and IPPs filed their opposition under seal (ECF Nos.
24 950-59) arguing that Toshiba's sale of manufacturing equipment did not constitute effective
25 withdrawal and that Toshiba remained in the lithium ion battery industry after its purported
26 withdrawal and continued to benefit from its lithium ion battery business. DPPs supported their
27 opposition with over 100 exhibits. *See* ECF. No. 957. The motion was heard on March 1, 2016. *See*
28

1 ECF No. 1120. On March 16, 2016, the Court denied Toshiba’s motion for summary judgment in its
2 entirety. *See* ECF. No. 1160.

3 22. BT, with assistance of other Plaintiffs’ Counsel, took the lead in preparing the briefing
4 for the opposition to Toshiba’s early motion for summary judgment. BT prepared for oral argument
5 and drafted demonstratives that were used at the hearing. BT attended the hearing and prepared to
6 argue the motion, along with other Plaintiffs’ Counsel.

7 **D. Discovery**

8 23. Discovery in this action was extensive and hard-fought. Defendants opposed DPPs at
9 almost every step. Ultimately, DPPs—in cooperation with the IPPs and the DAPs—obtained millions
10 of documents, took dozens of depositions, and obtained important information via interrogatories and
11 other discovery devices. Co-Lead Counsel created teams of Plaintiffs’ Counsel and assigned a team
12 to each Defendant family for discovery purposes.

13 **1. Requests for Production of Documents and Interrogatories**

14 24. On April 22, 2013, DPPs served their document request for information that
15 Defendants produced to the DOJ or any Grand Jury. Over Defendants’ objections, the Court ordered
16 Defendants to produce responsive documents to this document request. *See* ECF No. 200; *see also*
17 Dec. 6, 2013 Hearing Tr. at 102:21-23 (THE COURT: “I’m ordering you to produce the grand jury
18 documents at this point.”).

19 25. On August 1, 2014, DPPs propounded their Second Set of Document Requests for
20 Defendants’ Transactional Data. All Defendants produced data identifying transactions of lithium-
21 ion battery cells and packs. This data arrived in various forms and languages, in various states of
22 completeness, and covering various windows of time. Most importantly, the data provided by
23 Defendants regarding the cost of producing LiBs and LiB Products was not usable, either because the
24 data covered an insufficiently small window of time, the reported “costs” actually reflected the transfer
25 price from parent to subsidiary, or the Defendant was unable to explain the construction of the cost
26 values. Because overcharges weren’t accurately measurable using the limited cost data, the
27 underlying value of the batteries was estimated based on product characteristics. In order to create
28 these estimations, it was necessary to decode Defendants’ SKUs using a combination of materials.

1 Some Defendants provided certain of these characteristics within the transactional sales data, but no
2 Defendant provided all of the necessary characteristics within its sales data. The process of identifying
3 each product involved a variety of sources. For instance, LiB capacity was often identified by
4 combing through Defendants' product roadmaps. Reports from Underwriters Laboratory provided
5 further insight into LiB capacity and dimensions. Some Defendants produced proprietary decoders
6 that could identify characteristics of a battery based on characters in the product SKU, and other
7 Defendants relied on coding conventions identified by industry trade associations. A final source of
8 information on LiBs and LiB Product characteristics came from the responses provided by the
9 Defendants to specific data-related questions. Even after these steps, several sales transactions could
10 not be properly interpreted or were deemed to be outside the scope of the claims in this case. Of the
11 nearly three million sales records provided by Defendants, one million of them were excluded because
12 they identified products other than LiBs, represented internal transfers of product, or identified
13 transactions other than regular sales (*e.g.*, returns, adjustments, records with negative prices and/or
14 quantities). An additional one million transactions were excluded due to incomplete product details,
15 leaving a dataset of 704,928 records for analysis. Data on LiB Finished Products (*e.g.*, laptops, cell
16 phones, digital cameras) were produced by some, but not all, the Defendants. As with the LiB and
17 LiB Products data, this LiB Finished Product data suffered from a lack of usable cost information. In
18 particular, Defendants were largely unable to identify the particular LiBs that were used in the
19 production of the LiB Finished Products. In some cases, the data was missing other pertinent fields
20 such as customer identity. Only in one limited situation (Toshiba laptop computers) was data provided
21 that associated battery costs to the finished product. In all other cases, this information was
22 unavailable.

23 26. Subsequently, DPPs propounded interrogatories and additional sets of document
24 requests on Defendants. In sum, DPPs collectively propounded 10 sets of document requests (71
25 individual requests), 6 sets of interrogatories (24 individual interrogatories), and 9 sets of requests for
26 admissions on Defendants (1,526 individual requests).

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TABLE No. 1

Discovery Set	Number	Topics	Date
RFP Set 1	1	DOJ Docs	Apr. 22, 2013
RFP Set 2	10	Transactional Data	Aug. 1, 2014
RFP Set 3	22	General Set	Oct. 31, 2014
RFP Set 4	19	Packing/Ill. Brick	Nov. 20, 2014
RFP Set 5	1	UL	Nov. 6, 2015
RFP Set 6	3	Cell Phone, Email, Text, IM Policies	Feb. 26, 2016
RFP Set 7	1	Personnel Files	Mar. 15, 2016
RFP Set 8 (IPPs)	1	Communications with Third Parties	Mar. 24, 2016
RFP Set 9	2	LiBs ID'd in Rog Set 5	Jul. 13, 2016
RFP Set 1 – Toshiba	5	Conspiracy Withdraw	Feb. 23, 2015
RFP Set 1 – Panasonic/Sanyo	7	Personnel Files	Jan. 28, 2016
Rog Set 1	6	Corporate Structure	Aug. 26, 2014
Rog Set 2	9	General Set	Oct. 31, 2014
Rog Set 3 (IPPs)	1	California	Nov. 26, 2014
Rog Set 4	1	Non-Def Battery Cells Sold in U.S.	May 16, 2016
Rog Set 5	2	Non-Def Battery Products Sold in U.S.	Jul. 13, 2016
Rog Set 1 – Toshiba	5	Conspiracy Withdraw	Feb. 23, 2015
Rog Set 1 – LG Chem & Sanyo	1	Guilty Plea	Oct. 31, 2014
RFA Set 1 – Toshiba	2	Conspiracy Withdraw	Feb. 23, 2015
RFA Set 1 – Toshiba	512	Authentication	Aug. 28, 2015
RFA Set 1 – LG Chem	380	Authentication	Aug. 28, 2015
RFA Set 1 – Samsung SDI	136	Authentication	Aug. 28, 2015
RFA Set 1 – Sony	44	Authentication	Aug. 28, 2015
RFA Set 1 – Panasonic	132	Authentication	Aug. 28, 2015
RFA Set 1 – Sanyo	288	Authentication	Aug. 28, 2015
RFA Set 1 – NEC Corp.	28	Authentication	Aug. 28, 2015
RFA Set 1 – Hitachi Maxell	4	Authentication	Aug. 28, 2015
RFI – Set 1- LG Chem	1	Employees' Electronic Devices	Sept. 11, 2016
Subpoena to AT&T	1	Phone Records	Dec. 3, 2015
Subpoena to AT&T, Sprint, Cellco	1	Phone Records	Mar. 1, 2016
Subpoena to Nera Economic Consulting	1	Def Economist Presentation Materials	Jun. 9, 2016
Subpoena to Laila Haider	1	Def Economist Presentation Materials	Jun. 9, 2016
Subpoena to Edgeworth Economics	1	Def Economist Presentation Materials	Jun. 9, 2016
Subpoena to Underwriters Labs	1	UL Test Reports	Jun. 22, 2016
Subpoena to Samsung EAI	1	Transactional data and UL reports	April 28, 2017

1 27. For these discovery requests, Defendants sought to limit the temporal and geographic
2 scope of the discovery and sought to avoid searching the files of certain custodians and some or all of
3 their subsidiaries or related companies. DPPs, along with the IPPs, engaged in exhaustive separate
4 negotiations with each Defendant group regarding custodians and appropriate English and foreign
5 language search terms. Eventually, Defendants agreed to produce documents from the files of
6 designated document custodians using certain search terms to which the Parties agreed. These
7 negotiations, however, were lengthy and difficult. DPPs briefed, along with the IPPs, at least 12
8 motions relating to Defendants' discovery responses. Ultimately, Defendants produced more than 2.4
9 million documents, equaling 8.9 million pages of documents (approximately 73% of which were in a
10 foreign language) produced from the files hundreds of negotiated custodians.

11 28. To maximize the value of the review, Plaintiffs' Counsel created thousands of pages
12 of work product, including memoranda, summaries, and spreadsheets organizing the evidence by
13 element of the claim, and by witnesses. Deposition binders were later created based on this work
14 product. Co-Lead Counsel attempted to augment the "hands-on, eyes on" review by attorneys,
15 paralegals and translators with engagement of a provider of Technology Assisted Review ("TAR").
16 However, owing largely to the foreign-languages present in most of the documents and the quality of
17 the digitized document images, the TAR was only minimally effective at reducing the need to rely on
18 attorney and professional review. Inventus provided TAR that used latent semantic indexing,
19 clustering and other analytical processes to rank documents for review and assess the productions.
20 These analytical packages were used on both the English and foreign language documents.

21 29. DPPs, with the IPPs, also spent substantial time obtaining Defendants' transactional
22 data and negotiating a protocol relating to ESI, search terms, depositions, and the Protective Order.
23 ECF Nos. 193 (Protective Order), 489 (ESI), 558 (depositions), 679 (search terms). Significantly,
24 DPPs and IPPs obtained relief from the Court to mandate that Defendants create and maintain
25 "watchlists" of extraterritorial current employees, so that in the event such an employee departed the
26 Defendant, DPPs and IPPs would have an opportunity to notice and depose the witness. *See* ECF
27 No. 558.

1 30. A substantial percentage of the documents produced in this action were in Korean,
2 Chinese, or Japanese. Consequently, DPPs utilized foreign language attorneys and paralegals both to
3 review and analyze these documents, as well as to translate working copies of important documents.
4 In addition, DPPs, along with the other Parties, worked with commercial translators in order to
5 produce “certified translations” of thousands of evidentiary documents. Ultimately, all Parties
6 negotiated a Translation Protocol. ECF Nos. 665. This was a laborious process that involved, first, a
7 proposed translation, then an opportunity for other Parties to object, then a meet and confer process,
8 and, ultimately, a procedure for the Court to resolve disputes. The protocol applied to all translated
9 documents used at depositions, attached to motions, or which a Party intended to use at trial. After
10 the protocol was established, negotiation with Defendants about translations was virtually continual.

11 31. In addition to Party discovery, DPPs served two subpoenas on phone companies for
12 phone records, three subpoenas related to Defendants’ expert materials, one subpoena on Underwriters
13 Laboratories for UL Test Reports, as well as one subpoena on Samsung EAI for transactional data and
14 UL reports.

15 **2. Depositions**

16 32. Beginning in August 2015, DPPs began depositions of Defendants after meeting and
17 conferring with Defendants regarding scheduling depositions for various witnesses. DPPs
18 coordinated with DAPs and IPPs in the taking all of these depositions to avoid duplication of effort.
19 Generally, one plaintiffs’ firm representing the DPPs, IPPs, or DAPs was designated to take the lead
20 with regard to preparing for and taking each deposition. The non-lead plaintiffs’ firms would assist,
21 as necessary, in the preparation for the depositions and the examination of the witnesses. DPPs took
22 merits depositions of 34 Defendant employees. DPPs took the lead in around half of these depositions
23 and assisted the lead IPP attorneys in the rest. DPPs’ participation in the depositions of some
24 Defendants diminished after DPPs had settled with them. All but one of these depositions required
25 translation which caused many of the deponents to be deposed over a number of days. In total, the
26 merits depositions lasted approximately 81 days.

27 33. To take these depositions, Plaintiffs’ Counsel marshaled the evidence from the
28 document review and written discovery. These depositions were videotaped because the videotaped

1 deposition testimony was, in all likelihood, going to have to be the testimony presented at trial.
 2 Depositions that are not limited to pure pre-trial discovery but have the added necessity of extracting
 3 useful, if not critical, trial testimony is a high-stakes endeavor. DPPs' thorough preparation and sound
 4 examination techniques and experience were essential to extract the information they needed to
 5 support their actions.

6 34. Including the 34 merits depositions, 50 total depositions were taken in the DPP case
 7 over 100 days.

8 35. That some Defendants settled with the DPP Class did not reduce the scope of
 9 deposition discovery. The DPP Class still needed to prove a conspiracy among all Defendants in
 10 order to tie any non-settling Defendant to the conspiracy.

11 3. Discovery of DPPs

12 36. DPPs also spent substantial time responding to discovery propounded by Defendants.
 13 DPPs worked with each of the Class Representatives to collect and provide discoverable information
 14 and documents, object where appropriate, and meet and confer with Defendants. DPPs also briefed a
 15 discovery motion for a protective order in connection with Defendants' discovery demands for
 16 downstream discovery. ECF No. 1186.

17 37. Defendants propounded three sets of interrogatories, three sets of document requests,
 18 and one set of requests for admissions on DPPs. Each of the nine Class Representatives participated
 19 in the collection of responsive hard-copy documents and identification of ESI sources likely to contain
 20 responsive data. In total, the Class Representatives produced over 1.5 million pages of documents.
 21 These document requests required the Class Representatives to search for and produce both hard copy
 22 and, in certain circumstances, electronic documents from multiple sources.

23 **TABLE No. 2**

Discovery Set	Number	Topics	Date
RFP Set 1	33	General Set 1	Mar. 20, 2015
RFP Set 2	32	General Set 2	Mar. 15, 2016
RFP Set 1 – Toshiba	9	Toshiba Exit From Batteries Business	May 26, 2015
Rog Set 1	24	General Set	Mar. 20, 2015
Rog Set 2	1	Products In Class Definition	May 15, 2015
Rog Set 3	2	Battery that Named Plaintiff Purchased	Apr. 8, 2016

Discovery Set	Number	Topics	Date
RFA Set 1 – Toshiba	4	Toshiba Exit From Batteries Business	May 26, 2015
Subpoena to Circuit City	1	Transactional Data	Jan. 26, 2016

38. Hard-copy document review for Class Representative Circuit City included the assessment of a total corpus of over 50,000 boxes that were in storage in a warehouse in Richmond, Virginia. Production of Circuit City paper documents presented a unique challenge because of the enormous quantity of paper documents in storage, the very minimal indexing of those documents, and the complete absence of Circuit City employees to assist in identification of responsive documents. The review included pallet-level review as well as box-level review in the warehouse. The review of Circuit City's paper documents stored in Richmond, Virginia yielded over 500 boxes of documents that were produced for inspection by Defendants. DPPs made an effort to remove all downstream sales data from these boxes as DPPs successfully defeated Defendants' motion to compel DPP downstream data. ECF No. 1186.

39. Class Representative Ritz, through its Bankruptcy Trustee, made substantial efforts to respond fully to document discovery during its liquidation. Ritz's counsel performed manual searches through approximately 300,000 pages of paper files from the Bankruptcy Trustee's corporate document warehouse to supplement prior productions to Defendants. In addition, Ritz's counsel conducted searches through 3.8 million pages of scanned accounting files from offline legacy systems. To supplement existing ESI documents gathered for prior litigation, Ritz's counsel directed its backup tape vendor to catalog and identify an approximate 700 disaster recovery backup tapes to identify several appropriate tapes for full restoration to review for production to Defendants.

40. All Class Representatives were also deposed. These depositions were conducted all around and across the country. Plaintiffs' Counsel spent substantial time preparing each of the Class Representatives for their deposition and defending the depositions. Plaintiffs' Counsel also defended the 12 Class Representative depositions. In addition to individual depositions, eight Class Representatives were also deposed in a 30(b)(6) corporate representative capacity.

ORDER ON MOTION TO COMPEL	DATE	OUTCOME
Order on Joint Disc. Letter Br. re LG Chem's Interrog. Resp., ECF No. 805 (on ECF 745) <i>--DPP/IPP MTC LGC further responses to Rog. Set 2, No. 2 (meetings) (to Supplement Rog. Resp. ("all facts supporting LGC guilty plea" – LGC referred to docs)).</i>	Aug. 21, 2015	Granted
Order on Pls.' Mot. to Continue Dep. Hiroshi Kubo, ECF No. 822 (on ECF 803) <i>--DPP/IPP Motion to Continue due to delayed document production for depo</i>	Aug. 31, 2015	Granted
Order re Pls.' Mot. to Compel Dep. Seok Hwan Kwak, ECF No. 836 (on ECF 745) <ul style="list-style-type: none"> • LG Chem did not comply, and submitted declaration re unsuccessful attempts to convince witness to appear (ECF 996) • Ultimately, given barriers to The Hague Convention, Court declined to order Parties to pursue the depo via that avenue. Judge to consider sanctions for LG Chem's failure to comply in the context of summary judgment or Trial (Order, ECF 1675, issued Feb. 14, 2017, on letter brief ECF 1130) 	Sept. 15, 2015	Granted
Minute Order re Joint Disc. Letter Br. ECF No. 1066 (on ECF 977) <i>--DPP/IPP MTC LG Chem to ID Docs. Used to Refresh Deponent's Memory & for doc preservation</i>	Feb. 4, 2016	Granted
Minute Order re Joint Disc. Letter Br. ECF No. 1066 (on ECF 995) <i>--DPP/IPP MTC LG Chem to produce docs it is withholding as privileged for which no privilege log has been produced</i>	Feb. 4, 2016	Denied
Order Grant'g Pls.' Mot. to Compel Dep. Jae Jeong Joe, ECF No. 1177 (on ECF 1122)	Mar. 24, 2016	Granted
Minute Entry re Disc. Letter Br. re Compelling Sanyo to Produce Docs. of Hiroshi Shimokomaki, ECF No. 1547 (on ECF 1424)	Oct. 27, 2016	Granted in part

43. Toshiba Defendants were particularly aggressive in resisting discovery productions. DPPs were forced to engage in constant discovery battles with Toshiba while concurrently reviewing documents, taking depositions, translating documents, and negotiating stipulations for authenticity with all Defendants while DPPs prepared their opposition to Toshiba's early motion for summary judgment. This all occurred while DPPs' discovery negotiations were in full swing with all other Defendants. Over a few months period, DPPs were forced to move to compel Toshiba to answer

1 interrogatory sub-parts beyond a certain number (ECF No. 650), to produce worldwide transactional
2 level sales data for lithium ion battery cells and packs (ECF No. 677), and to continue the deposition
3 of Toshiba witness Hiroshi Kubo due to Toshiba's delayed document production for the deposition
4 (ECF No. 803). In all instances, DPPs prevailed in compelling Toshiba to produce the information
5 that DPPs requested. *See* ECF Nos. 690 (granting DPPs' motion to compel), 710 (same), 822 (same).

6 44. LGC Defendants were similarly recalcitrant when it came to discovery production. For
7 example, LGC Defendants resisted DPPs' request for production of worldwide transaction-level sales
8 and cost data for lithium ion battery cells and packs (ECF No. 590), to provide supplemental and
9 complete responses to DPPs' First Set of Interrogatories (ECF No. 644), to provide further responses
10 to DPPs' Interrogatory Set 2, No. 2 (ECF No. 745), to identify and produce documents used to refresh
11 a deponent's memory and for document preservation (ECF No. 977), to produce documents it was
12 withholding as privileged for which no privilege log had been produced (ECF No. 995), and to
13 produce LGC witness Jae Jeong Joe for deposition (ECF No. 1122). As with DPPs' motions to compel
14 Toshiba discovery, the Court granted DPPs' motions to compel LGC discovery in all instances. ECF
15 Nos. 624, 689, 805, 1066, 1177. Most notably, LGC represented to DPPs during discovery
16 negotiations that LGC key witness Seok Hawn Kwak ("Kwak") had "suddenly left" LGC when he
17 was still on LGC's payroll. *See* ECF No. 795-1, Ex. 2 (under seal). The Court granted DPPs' motion.
18 *See* ECF No. 836. LGC failed to comply with the Court's order to produce Kwak for deposition,
19 submitting a declaration regarding LGC's counsel's unsuccessful attempts to convince Kwak to
20 appear for deposition. *See* ECF No. 996. The Court asked for, and DPPs provided the Court with,
21 information regarding the possibility of taking Kwak's deposition pursuant to the parameters provided
22 for international depositions in The Hague Convention. *See* ECF 1130. Ultimately, given barriers
23 with The Hague Convention, the Court declined to order Parties to pursue Kwak's deposition via that
24 avenue. *See* ECF No. 1675. The Court's order indicated that the Court would consider sanctions for
25 LG Chem's failure to comply in the context of a motion for summary judgment or trial. *See id.*

26 45. Additionally, DPP successfully defended against Defendants offensive discovery
27 motions for DPP discovery:
28

TABLE No. 4

ORDER ON MOTION TO COMPEL	DATE	OUTCOME
Order on Joint Disc. Letter, ECF No. 899 (on ECF 825) <i>--Defs' MTC DPPS to specifically identify which products they will include in their class definitions upon moving for certification</i>	Oct. 15, 2015	Denied
Order on Joint Disc. Letter, ECF No. 1224 (on ECF 1195) <i>--Defs' motion to amend a provision of the Parties' Discovery and Deposition Protocol regarding deposition time limits</i>	Apr. 27, 2016	Denied
Order on Joint Disc. Letter, ECF No. 1225 (on ECF 1186) <i>--Defs' MTC DPPS to produce downstream data for use in Defs' IPP case</i>	Apr. 28, 2016	Denied
Order on Joint Disc. Letter, ECF No. 1253 (on ECF 1202) <i>--Defs' Motion to Quash Subpoenas [the Stipulated Administrative Motion to file Supplementary Materials [ECF 1203] was Granted</i>	May 21, 2016	Denied
Order on Joint Disc. Letter, ECF No. 1530 (on ECF 1349) <i>--Defs' MTC Discovery From and to Strike Certain of the Deposition Errata of Purported Expert Mr. James L. Kaschmitter</i>	Oct. 13, 2016	Denied

46. Similar to their success with offensive discovery, DPPs maintained a perfect scorecard defending against Defendants' offensive discovery. Notably, DPPs successfully moved for a protective order to preclude Defendants from taking discovery, including depositions pursuant to Rule 30(b)(6) or Rule 45, pertaining to DPPs' marketing, distribution, sales, and pricing of LiB and LiB Products (referred by DPPs as "Downstream Discovery"). *See* ECF no. 1225.

E. Motion for Class Certification

47. DPPs filed a motion for class certification against Defendants on January 22, 2016. ECF No. 1038 (refiled at ECF No. 1582).⁵ The motion was supported by the report of DPPs' expert economist, Dr. Roger Noll, the report of DPPs' industry expert, James L. Kaschmitter, and a declaration of counsel attaching over 195 exhibits. DPPs' moving papers comprised in excess of 40 pages of briefing. On May 24, 2016, Defendants filed their nearly 40-page opposition to class certification, which included hundreds of pages of exhibits, as well as a 95-page economic expert report critiquing Dr. Noll's report as well as a 79-page industry expert report. *See* ECF No. 1283 (refiled at ECF 1573). On the same day, Defendants concurrently also filed Motions to Strike Certain

⁵ Pursuant to the Court's request, DPPs refiled their motion papers on October 31, 2016.

1 Testimony of DPP's Expert Dr. Roger Noll and a Motion to Strike Certain Proposed Testimony of
2 DPP Expert James L. Kaschmitter. ECF Nos. 1276-79 (refiled at 1565, 1569). On August 23, 2016,
3 DPPs filed their reply brief and Dr. Noll's Reply Declaration and James L. Kaschmitter's rebuttal
4 report, ECF Nos. 1400, 1403, 1406, 1407 (refiled at 1591, 1593, 1595), along with responses to the
5 motions to strike, ECF Nos. 1394-95, 1397-98 (refiled at 1592, 1594, 1596).

6 48. DPPs spent an enormous amount of time and effort drafting their motion for class
7 certification, analyzing relevant evidence, working with Dr. Noll and OSKR, preparing Dr. Noll and
8 James Kaschmitter for deposition and defending both depositions, and analyzing and responding to
9 the Defendant's opposition papers and expert reports.

10 49. Defendants opposed the motion for class certification, contesting nearly every part of
11 DPPs' Rule 23 showing and offering the opinion of Defendants' own expert economist, who opined
12 that it is impossible to prove impact and damages in this action with common evidence. In opposition
13 to DPPs' motion for class certification, Defendants also litigated their position that DPPs were entitled
14 to no recovery for LiB finished products—*e.g.*, camcorders and notebook PCs—which account for
15 the vast majority of DPPs' damages. DPPs' experts estimate that finished products constitute 75% of
16 class members' purchases. ECF No. 1443 (refiled at 1582-83) (Noll Report Ex. 12). In their
17 opposition to DPPs' class certification motion, Defendants also sought to exclude opinion testimony
18 of both the DPPs' economic expert and industry expert.

19 50. After filing their class certification motion, DPPs reached Settlements with Sony, NEC
20 Corp., Hitachi Maxell, Panasonic/Sanyo, Toshiba.

21 51. On April 12, 2017, the Court denied DPPs' motion for class certification with leave to
22 renew the motion. *See* ECF No. 1735. Co-Lead Counsel believe the Court would have certified the
23 proposed DPP Class on a renewed motion had Co-Lead Counsel not subsequently settled with the
24 remaining Defendants, LG Chem, Samsung SDI and NEC Tokin, as the areas in need of buttressing
25 that were identified by the Court were curable with further work, and the retained experts had
26 performed that work.

1 **F. Settlements**

2 52. Co-Lead Counsel spent substantial time in settlement negotiations throughout the
3 litigation. For each mediation session, Co-Lead Counsel worked with its economists and drafted a
4 mediation briefs that included analysis of Defendants' transactional data, corporate structure, as well
5 as conspiracy evidence. After briefing and preparation, Co-Lead Counsel engaged in hours-long
6 negotiation sessions with Judge Vaughn R. Walker (retired). In order to effectuate settlements with
7 Defendants, Co-Lead Counsel performed extensive document review and analysis, legal research, and
8 data analysis to prepare for settlement negotiations. Co-Lead Counsel performed significant work
9 negotiating and drafting the settlement agreements and moving for approval of the settlement with
10 this Court. Co-Lead Counsel also spent time and resources developing a notice program to inform
11 DPP Class Members of the pending settlements.

12 53. Ultimately, with the exception of Defendant GS Yuasa, who DPPs voluntarily
13 dismissed early in the litigation (ECF No. 920), DPPs reached settlements with all other Defendants
14 who appeared in the action.

15 54. DPPs first settled with Defendant Sony after six months of negotiation. The Parties
16 executed a Settlement Agreement on February 1, 2016, after over half-a-year of negotiation. ECF
17 No. 1090-1, Ex. 1. The terms of the settlement required Sony to pay the DPP Class \$19 million and
18 to cooperate with DPPs in the prosecution of the case against the rest of the Defendants. *Id.* at
19 § A.1(dd) & ¶¶25-27. DPPs moved for preliminary and final approval of the Sony settlement on
20 February 16, 2016 (ECF No. 1090) and July 29, 2016 (ECF Nos. 1357), respectively. On September
21 7, 2016, the Court granted final approval of the Sony settlement. ECF No. 1488.

22 55. DPPs next settled with Defendant NEC Corp. The Parties negotiated with NEC Corp.
23 counsel and executed a written Settlement Agreement in April 4, 2016 (ECF No. 1707-3, Ex. A), after
24 months of negotiations. The terms of the settlement required NEC Corp. to pay the DPP Class \$1
25 million and cooperate with DPPs in the prosecution of the case against the remaining Defendants.
26 ECF No. 1707-3, Ex. A, at ¶¶6, 16, 24.

27 56. DPPs next settled with Defendant Hitachi Maxell. The Parties executed a Settlement
28 Agreement on September 30, 2016 after several months of negotiation. ECF No. 1707-2, Ex. A. The

1 terms of the settlement required Hitachi Maxell to pay the DPP Class \$3.45 million and to cooperate
2 with DPPs in the prosecution of the case against the rest of the Defendants. *Id.* at ¶¶6, 16, 24.

3 57. DPPs next settled with Defendant Panasonic/Sanyo. The Parties executed a Settlement
4 Agreement on December 15, 2016 after several months of negotiation. ECF No. 1707-4, Ex. A. The
5 terms of the settlement required Panasonic/Sanyo to pay the DPP Class \$42.5 million and to cooperate
6 with DPPs in the prosecution of the case against the rest of the Defendants. ECF No. 1707-4, Ex. A,
7 at ¶¶6, 16, 24.

8 58. DPPs next settled with Defendant Toshiba. The Parties executed a Settlement
9 Agreement on March 15, 2017 after several months of negotiation. ECF No. 1707-5, Ex. A. The
10 terms of the settlement required Toshiba to pay the DPP Class \$2.9 million and to cooperate with
11 DPPs in the prosecution of the case against the rest of the Defendants. ECF No. 1707-5, Ex. A, at
12 ¶¶8, 18, 26.

13 59. On March 17, 2017 and July 24, 2017, respectively, DPPs moved for preliminary and
14 final approval of the settlements, certification of a settlement class and notice to the DPP Class. ECF
15 Nos. 1707, 1888. The Court granted final approval of the NEC Corp., Hitachi Maxell,
16 Panasonic/Sanyo, and Toshiba settlements on September 5, 2017. ECF Nos. 1940-1947.

17 60. DPPs next settled with Defendant LG Chem. The Parties executed a Settlement
18 Agreement with LG Chem on October 2, 2017. ECF No. 2029-2, Ex. A. The terms of the settlement
19 required LG Chem to pay the DPP Class \$41 million and to cooperate with DPPs in the prosecution
20 of the case against the rest of the Defendants. *Id.* at ¶¶8, 18, 26.

21 61. DPPs next settled with Defendant Samsung SDI. The Parties executed a Settlement
22 Agreement with Samsung SDI on August 7, 2017. ECF No. 2029-3, Ex. A. The terms of the
23 settlement required Samsung SDI to pay the DPP Class \$24.5 million and to cooperate with DPPs in
24 the prosecution of the case against the rest of the Defendants. *Id.* at ¶¶8, 18, 26.

25 62. DPPs next settled with Defendant NEC Tokin. The Parties executed a Settlement
26 agreement with NEC Tokin on August 30, 2017. ECF No. 2029-4, Ex. A. The terms of the settlement
27 required NEC Tokin to pay the DPP Class \$4.95 million. *Id.* at ¶¶6, 16.

1 63. The Settlements identified above each provided for cooperation in the form of
2 witnesses at trial and other assistance, a valuable form of non-cash benefit that the DPP Class already
3 enjoyed. The first settlement with Sony Defendants in particular resulted in valuable cooperation
4 from Sony which was used to advance the case against the remaining Defendants.

5 64. From the pleading stage, Co-Lead Counsel, in conjunction with the IPPs, engaged
6 counsel for an ACPERA amnesty applicant-Defendant, Samsung SDI, to obtain the cooperation in the
7 civil litigation that an amnesty applicant is obligated to give. The cooperation came out over the
8 course of the case and was at all times limited to narrow attorney proffers regarding anticompetitive
9 conduct related to cylindrical cells only from April 2007 to September 2008. The amnesty applicant
10 fought every stage of the litigation and was one of the last Defendants to settle with DPPs.

11 65. On November 17, 2017, DPPs moved for preliminary approval of the LG Chem,
12 Samsung SDI, and Tokin Corporation settlements, certification of a settlement class, and notice to the
13 DPP Class. ECF Nos. 2029. The Court granted preliminary approval, certified the settlement class,
14 and approved class notice on December 22, 2018. ECF Nos. 2104, 2105, 2106. The Court set the
15 fairness hearing for May 8, 2018 at 2:00 p.m. and ordered that DPP's Fee and Expense Application
16 be filed no later than February 8, 2018 and papers in support of final approval be filed no later than
17 March 29, 2018. *Id.*

18 66. The Settlement Fund of \$139.3 million in cash represents a 39% recovery of the single
19 damages the Plaintiffs' Counsel could have hoped to achieve through total victory at a trial on the
20 merits. The single damages to the DPP Class before factoring DAPs was \$416 million (*see* ECF
21 No. 1443 (refiled at 1582-83) (Noll Report Ex. 12)) but net of DAPs, which were expected not to be
22 part of DPPs' trial, the total single damages available is \$362 million, according to the analysis
23 provided to Co-Lead Counsel by the retained expert economists. As another measure of the result
24 achieved here, net of opt-outs, the single damages for cylindrical cells and packs—the narrow price-
25 fixing conduct targeted by the DOJ criminal investigation—amounted to only \$35.5 million. This
26 means that the Settlements recovered nearly four times (3.9x) the single damages that would have
27 been achievable had this action against these Defendants matched the narrower contours of the Sanyo
28 and LG Chem guilty pleas. Plaintiffs' Counsel's skill in developing the evidence on which to base an

1 expanded case that includes prismatic batteries and finished products for both cylindrical and
2 prismatic is what created the value in the \$139.3 million common fund.

3 **II. WORK PERFORMED BY PLAINTIFFS' COUNSEL**

4 67. During the pendency of the litigation, the work of BT and Plaintiffs' Counsel included,
5 without limitation, the following major tasks:

- 6 • Conducted an initial investigation of this case to develop the theories and facts that formed
7 the basis of the allegations against Defendants. The research included a review of publicly
8 available information regarding the LIB industry and consultation with industry experts
9 and economists prior to the filing of the complaints;
- 10 • Drafted comprehensive CAC detailing Defendants' violations of antitrust laws;
- 11 • Conducted exhaustive legal research regarding the DPP Class' claims and the defenses
12 thereto;
- 13 • Successfully defended, over the course of nearly a year, a set of hard-fought motions to
14 dismiss the complaint before this Court;
- 15 • Successfully defended an early summary judgment motion by which Defendant Toshiba
16 claimed that it did not participate in the conspiracy or withdrew from the conspiracy long
17 ago;
- 18 • Propounded discovery that—after extensive research, negotiations with Defendants, and
19 motion practice—resulted in the identification of dozens of defendant-employee
20 custodians and the production of millions of documents, as well as voluminous electronic
21 transactional data;
- 22 • Reviewed and analyzed these documents (many of which were in foreign languages and
23 required translation), as well as the transactional data;
- 24 • Coordinated and performed translation of approximately 3,275 documents produced by
25 Defendants for use in litigation (both certified translations and informal translations for
26 informal use and understanding);
- 27 • Propounded 6 sets of interrogatories (24 individual interrogatories total), 10 sets of
28 document requests (71 individual requests total), and 9 sets of requests for admissions on
29 Defendants (1,526 individual requests);
- 30 • Served 7 subpoenas on telephone providers, Defendants' expert (and her related economic
31 firms), Underwriters Laboratories, and Samsung EAI;
- 32 • Cooperated with the IPPs and the DAPs to take over 34 depositions of employees and
33 officers of Defendants over the course of 81 days;
- 34 • Contended with near-constant discovery disputes and motions to compel;
- 35 • Responded to Defendants' 74 document requests, 27 interrogatories, 4 requests for
36 admission;

- 1 • Prepared and defended the depositions of the 12 Class Representatives, including 30(b)(6) depositions for 8 of these Class Representatives;
- 2 • Prepared a motion for class certification and supporting materials, including 196 exhibits and the expert report of Dr. Roger Noll;
- 3 • Consulted extensively with economic and industry experts on issues pertaining to liability, class certification, and damages throughout the course of the DPP action and defended the depositions of DPPs' economic expert Dr. Roger Noll and industry expert James L. Kaschmitter;
- 4 • Prepared for and defended the depositions of DPPs' economic expert Dr. Roger Noll and industry expert James L. Kaschmitter to support motion for class certification;
- 5 • Prepared for and took the depositions of Defendants' economic expert Dr. Haider and industry expert Quinn Horn, who filed reports in opposition to DPPs' motion for class certification;
- 6 • Engaged in extensive settlement negotiations with each of the nine Defendant groups; and
- 7 • Documented each settlement and did the substantial work necessary to obtain final approval of each settlement—*e.g.*, drafted and filed motions for preliminary and final approval, drafted class notices, and worked with the settlement administrator to provide notice to the class of each settlement.

13 68. This case is notable for and characterized by the complex issues it has presented and
 14 the tenacity and creativity with which Defendants—all possessing enormous resources and
 15 represented by law firms among the best and largest in the world—have litigated those issues.
 16 Defendants have steadfastly opposed DPPs on many grounds. From the outset of the case, Defendants
 17 have contended that DPPs are entitled to little or no recovery because, *inter alia*, (i) DPPs lacked
 18 standing because the conspiracy did not extend to the LiB Products (*i.e.*, camcorders and laptop
 19 computers) most had purchased; (ii) DPPs' claims were barred by the statute of limitations; (iii) the
 20 conspiracy, if it existed, was limited to the products and timeframe identified in certain Defendants'
 21 guilty pleas—*i.e.*, cylindrical LiB cells for notebook computers, and a brief 18-month period during
 22 the years 2007 and 2008; and (iv) the conspiracy, if it existed, caused little or no damage to DPPs. In
 23 addition, most Defendants asserted that they were not conspirators or had withdrawn from the
 24 conspiracy long ago. At every stage of this case, Defendants asserted these arguments as a basis to
 25 dismiss all or part of the case, to limit damages, or to deny or limit discovery. DPPs battled Defendants
 26 at every step, but the battles were difficult and drawn out. For example, Defendants' motions to
 27 dismiss ultimately entailed hundreds of pages of briefing and took over a year to resolve. *See* ¶¶13-
 28

1 15, *supra*. DPPs successfully defeated Defendant Toshiba’s early summary judgment motion in this
 2 case that also involved hundreds of pages of briefing and exhibits and took over eight months to brief
 3 and resolve. *See* ¶¶19-22, *supra*.

4 69. Measured by hours, the breakdown of the most significant labor is as follows:⁶

TASK	% OF TOTAL HOURS
Document review	48%
Discovery (<i>excluding doc review and depositions</i>)	24%
Pleadings and briefing (<i>incl. class certification</i>)	12%
Depositions	8%
Misc. (<i>including court appearances, settlement, strategy, case management</i>)	8%

5
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10 70. Co-Lead Counsel managed the litigation effectively and efficiently. Among other
 11 things, work was assigned by Co-Lead Counsel among the various firms to avoid duplication. As
 12 required by Modified Pretrial Order No. 1, Plaintiffs’ Counsel kept contemporaneous time records
 13 and reported their time on a quarterly basis to BT. BT collected reports every quarter for each firm
 14 and served as the repository for reporting and tracking time throughout the course of the DPP
 15 litigation. On January 21, 2014 and February 4, 2014, the Court ordered Co-Lead Counsel to submit
 16 quarterly summary reports of time and expenses using the form provided to Judge Illston in *In re TFT-
 17 LCD (Flat Panel) Antitrust Litigation*, No. 07-md-1827 (N.D. Cal.). ECF Nos. 362, 375. BT took
 18 primary responsibility for providing such reports in-camera, every quarter.

19 71. Additionally, in order to ensure maximum efficiency was achieved, on May 31, 2013,
 20 Co-Lead Counsel provided DPP firms with a written protocol (“DPP Time & Expense Protocol”) for
 21 maintaining and reporting time and expenses with protocols that went beyond those that the Court
 22 articulated in its Modified Pretrial Order No. 1. This protocol included billing caps for certain
 23 categories of individuals who worked on the case, instructions on detailed time entries, prohibitions
 24 on unnecessary “read and review” time that is not tied to specific assignments from Co-Lead Counsel,
 25 prohibition on travel time unless the professional is actively engaged in preparation or work in
 26 connection with an assignment by Lead Counsel. Co-Lead Counsel required every law firm

27
28 ⁶ This breakdown is a rough estimate that includes some pre-audited time from several Plaintiffs’ Counsel.

1 representing the DPP Class to commit in writing to a time and expense protocol as a precondition to
2 receiving any assignments. A true and correct copy of the DPP Time and Expense Protocol is attached
3 hereto as Exhibit 4. Finally, wherever possible, DPPs coordinated with IPPs and DAPs to avoid any
4 duplication of effort. As a part of this Motion, Co-Lead Counsel reviewed and audited all supporting
5 Plaintiffs' Counsel claimed time and expenses and eliminated time entries that did not comply with
6 the Modified Pretrial Order No. 1 and/or DPP's Time and Expense Protocol.

7 72. Co-Lead Counsel and supporting Plaintiffs' Counsel opposed Defendants' first
8 omnibus motion to dismiss the CAC as well as the concurrently filed individual Defendant motions
9 to dismiss and requests for the judicial notices. Co-Lead Counsel prepared for the hearing on the first
10 motions to dismiss and drafted demonstratives for the hearing.

11 73. To address the DPP standing concerns expressed in the Court's order granting
12 Defendants' first round of motions to dismiss, Co-Lead Counsel searched for and identified potential
13 industry consultants to learn whether additional industry facts existed to address the Court's concerns
14 regarding DPP standing. Additionally, Co-Lead Counsel led and managed review of additional
15 documents that the Court ordered Defendants to produce to identify additional conspiracy evidence
16 for the amended complaint. Many of the documents were produced in foreign language (primarily
17 Japanese and Korean) and required making decisions on documents to translate in a very short time
18 period. From the information learned in this document review and discussions with industry experts,
19 Co-Lead Counsel drafted and finalized the amended allegations in the SCAC.

20 74. Co-Lead Counsel and supporting Plaintiffs' Counsel opposed Defendants' second
21 round of motions to dismiss—including opposing Defendants' omnibus motion to dismiss the SCAC
22 and individual Defendants' motions to dismiss. Co-Lead Counsel prepared for the hearing on the
23 second motions to dismiss and drafted hearing demonstratives for the motions to dismiss hearing.

24 75. Subsequent to the Court denying all of Defendants' motions to dismiss the SCAC, Co-
25 Lead Counsel led discussions and negotiations with Defendant GS Yuasa that ultimately resulted in
26 DPPs and IPPs voluntarily dismissing Defendant GS Yuasa.

27 76. Co-Lead Counsel and supporting Plaintiffs' Counsel, led the briefing efforts opposing
28 Toshiba's early motion for summary judgment. In opposing Toshiba's motion for summary judgment,

1 DPPs faced the challenge of responding to the summary judgment motion very early in the litigation
2 and before fact discovery was complete. In order to develop arguments to oppose Toshiba's motion
3 for summary judgment, DPPs reviewed an enormous amount of foreign language (mostly Japanese)
4 documents and obtained the certified translations they needed to take depositions of relevant Toshiba
5 witnesses. All of this was done in the very short and compressed timeframe set by the Court while
6 discovery negotiations with other Defendants were in full swing. Additionally, DPPs negotiated
7 authenticity and admissibility issues for documents from each Defendant family related to the
8 documents DPPs submitted in support of their opposition to the motion for summary judgment. Co-
9 Lead Counsel prepared for the oral argument and drafted demonstratives that were used at the hearing.
10 Co-Lead Counsel attended the hearing and prepared to argue the motion along with other Plaintiffs'
11 Counsel.

12 77. Throughout the litigation, Co-Lead Counsel managed the overall discovery process
13 and did much of the ground-level work, as described below. Co-Lead Counsel assigned a Plaintiffs'
14 Counsel firm or firms to have the primary responsibility for obtaining discovery from a single
15 Defendant. With assistance from other Plaintiffs' Counsel, Co-Lead Counsel drafted discovery,
16 identified potential document custodians and witnesses, and negotiated with that Defendant regarding
17 the myriad issues attendant to discovery in a complex case such as this one. Co-Lead Counsel
18 attorneys were charged with engaging in and supervising this process, to ensure, among other things,
19 that DPPs' positions on the various issues were coordinated and consistent. In this role, Co-Lead
20 Counsel attorneys actively participated in most of the negotiations with defense counsel, including
21 negotiating and obtaining cooperation from the ACPERA amnesty applicant against other Defendants
22 in the action. Co-Lead Counsel performed a substantial amount of ground-level work as well: Co-
23 Lead Counsel attorneys took depositions, drafted, propounded, and responded to discovery requests,
24 negotiated extensively with Defendants regarding discovery and various case protocols, and took the
25 lead in briefing both offensive and defensive discovery motions. Co-Lead Counsel attorneys and
26 paralegals also played a central role in the analysis of documents and other discovery. Co-Lead
27 Counsel attorneys received and organized Defendant document productions for loading into the
28 database, drafted and created a document review protocol, led discussions about and put into place

1 the technical architecture for document review, and managed and organized evidence supporting the
2 DPP case that multiple teams of English and foreign language attorneys culled across document
3 productions from all Defendants. Working in tandem with the document review management
4 attorneys, a BT attorney fluent in Japanese and with finely honed translation and analysis skills, led
5 and managed the DPP Japanese language document review team and played an integral role in
6 identifying, culling, translating, and managing complex transactional data produced in Japanese as
7 well as critical evidence used in depositions and case-dispositive motions. Additionally, BT
8 paralegals maintained, tracked, and organized discovery related to the DPP action for all Plaintiffs’
9 Counsel’s access and use throughout the litigation.

10 78. In drafting the DPP class certification motion, Co-Lead Counsel worked closely with
11 the economic and industry experts retained by DPPs as well as the supporting economists as OSKR
12 on DPPs’ supporting economic model, analysis, and expert reports.

13 79. The effort on class certification required Co-Lead Counsel to expend significant time
14 and money on legal briefing, testifying experts, and the consulting economists charged with working
15 the transactional data into shape for use in the sophisticated econometric modeling performed by
16 Dr. Noll. Co-Lead Counsel also expend significant time and money in preparing for and examining
17 the Defendants’ expert economist at deposition and defending the two depositions of Dr. Noll.

18 80. Co-Lead Counsel also led efforts to identify, translate, and organize documents and
19 Defendants’ discovery responses to support DPPs’ class certification motion. In addition to
20 conspiracy evidence, Co-Lead Counsel drafted legal and factual analysis to support DPPs’ class
21 certification motion and worked with Class Representatives to collect information relevant to the class
22 certification motion and prepare them for deposition.

23 81. Co-Lead Counsel mediated and negotiated settlements with all Defendants. In
24 particular, BT attorneys played a central role engaging with Defendant Sony’s counsel and negotiating
25 the first hard-fought “ice breaker” settlement with Sony. This settlement resulted in benefit to the
26 DPP Class in two respects. First, it was a cash settlement that was paid to the DPP Class. Second,
27 DPPs negotiated cooperation from Sony against the other Defendants a part of this settlement
28 agreement. Settling with Sony first was a significant milestone in the litigation because Sony was a

1 major player in the lithium ion battery market, and the DOJ's investigation into Sony's participation
2 in the conspiracy was very limited. The negotiated cooperation from Sony included identifying key
3 documents implicating other Defendants, providing Sony employees for interviews, authenticating
4 documents, and clarifying transactional data from a large dataset. As a result of cooperation obtained
5 from Sony, DPPs were able to obtain information about component costs that provided support for
6 DPPs' motion for class certification. As a part of its cooperation, Sony also confirmed aspects of
7 DPPs' expert economist's analysis and cost assumptions as well as aspects of conspiracy proof.
8 Plaintiffs' Counsel met with Defendant Sony's counsel on multiple occasions throughout the rest of
9 the litigation so Sony could provide DPPs with information relevant to DPPs' litigation against other
10 Defendants. This cooperation from Sony was a valuable benefit to the DPP Class because it provided
11 Plaintiffs' Counsel with access to information, witnesses, and documents regarding the conspiracy
12 and class issues that might otherwise not have been available to DPPs. Finally, this first "ice breaker"
13 with Sony was beneficial because it encouraged other Defendants to approach DPPs about settling
14 their own cases in the DPP action.

15 **III. BERMAN TABACCO ATTORNEYS' FEES AND EXPENSES**

16 82. Univisions-Crimson Holding, Inc. ("Univisions"), one of the larger named Class
17 Representatives in this action, retained BT and was actively involved in the litigation. During the
18 Class Period, Univisions, through its subsidiaries, provided professional audio, video,
19 teleconferencing, presentation and multi-media equipment. As noted above, on May 17, 2013, the
20 Court appointed me and BT to serve Interim Lead Counsel for the DPP Class alongside attorneys at
21 Saveri & Saveri and Pearson, Simon, and Warshaw LLP.

22 83. From the inception of this case to the date of this declaration, BT attorneys were
23 involved in all aspects of litigation as Co-Lead Counsel as detailed in the paragraphs above.

24 84. BT has prosecuted this litigation solely on a contingent-fee basis and has been at risk
25 that it would not receive any compensation for prosecuting claims against the Defendants. While BT
26 devoted its time and resources to this matter, it has foregone other legal work for which it would have
27 been compensated.

1 85. The background and experience of BT and its attorneys are summarized in the
2 *curriculum vitae* attached hereto as Exhibit 1.

3 86. Attached hereto as Exhibit 2 is my firm's total hours and lodestar, computed at
4 historical rates, for the period of June 1, 2013 through August 31, 2017. This period reflects the time
5 spent after the appointment of Co-Lead Counsel for DPPs in this litigation. The total number of hours
6 spent by BT during this period of time was 21,398.30, with a corresponding lodestar of \$9,021,126.00.
7 My firm's lodestar figures are based on the firm's historical billing rates which do not include charges
8 for expense items. Expense items are billed separately and such charges are not duplicated in my
9 firm's billing rates. This summary was prepared from contemporaneous, daily time records regularly
10 prepared and maintained by my firm. The lodestar amount reflected in Exhibit 2 is for work done by
11 BT and was performed by professionals at my law firm for the benefit of the DPP Class.

12 87. BT has reviewed the time and expense records that form the basis of this declaration
13 to correct any billing errors.

14 88. The hourly rates for the attorneys and professional support staff in my firm included in
15 Exhibit 2 are the same as the regular rates charged for their services in non-contingent matters and/or
16 which have been accepted in other complex or class action litigation subject to the hourly rate caps
17 established by Co-Lead Counsel, including:

- 18 a. the highest hourly rates for Attorneys at the highest Partner level is capped at \$850 per
19 hour;
- 20 b. the highest hourly rates for Attorneys at the Of-counsel/Special counsel level for
21 substantive work is capped at \$650 per hour, which excludes document review;
- 22 c. the highest hourly rates for Attorneys at the highest Associate level for substantive
23 work is capped at \$450 per hour, which excludes document review;
- 24 d. the highest hourly rates for Attorneys at the Associate level engaged in English-
25 language document review is capped at \$350 per hour; a cap of \$400 per hour is
26 permitted where the reviewer has special skill set, such as foreign language translation,
27 and Lead Counsel has approved that work performed; and
- 28 e. the highest hourly rates for Paralegals and investigators is capped at \$175 per hour.

1 89. BT paid a total of \$210,000.00 in assessments for the joint prosecution of the litigation
2 against the Defendants.

3 90. My firm has expended a total of \$98,599.43 in unreimbursed costs and expenses in
4 connection with the prosecution of this litigation. These costs and expenses are broken down in the
5 chart attached hereto as Exhibit 3. They were incurred on behalf of DPPs by my firm on a contingent
6 basis, and have not been reimbursed. The expenses incurred in this action are reflected on the books
7 and records of my firm. These books and records are prepared from expense vouchers, check records
8 and other source materials and represent an accurate recordation of the expenses incurred. The in-
9 house photocopying expense of \$29,353 was incurred by BT in that amount due to the fact that my
10 firm served as the principal firm amongst Co-Lead Counsel tasked with finalizing and filing the
11 significant pleadings in the case, which meant that under the local rules, a significant amount of
12 printing of hard copies for courtesy copies and sealed pleadings and exhibits was carried out by BT.
13 My firm also was a principal source of hard-copy versions of voluminous deposition exhibits for
14 depositions of percipient witnesses and expert witnesses. Finally, my firm managed the foreign
15 document review in this action, which necessitated printing a significant quantity of pages of
16 translations and related material.

17 91. My firm has carefully reviewed the time and expenses that comprise its reported
18 lodestar and out of pocket expenses and represents that such lodestar and expenses comply with all
19 material applicable terms of the May 21, 2013 letter from Co-Lead Counsel regarding Protocols for
20 Maintaining and Reporting Time and Expense as well as Modified Pretrial Order No. 1.

21 **IV. PLAINTIFFS' COUNSEL ATTORNEYS' FEES AND EXPENSES**

22 **A. Attorneys' Fees**

23 92. Attached hereto as Exhibit 5 is a summary of the total hours and lodestar of all
24 Plaintiffs' Counsel that participated in the joint prosecution of this litigation. The total number of
25 hours spent by all Plaintiffs' Counsel, including BT, during the Relevant Period was 173,863.20, with
26 a corresponding lodestar of \$72,489,066.75. All firms were instructed to only submit time and
27 lodestar for work done during the Relevant Period starting on June 1, 2013 (after the appointment of
28 Co-Lead Counsel on May 17, 2013). All firms were instructed to cease work on the case in August

1 2017, when the settlement with the last Defendant—NEC Tokin—was reached. The bulk of the work
2 performed after this date related to obtaining Court approval of the last settlements and related issues.
3 Co-Lead Counsel performed the vast majority of this work. The declarations of all counsel seeking
4 reimbursement are filed in the accompanying Compendium. The lodestar does not include time spent
5 by counsel before the appointment of Co-Lead Counsel. It therefore excludes substantial work by
6 counsel in connection with their pre-filing investigation of the case, the JPML proceeding, and the
7 organization of counsel. It also does not include substantial time spent by counsel relating to this
8 application for a fee award and reimbursement of expenses.

9 93. Each Plaintiffs’ Counsel has provided a separate declaration which provides a
10 summary of time records and expenses spent in the case. Plaintiffs’ Counsel’s declarations are filed
11 concurrently with this motion as Exhibits A to KK in the accompanying Compendium.

12 94. Co-Lead counsel request an award of \$41,790,000 million in attorneys’ fees, which
13 amounts to 58% of their lodestar of \$72,489,066.75. The requested award therefore represents a
14 negative 0.58 multiplier. Co-Lead Counsel believes that this amount is reasonable, in light of the
15 uncompensated time and effort invested in the case, the work performed on behalf of the DPP Class,
16 and the risks faced by Plaintiffs’ Counsel.

17 95. Exhibit 6 attached hereto is a true and correct copy of Eisenberg, Miller & Germano,
18 *Attorneys’ Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. REV. 937 (2017).

19 **B. Expenses**

20 **1. Plaintiffs’ Counsel’s Unreimbursed Costs and Other Expenses**

21 96. Exhibit 7 attached hereto contains a compilation of all Plaintiffs’ Counsel’s
22 unreimbursed costs and other expenses in the amount of \$445,068.46. These costs and expenses are
23 supported by each firm’s separate declaration in support of fees and costs. The separate categories
24 and totals are as follows (*see also* Exhibit 8 which breaks down each Plaintiffs’ Counsel’s expenses
25 by the categories below):

26 //
27 //
28 //

CATEGORY	AMOUNT INCURRED
Court Fees (filing, etc.)	\$4,795.45
Computer Research (Lexis, Westlaw, PACER, etc.)	\$79,850.74
Document Production	\$47,594.85
Experts / Consultants (paid)	\$9,764.90
Messenger Delivery	\$3,238.71
Photocopies - In House	\$70,378.45
Photocopies - Outside	\$6,190.21
Postage	\$2,520.75
Service of Process	\$1,188.01
Overnight Delivery (Federal Express, etc.)	\$6,928.21
Telephone / Facsimile	\$14,530.54
Transcripts (Hearings, Depositions, etc.)	\$7,173.08
Travel (Airfare, Ground Travel)	\$108,993.71
Travel (Meals and Lodging)	\$81,920.85
TOTAL	\$445,068.46

These expenditures were audited and comply with the Court's Modified Pretrial Order No. 1 and the DPP Time & Expense Protocol. DPPs are not seeking reimbursement for travel, meals, and lodging expenses, as explained in ¶100, *infra*.

2. Litigation Fund

97. Co-Lead Counsel established a litigation fund to finance the joint prosecution of this litigation against the Defendants (the "Litigation Fund") that was maintained by Liaison Counsel, Zelle LLP. *See* Zahid Decl. ¶¶2-16 & Exs. A-B. The total amount paid into the Litigation Fund is \$2,260,000 and the amount remaining in the Litigation Fund, after payment of expenses, is \$12,801.38. *Id.* at ¶¶2-4 & Ex. A. Co-Lead Counsel seek reimbursement of \$2,247,198.62 for the monetary contributions that they made to the Litigation Fund, which were used to pay necessary litigation expenses. *Id.* at ¶¶4-16 & Ex. B.

3. Outstanding Invoices

98. Additionally, Plaintiffs' Counsel seek reimbursement for unreimbursed invoices for reasonable charges invoiced by retained economic experts in this case in the amount of \$212,030.00. *See* Zahid Decl. ¶6.

1 **4. Document Hosting Services**

2 99. Co-Lead Counsel assigned Polsinelli LLP (“Polsinelli”) to provide document hosting
3 services to facilitate document review. Polsinelli provided the services for the benefit of the DPP
4 Class, and Co-Lead Counsel has received charges totaling \$641,190.83 for the document hosting. For
5 a description of the scope of the services rendered, and the basis for the total charge, see the
6 Declaration of Daniel D. Owen Regarding Document Hosting Expenses, at Compendium, Ex. BB
7 (“Owen Decl. re: Document Hosting”). Co-Lead Counsel have been unable to assess whether the
8 charged amount represents an out-of-pocket cost to Polsinelli, or assess through independent
9 verification the reasonableness of the \$641,190.83 amount, but note that according to the Owen Decl.
10 re: Document Hosting, the charge is largely in line with what a third-party vendor would charge for
11 equivalent services. *See* Owen Decl. re: Document Hosting ¶¶15-18. Moreover, the charge appears
12 reasonable when juxtaposed to the IPPs’ incurred cost to host what was largely the same document
13 productions from Defendants. *See* Declaration of Brendan P. Glackin In Support of Plaintiffs’ Motion
14 for Attorneys’ Fees, Reimbursement of Expenses and Service Awards *filed in the IPP action*, (ECF
15 no. 1811) (May 26, 2017) at ¶29a (identifying payments made to three “document review platform
16 hosting vendors” totaling \$660,994.53).

17 **5. Expenses for which Plaintiffs’ Counsel Does Not Seek Reimbursement**

18 100. Co-Lead Counsel have excluded expense reimbursement for travel (including airfare,
19 ground travel, and parking), meals, and lodging expenses related to the litigation of this action.
20 Exhibit 9 contains a compilation of each firm’s travel, meals, and lodging expenses, which totaled
21 \$190,914.56.

22 **6. Total Expenses for Which Plaintiffs’ Counsel Seek Reimbursement**

23 101. Total expenses incurred by the DPPs for the prosecution of this case for which
24 Plaintiffs’ Counsel now seek payment from the Settlement Fund are \$3,354,573.35. *See* Exhibit 7.
25 The sum is calculated as the total of:

- 26 a. \$445,068.46 in expenses and cost incurred by each firm (*see* ¶96, *supra*);
27 b. \$2,247,198.62 in Litigation Fund expenses (*see* ¶97, *supra*);
28 c. \$212,030.00 in outstanding invoices for services rendered (*see* ¶98, *supra*);

- d. \$641,190.83 for document hosting services (*see* ¶99, *supra*);
- e. and **subtracting** from the expense and costs incurred by each firm (¶101(a), above), travel expenses in the amount of \$190,914.56 for which Plaintiffs' Counsel **does not seek** reimbursement (*see* ¶100, *supra*).

Exhibit 7, attached hereto, provides a summary and total of Plaintiffs' expense accounting.

V. CLASS REPRESENTATIVE INCENTIVE AWARDS

102. There are nine named Class Representatives: Automation Engineering LLC; Charles Carte; Alfred H. Siegel, not individually, but acting solely in capacity as the Liquidating Trustee of Circuit City Stores, Inc. Liquidating Trust ("Circuit City"); First Choice Marketing, Inc.; James O'Neil; Alfred T. Giuliano, as the Chapter 7 Trustee of Ritz Camera & Image, LLC ("Ritz Camera & Image, LLC"); The Stereo Shop; Univisions-Crimson Holding, Inc.; and Terri Walner.

103. Each of the nine Class Representatives in this litigation have remained actively involved throughout the litigation of this case and should receive incentive awards.

104. Each of the nine Class Representatives devoted extensive time and resources to the prosecution of this case. For example, Circuit City held numerous phone calls with Pearson Simon and Warshaw LLP lawyers to answer questions regarding the storage of data and documents. Circuit City played a critical role in helping Plaintiffs' Counsel understand the makeup of over 50,000 boxes of Circuit City paper documents, ultimately enabling Plaintiffs' Counsel and Circuit City to identify 528 boxes containing hard-copy documents that were potentially responsive to Defendants' discovery requests. Circuit City made these boxes available to Defendants for inspection and copying. Defendants took advantage of that opportunity, sending teams of defense lawyers to Richmond, VA to inspect documents.

105. All named Class Representatives also assisted with the preparation of responses to Defendants' written discovery requests.

106. In addition, each Class Representative diligently followed the litigation, and there were regular meetings and calls with Class Representatives.

107. Each Class Representative also expended considerable effort in connection with preparing for and sitting for depositions. For example, Defendants deposed several former Circuit

1 City employees in both their individual and corporate representative capacities. In addition, the trustee
2 for Circuit City—Al Siegel—sat for deposition. Similar to Circuit City, seven of the nine other Class
3 Representatives were deposed in both their individual and corporate representative capacities.

4 108. Circuit City should be compensated for its efforts with a \$30,000 incentive award.

5 109. Ritz Camera & Image, LLC should be compensated for its efforts with a \$30,000
6 incentive award.

7 110. Univisions-Crimson Holding, Inc., should be compensated for its efforts with a
8 \$30,000 incentive award. Univisions preserved and maintained extensive accounting databases and
9 other documents and information in electronic form, which required knowledgeable assistance from
10 the client in order to search the databases for responsive discovery information. Univisions responded
11 to 74 document requests and 27 interrogatories and invested time and effort to prepare for, and give,
12 deposition testimony. Had this action not settled, Univisions through its representative was committed
13 and prepared to testify at a trial.

14 111. Automation Engineering LLC should be compensated for its efforts with a \$10,000
15 incentive award.

16 112. The Stereo Shop, should be compensated for its efforts with a \$10,000 incentive award.

17 113. First Choice Marketing, Inc. should be compensated for its efforts with a \$10,000
18 incentive award.

19 114. Charles Carte should be compensated for his efforts with a \$5,000 incentive award.

20 115. James O’Neil should be compensated for his efforts with a \$5,000 incentive award.

21 116. Terri Walner should be compensated for her efforts with a \$5,000 incentive award.

22 117. In total, Co-Lead Counsel request incentive awards in the amount of \$135,000 from
23 the Settlement Fund to compensate each Class Representative for his or her or its service, diligence,
24 and effort on behalf of the entire DPP Class.

25 **VI. OTHER ATTACHMENTS**

26 118. Attached hereto as Exhibit 10 is a true and correct copy of the Order on Attorneys’
27 Fees, Expenses, an Incentive Awards entered June 8, 2017 in *In re Cathode Ray Tube (CRT) Antitrust*
28 *Litig.*, No. 07-cv-05944-JST (N.D. Cal.), ECF No. 5169.

1 119. Attached hereto as Exhibit 11 is a true and correct copy of the Order Granting Direct
2 Purchaser Plaintiffs' Motion For An Award of Attorneys' Fees, Reimbursement of Expenses, and
3 Class Representative Incentive Awards entered on July 23, 2015 in *In re Optical Disk Drive Antitrust*
4 *Litig.*, No. 10-md-2143 RS (N.D. Cal.), ECF No. 1658.

5 120. Attached hereto as Exhibit 12 is a true and correct copy of the Order Awarding Class
6 Counsel Attorneys' Fees, Reimbursement of Expenses and Incentive Award entered on June 30, 2012
7 in *In re Static Random Access Memory (SRAM) Antitrust Litig.*, No. 4:07-MD-01819-CW (N.D. Cal.),
8 ECF No. 1370.

9 121. Attached hereto as Exhibit 13 is a true and correct copy of the Special Verdict form
10 filed on July 3, 2012 in *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. 07-MD-1827 SI (N.D. Cal.),
11 ECF No. 6061.

12 ///

13 ///

14 ///

15 I declare under penalty of perjury under the laws of the United States of America that the
16 foregoing is true and correct.

17 Executed on this 8th day of February, 2018 at San Francisco, California.

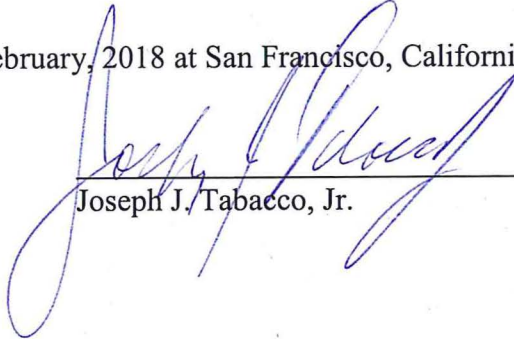
18 
19 _____
20 Joseph J. Tabacco, Jr.

Exhibit 1

BERMAN TABACCO

THE FIRM

Berman Tabacco is a national law firm with 34 attorneys located in offices in Boston and San Francisco. Since its founding in 1982, the firm has devoted its practice to complex litigation, primarily representing plaintiffs seeking redress under U.S. federal and state securities and antitrust laws.

Over the past three-and-a-half decades, Berman Tabacco's attorneys have prosecuted hundreds of class actions, recovering billions of dollars on behalf of the firm's clients and the classes they represented. In addition to financial recoveries, the firm has achieved significant changes in corporate governance and business practices of defendant companies. Indeed, according to the most recent ISS Securities Class Action Services "Top 50 for 2015" report, Berman Tabacco was one of only six firms that recovered more than half-a-billion dollars for investors in 2015.¹ It currently holds leadership positions in securities and antitrust cases around the country.

Berman Tabacco is rated AV[®] Preeminent[™] by Martindale-Hubbell[®]. The firm was recognized as a "Top Ten Plaintiffs' firm" for its work "on behalf of individuals and institutions who have suffered financial harm due to violations of securities or antitrust laws" by Benchmark Litigation in 2017 and 2018, <https://www.benchmarklitigation.com/firms/berman-tabacco/f-195>. Benchmark also ranked the firm as "Highly Recommended" – the seventh time the firm has received that distinction. Berman Tabacco's lawyers are frequently singled out for favorable comments by our clients, presiding judges and opposing counsel. For examples, please see:

<http://www.bermantabacco.com/about-the-firm/what-our-clients-say>
and <http://www.bermandetabacco.com/about-the-firm/reviews-from-the-bench>.

ANTITRUST PRACTICE

Berman Tabacco has a national reputation for our work prosecuting antitrust class actions involving price-fixing, market allocation agreements, patent misuse, monopolization and group boycotts among other types of anticompetitive conduct. Representing clients ranging from Fortune 500 companies and public pension funds to individual consumers, the experienced senior attorneys in our Antitrust Practice Group have engineered substantial settlements and changed business practices of defendant companies, recovering more than \$1 billion for our clients overall.

Berman Tabacco has played a major role in the prosecution of numerous landmark antitrust cases. For example, the firm was lead counsel in the Toys "R" Us litigation, which developed the antitrust laws with respect to "hub and spoke" conspiracies and resulted in a \$56 million settlement. Berman Tabacco brought the first action centered on so-called "reverse payments"

¹ ISS's report "lists the top 50 plaintiffs' law firms ranked by the total dollar value of the final class action settlements occurring in 2015 in which the law firm served as lead or co-lead counsel." ISS Securities Class Action Services, *Top 50 for 2015* (May 2016), <http://www.bermantabacco.com/images/pdfs/articles/scastop502015.pdf>.

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between a brand name drug maker and a generic drug maker, resulting in an \$80 million settlement from the drug makers, which had been accused of keeping a generic version of their blood pressure medication off the market.

The firm's victories for victims of antitrust violations have come at the trial court level and also through landmark appellate court victories, which have contributed to shaping private enforcement of antitrust law. For example, in the Cardizem CD case, Berman Tabacco was co-lead counsel representing health insurer Aetna in an antitrust class action and obtained a pioneering ruling in the federal court of appeals regarding the "reverse payment" by a generic drug manufacturer to the brand name drug manufacturer. In a first of its kind ruling, the appellate court held that the brand name drug manufacturer's payment of \$40 million per year to the generic company for the generic to delay bringing its competing drug to market was a *per se* unlawful market allocation agreement. Today that victory still shapes the ongoing antitrust battle over competition in the pharmaceutical market.

In the firm's case against diamond giant De Beers, the Third Circuit, sitting *en banc*, vacated an earlier panel decision and upheld the certification of a nationwide settlement class, removing the last obstacle to final approval of a historic \$295 million settlement. The Third Circuit's important decision provides a roadmap for obtaining settlement class certification in complex, nationwide class actions involving laws of numerous states.

In 2016, the firm won reversal of a grant of summary judgment for defendant automakers in a group boycott-conspiracy case involving the export of new motor vehicles from Canada to the U.S. The California Court of Appeal found that plaintiffs had presented evidence of "patently anticompetitive conduct" with evidence gathered in the pre-trial phase, which was powerful enough to go to a jury. The ruling is a rare example of an appellate court analyzing and reversing a trial court's evidentiary rulings to find evidence of a conspiracy.

Today the firm currently holds leadership positions in significant antitrust class actions around the country, including as co-lead counsel in *In re Lithium Ion Batteries Antitrust Litigation*, and is actively representing major public pension funds in prosecuting price-fixing in the financial derivatives and commodities markets in the Euribor, Yen LIBOR, Foreign Currency Exchange and Canadian Dollar Offered Rate actions.

While the majority of antitrust cases settle, our attorneys have experience taking antitrust class actions to trial. Because we represent only plaintiffs in antitrust matters, we do not have the conflicts of interest of other national law firms that represent both plaintiffs and defendants. Our experience also allows us to counsel medium and larger-sized corporations considering whether to participate as a class member or opt-out and pursue an individual strategy.

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RESULTS

ANTITRUST SETTLEMENTS

Over the past two-and-a-half decades, Berman Tabacco has actively prosecuted scores of complex antitrust cases that led to substantial settlements for its clients. These include:

In re NASDAQ Market-Makers Antitrust Litigation, No. 94-cv-3996 (S.D.N.Y.). The firm played a significant role in one of the largest antitrust settlements on record in a case that involved alleged price-fixing by more than 30 NASDAQ Market-Makers on about 6,000 NASDAQ-listed stocks over a four-year period. The settlement was valued at nearly \$1 billion.

In re Foreign Currency Conversion Fee Antitrust Litigation, MDL No. 1409 (S.D.N.Y.). Berman Tabacco, as head of discovery against defendant Citigroup Inc., played a key role in reaching a \$336 million settlement. The agreement settled claims that the defendants, which include the VISA, MasterCard and Diners Club networks and other leading bank members of the VISA and MasterCard networks, violated federal and state antitrust laws in connection with fees charged to U.S. cardholders for transactions effected in foreign currencies.

In re DRAM Antitrust Litigation, No. M:02-cv-01486 (N.D. Cal.). As liaison counsel, the firm actively participated in this multidistrict litigation, which ultimately resulted in significant settlements with some of the world's leading manufacturers of Dynamic Random Access Memory (DRAM) chips. The defendant chip-makers allegedly conspired to fix prices of the DRAM memory chips sold in the United States during the class period. The negotiated settlements totaled nearly \$326 million.

Sullivan v. DB Investments, Inc., No. 04-02819 (D.N.J.). Berman Tabacco represents a class of diamond resellers, such as diamond jewelry stores, in this case alleging that the De Beers group of companies unlawfully monopolized the worldwide supply of diamonds in a scheme to overcharge resellers and consumers. In May 2008, a federal judge approved the settlement, which included a cash payment to class members of \$295 million, an agreement by De Beers to submit to the jurisdiction of the United States court to enforce the terms of the settlement and a comprehensive injunction limiting De Beers' ability to restrict the worldwide supply of diamonds in the future. This case is significant not only because of the large cash recovery but also because previous efforts to obtain jurisdiction over De Beers in both private and government actions had failed. On August 27, 2010, the United States Court of Appeals for the Third Circuit agreed to hear arguments over whether to uphold the district court's certification of the settlement class. By agreeing to schedule an *en banc* appeal before the full court, the Third Circuit vacated a July 13, 2010 ruling by a three-judge panel of the appeals court that, in a 2-to-1 decision, had ordered a remand of the case back to the district court, which may have required substantial adjustments to the original settlement. On February 23, 2011, the Third Circuit,

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sitting *en banc*, again heard oral argument from the parties. On December 20, 2011, the *en banc* Third Circuit handed down its decision affirming the district court in all respects.

In re Sorbates Direct Purchaser Antitrust Litigation, No. C 98-4886 CAL (N.D. Cal.). The firm served as lead counsel alleging that six manufacturers of Sorbates, a food preservative, violated antitrust laws through participation in a worldwide conspiracy to fix prices and allocations to customers in the United States. The firm negotiated a partial settlement of \$82 million with four of the defendants in 2000. Following intensive pretrial litigation, the firm achieved a further \$14.5 million settlement with the two remaining defendants, Japanese manufacturers, in 2002. The total settlement achieved for the class was \$96.5 million.

In re Disposable Contact Lens Antitrust Litigation, MDL No. 1030 (M.D. Fla.). The firm acted as co-lead counsel and chief trial counsel. Representing both a national class and the State of Florida, the firm helped secure settlements from defendants Bausch & Lomb and the American Optometric Association before trial and from Johnson & Johnson after five weeks of trial. The settlements were valued at more than \$92 million and also included significant injunctive relief to make disposable contact lenses available at more discount outlets and more competitive prices.

In re Cardizem CD Antitrust Litigation, No. 99-01278 (E.D. Mich.). In another case involving generic drug competition, Berman Tabacco, as co-lead counsel, helped secure an \$80 million settlement from French-German drug maker Aventis Pharmaceuticals and the Andrx Corporation of Florida. The payment to consumers, state agencies and insurance companies settled claims that the companies conspired to prevent the marketing of a less expensive generic version of the blood pressure medication Cardizem CD. The state attorneys general of New York and Michigan joined the case in support of the class. The firm achieved a significant appellate victory in a first of its kind ruling that the brand name drugmaker's payment of \$40 million per year for the generic company to delay bringing its generic version of blood-pressure medication Cardizem CD to market constituted an agreement not to compete that is a *per se* violation of the antitrust laws.

In re Toys "R" Us Antitrust Litigation, MDL No. 1211 (E.D.N.Y.). The California office negotiated a \$56 million settlement to answer claims that the retailer violated laws by colluding to cut off or limit supplies of popular toys to stores that sold the products at lower prices. The case developed the antitrust laws with respect to a "hub and spoke" conspiracy, where a downstream power seller coerces upstream manufacturers to the detriment of consumers. One component of the settlement required Toys "R" Us to donate \$36 million worth of toys to needy children throughout the United States over a three-year period.

In re Reformulated Gasoline (RFG) Antitrust and Patent Litigation, MDL No. 05-1671 (C.D. Cal.). Berman Tabacco, as one of four co-lead counsels in the case, negotiated a \$48 million settlement with Union Oil Company and Unocal. The agreement settled claims that the defendants manipulated the California gas market for summertime reformulated gasoline and increased prices for consumers. The settlement is noteworthy because it delivers to consumers a

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combination of clean air benefits and the prospect of funding for alternative fuel research. The settlement received final court approval in November 2008.

In re Abbott Laboratories Norvir Antitrust Litigation, Nos. 04-1511, 04-4203 (N.D. Cal.). Berman Tabacco acted as co-lead counsel in a case on behalf of indirect purchasers alleging that the defendant pharmaceutical company engaged in an illegal leveraged monopoly in the sale of its AIDS boosting drug known as Norvir (or Ritanovir). Plaintiffs were successful through summary judgment, including the invalidation of two key patents based on prior art, but were reversed on appeal in the Ninth Circuit as to the leveraged monopoly theory. The case settled for \$10 million, which was distributed net of fees and costs on a *cy pres* basis to 10 different AIDS research and charity organizations throughout the United States.

Automotive Refinishing Paint Antitrust, J.C.C.P. No. 4199 (Cal. Super. Ct.). In this class action, indirect purchaser-plaintiffs brought suit in California State Court against five manufacturers of automotive refinishing coatings and chemicals alleging that they violated California law by unlawfully conspiring to fix paint prices. Settlements were reached with all defendants totaling \$9.4 million, 55% of which was allocated among an End-User Class consisting of consumers and distributed on a *cy pres*, or charitable, basis to thirty-nine court-approved organizations throughout California, and the remaining 45% of which was distributed directly to a Refinishing Class consisting principally of auto-body shops located throughout California.

SECURITIES PRACTICE

Berman Tabacco has more than 36 years of experience in securities litigation and has represented public pension funds and other institutional investors in this area since 1998. As reported by Cornerstone Research, the firm has successfully prosecuted some of the most significant shareholder class action lawsuits.² According to the most recent ISS Securities Class Action Services “Top 50 for 2015” report, Berman Tabacco was one of only six firms that recovered more than half-a-billion dollars for investors in 2015.³

Specifically, the firm has been appointed lead or co-lead counsel in more than 100 actions, recovering billions of dollars on behalf of defrauded investors and the classes they represent under the Private Securities Litigation Reform Act of 1995 (“PSLRA”). The firm has an extremely rigorous case-evaluation process and highly experienced litigation attorneys. Its dismissal rate

² Cornerstone Research, *Securities Class Action Filings: 2011 Year in Review* (2012), at p. 23, available at <http://securities.stanford.edu/research-reports/1996-2011/Cornerstone-Research-Securities-Class-Action-Filings-2011-YIR.pdf>.

³ ISS’s report “lists the top 50 plaintiffs’ law firms ranked by the total dollar value of the final class action settlements occurring in 2015 in which the law firm served as lead or co-lead counsel.” ISS Securities Class Action Services, *Top 50 for 2015* (May 2, 2016), available at <http://www.bermantabacco.com/images/pdfs/articles/scastop502015.pdf>.

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for cases brought under the PSLRA is less than half the overall dismissal rate for such cases according to one authoritative study.⁴

Berman Tabacco serves as monitoring, evaluation and/or litigation counsel to nearly 100 institutional investors, including statewide public employee retirement systems in 18 states, 10 public funds with more than \$50 billion in assets, five of the 10 largest public pension plans in the country, and 11 of the top 20.⁵ For many institutional investors, the firm's services include electronically monitoring the client's portfolio for losses due to securities fraud in U.S. securities cases.

The firm provides portfolio monitoring, case evaluation and litigation services to its institutional clients, including the litigation of class and individual claims pursuant to U.S. federal and state securities laws, as well as derivative cases pursuant to state law. The firm also offers institutional investors legal services in other areas, including (a) representing institutional investors in general commercial litigation; (b) representing institutional investors in their capacity as defendants in constructive fraudulent transfer cases; (c) negotiating resolution of disputes with money managers and custodians; and (d) pursuing shareholder rights, such as books and records demands and merger and acquisition cases.

RESULTS

SECURITIES SETTLEMENTS

Examples of the firm's settlements include:

Carlson v. Xerox Corp., No. 00-cv-1621 (D. Conn.). Representing the Louisiana State Employees' Retirement System as co-lead counsel, Berman Tabacco negotiated a \$750 million settlement to resolve claims of securities fraud against Xerox, certain top officers and its auditor KPMG LLP. When it received final court approval in January 2009, the recovery was the 10th largest securities class action settlement of all time. The judge praised plaintiffs' counsel for obtaining "a very large settlement" despite vigorous opposition in a case complicated by an alleged fraud that "involved multiple accounting standards that touched on numerous aspects of a multinational corporation's business, implicated operating units around the world, and spanned five annual reporting periods. ... [and] the rudiments of the accounting principles at issue in the case were complex, as were numerous other aspects of the case. ... The class received high-

⁴ Firm data reflects dismissal rates through present. Overall dismissal rates come from *Securities Class Action Filings: 2015 Year in Review*, p. 12 (Cornerstone Research 2016), available at <https://www.cornerstone.com/Publications/Reports/Securities-Class-Action-Filings-2015-Year-in-Review.pdf>.

⁵ Based on an October 27, 2016 query of the Standard & Poor's Money Market Directories, www.mmdwebaccess.com, whereby public pension funds were ranked according to defined benefit assets under management. Actual valuation dates vary.

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quality legal representation and obtained a very large settlement in the face of vigorous opposition by highly experienced and skilled defense counsel.”

In re IndyMac Mortgage-Backed Litigation, No. 09-cv-4583 (S.D.N.Y.). Representing the Wyoming State Treasurer’s Office and the Wyoming Retirement System as lead plaintiffs, Berman Tabacco achieved settlements totaling \$346 million in a case regarding the securitization and sale of mortgage-backed securities (“MBS”) by IndyMac Bank and related entities. In February 2015, the court approved a \$340 million settlement with six underwriters of IndyMac MBS offerings, adding to a previous \$6 million partial settlement and making the total recovery one of the largest MBS class action settlements to date. This settlement is extraordinary, not only because of its size but also because \$340 million of the settlement amount was paid entirely by underwriters who had due diligence defenses. In most other MBS cases, by contrast, plaintiffs were able to recover the settlement fund monies from the issuing entities, who are held to a strict liability standard for which there is no due diligence defense. (The issuer in this action, IndyMac Bank, is no longer in existence.)

In re Bristol-Myers Squibb Securities Litigation, No. 02-cv-2251 (S.D.N.Y.). Berman Tabacco represented the Fresno County Employees’ Retirement Association and Louisiana State Employees’ Retirement System as co-lead plaintiffs and negotiated a settlement of \$300 million in July 2004. At that time, the settlement was the largest by a drug company in a U.S. securities fraud case.

In re The Bear Stearns Cos. Inc. Securities, Derivative and ERISA Litigation, Master File No. 08-MDL No. 1963/08 Civ. 2793 (S.D.N.Y.). Berman Tabacco acted as co-lead counsel for court-appointed lead plaintiff the State of Michigan Retirement Systems in this case arising from investment losses suffered in the Bear Stearns Companies’ 2008 collapse. The firm negotiated \$294.9 million in settlements, comprised of \$275 million from Bear Stearns and \$19.9 million from auditor Deloitte & Touche LLP. The settlement received final approval November 9, 2012. At the time, the settlement for \$294.9 million represented one of the 40 largest securities class action settlements under the PSLRA. This is particularly significant in light of the fact that no government entity had pursued actions or claims against Bear Stearns or its former officers and directors related to the same conduct complained of in the firm’s action.

In re El Paso Securities Litigation, No. H-02-2717 (S.D. Tex.). Representing the Oklahoma Firefighters Pension and Retirement System as co-lead plaintiff, Berman Tabacco helped negotiate a settlement totaling \$285 million, including \$12 million from auditors PricewaterhouseCoopers. The court granted final approval of the settlement in March 2007.

California Public Employees’ Retirement System v. Moody’s Corp., No. CGC-09-490241 (Cal. Super. Ct. San Francisco Cty.). As lead counsel representing the California Public Employees’ Retirement System (CalPERS), the firm negotiated a combined \$255 million settlement with the credit rating agencies Moody’s and Standard & Poor’s to settle CalPERS’ claim that “Aaa” ratings on three structured investment vehicles were negligent misrepresentations under California law.

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In addition to obtaining a substantial recovery for investment losses, this case was groundbreaking in that (a) the settlements rank as the largest known recoveries from Moody's and S&P in a private lawsuit for civil damages, and (b) it resulted in a published appellate court opinion finding that rating agencies can, in certain circumstances, be liable for negligent misrepresentations under California law for their ratings of privately-placed securities.

In re Centennial Technologies Securities Litigation, No. 97-cv-10304 (D. Mass.). Berman Tabacco served as sole lead counsel in a class action involving a massive accounting scandal that shot down the company's high-flying stock. Berman Tabacco negotiated a settlement that permitted a turnaround of the company and provided a substantial recovery for class members. The firm negotiated changes in corporate practice, including strengthening internal financial controls and obtaining 37% of the company's stock for the class. The firm also recovered \$20 million from Coopers & Lybrand, Centennial's auditor at the time. In addition, the firm recovered \$2.1 million from defendants Jay Alix & Associates and Lawrence J. Ramaekers for a total recovery of more than \$35 million for the class. The firm subsequently obtained a \$207 million judgment against former Centennial CEO Emanuel Pinez.

In re Digital Lightwave Securities Litigation, No. 98-152-cv-T-24C (M.D. Fla.). As co-lead counsel, Berman Tabacco negotiated a settlement that included changing company management and strengthening the company's internal financial controls. The class received 1.8 million shares of freely tradable common stock that traded at just below \$4 per share when the court approved the settlement. At the time the shares were distributed to the members of the class, the stock traded at approximately \$100 per share and class members received more than 200% of their losses after the payment of attorneys' fees and expenses. The total value of the settlement, at the time of distribution, was almost \$200 million.

In re Lernout & Hauspie Securities Litigation, No. 00-11589 (D. Mass.), and *Quaak v. Dexia, S.A.*, No. 03-11566 (D. Mass.). In December 2004, as co-lead counsel, Berman Tabacco negotiated what was then the third-largest settlement ever paid by accounting firms in a securities class action – a \$115 million agreement with the U.S. and Belgian affiliates of KPMG International. The case stemmed from KPMG's work for Lernout & Hauspie Speech Products, a software company driven into bankruptcy by a massive fraud. In March 2005, the firm reached an additional settlement worth \$5.27 million with certain of Lernout & Hauspie's former top officers and directors. In the related *Quaak* case, the firm negotiated a \$60 million settlement with Dexia Bank Belgium to settle claims stemming from the bank's alleged role in the fraudulent scheme at Lernout & Hauspie. The court granted final approval of the Dexia settlement in June 2007, bringing the total settlement value to more than \$180 million.

In re BP PLC Securities Litigation, No. 10-md-2185 (S.D. Tex.). The firm was co-lead counsel representing co-lead plaintiff Ohio Public Employees Retirement System. Lead plaintiffs reached a \$175 million settlement to resolve claims brought on behalf of a class of investors who purchased BP's American Depositary Shares ("ADS") between April 26, 2010 and May 28, 2010. The action alleged that BP and two of its former officers made false and misleading statements

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regarding the severity of the Gulf of Mexico oil spill. More specifically, plaintiffs alleged that BP misrepresented that its best estimate of the oil spill flow rate was from 1,000 to 5,000 barrels of oil per day, when internal BP estimates showed substantially higher potential flow rates. On February 13, 2017, the court granted final approval of the settlement, ending more than six years of hard fought litigation that included extensive fact and expert discovery, multiple rounds of briefing on defendants' motions to dismiss, two rounds of briefing on class certification, a successful defense of BP's appeal of the district court's class certification decision and briefing on cross-motions for summary judgment.

In re Fannie Mae 2008 Securities Litigation, No. 08-cv-7831 (S.D.N.Y.). As co-lead counsel representing the Massachusetts Pension Reserves Investment Management Board, a co-lead plaintiff for the common stock class, Berman Tabacco helped negotiate a \$170 million settlement with Fannie Mae. To achieve the settlement, which was approved in March 2015, plaintiffs had to overcome the challenges posed by the federal government's placement of Fannie Mae into conservatorship and by the Second Circuit's upholding of dismissal of similar claims against Freddie Mac, Fannie Mae's sibling Government-Sponsored Enterprise.

In re Symbol Technologies, Inc. Securities Litigation, No. 2:02-cv-01383 (E.D.N.Y.). Berman Tabacco represented the Louisiana Municipal Police Employees' Retirement System as co-lead plaintiff, obtaining a \$139 million partial settlement in June 2004. Subsequently, Symbol's former auditor, Deloitte & Touche LLP, agreed to pay \$24 million, bringing the total settlement to \$163 million. The court granted final approval in September 2006.

In re Prison Realty Securities Litigation, No. 3:99-cv-0452 (M.D. Tenn.) (*In re Old CCA Securities Litigation*, No. 3:99-cv-0458). The firm represented the former shareholders of Corrections Corporation of America, which merged with another company to form Prison Realty Trust, Inc. The action charged that the registration statement issued in connection with the merger contained untrue statements. Overcoming arguments that the class' claims of securities fraud were released in prior litigation involving the merger, the firm successfully defeated the motions to dismiss. It subsequently negotiated a global settlement of approximately \$120 million in cash and stock for this case and other related litigation.

Oracle Cases, Coordination Proceeding, Special Title (Rule 1550(b)) No. 4180 (Cal. Super. Ct. San Mateo Cty.). In this coordinated derivative action, Oracle Corporation shareholders alleged that the company's Chief Executive Officer, Lawrence J. Ellison, profited from illegal insider trading. Acting as co-lead counsel, the firm reached a settlement, pursuant to which Mr. Ellison would personally make charitable donations of \$100 million over five years in Oracle's name to an institution or charity approved by the company and pay \$22 million in attorneys' fees and expenses associated with the prosecution of the case. The innovative agreement, approved by a judge in December 2005, benefited Oracle through increased goodwill and brand recognition, while minimizing concerns that would have been raised by a payment from Mr. Ellison to the company, given his significant ownership stake. The lawsuit resulted in important changes to

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Oracle's internal trading policies that decrease the chances that an insider will be able to trade in possession of material, non-public information.

In re International Rectifier Securities Litigation, No. 07-cv-2544 (C.D. Cal.). As co-lead counsel representing the Massachusetts Laborers' Pension Fund, the firm negotiated a \$90 million settlement with International Rectifier Corporation and certain top officers and directors. The case alleged that the company engaged in numerous accounting improprieties to inflate its financial results. The court granted final approval of the settlement in February 2010. At the settlement approval hearing, the Honorable John F. Walter, the presiding judge, praised counsel, stating: "I think the work by the lawyers – all the lawyers in this case – was excellent. ... In this case, the papers were excellent. So it makes our job easier and, quite frankly, more interesting when I have lawyers with the skill of the lawyers that are present in the courtroom today who have worked on this case ... the motion practice in this case was, quite frankly, very intellectually challenging and well done. ... I've presided over this consolidated action since its commencement and have nothing but the highest respect for the professionalism of the attorneys involved in this case. ... The fact that plaintiffs' counsel were able to successfully prosecute this action against such formidable opponents is an impressive feat."

In re State Street Bank & Trust Co. ERISA Litigation, No. 07-cv-8488 (S.D.N.Y.). The firm acted as co-lead counsel in this consolidated class action case, which alleged that defendant State Street Bank and Trust Company and its affiliate, State Street Global Advisors, Inc., (collectively, "State Street") breached their fiduciary duties under the Employee Retirement Income Security Act of 1974 ("ERISA") by failing to prudently manage the assets of ERISA plans invested in State Street fixed income funds during 2007. After well over a year of litigation, during which Berman Tabacco and its co-counsel reviewed approximately 13 million pages of documents and took more than 30 depositions, the parties negotiated an all-cash \$89.75 million settlement, which received final approval in 2010.

In re Philip Services Corp. Securities Litigation, No. 98-cv-0835 (S.D.N.Y.). As co-lead counsel, Berman Tabacco negotiated settlements totaling \$79.75 million with the bankrupt company's former auditors, top officers, directors and underwriters. The case alleged that Philip Services and its top officers and directors made false and misleading statements regarding the company's publicly reported revenues, earnings, assets and liabilities. The district court initially dismissed the claims on grounds of *forum non conveniens*, but the firm successfully obtained a reversal by the United States Court of Appeals for the Second Circuit. The court granted final approval of the settlements in March 2007.

In re Reliant Securities Litigation, No. 02-cv-1810 (S.D. Tex.). As lead counsel representing the Louisiana Municipal Police Employees' Retirement System, the firm negotiated a \$75 million cash settlement from the company and Deloitte & Touche LLP. The settlement received final approval in January 2006.

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In re KLA-Tencor Corp. Securities Litigation, No. 06-cv-04065 (N.D. Cal.). Representing co-lead plaintiff Louisiana Municipal Police Employees' Retirement System, Berman Tabacco negotiated a \$65 million agreement to settle claims that KLA-Tencor illegally backdated stock option grants, issued false and misleading statements regarding grants to key executives and inflated the company's financial results by understating expenses associated with the backdated options. The court granted final approval of the settlement in 2008. At the conclusion of the case, Judge Charles R. Breyer praised plaintiffs' counsel for "working very hard" in exchange for an "extraordinarily reasonable" fee, stating: "I appreciate the fact that you've done an outstanding job, and you've been entirely reasonable in what you've done. Congratulations for working very hard on this."

City of Brockton Retirement System v. Avon Products Inc., No. 11-cv-04665 (S.D.N.Y.). As a member of the executive committee representing named plaintiffs City of Brockton Retirement System and Louisiana Municipal Police Employees' Retirement System, the firm negotiated a \$62 million settlement. The action alleged that Avon Products, Inc. violated federal securities laws by failing to disclose to investors the size and scope of the Company's violations of the Foreign Corrupt Practices Act of 1977 ("FCPA"). In response to Avon's piecemeal disclosures over the course of more than a year, which ultimately revealed the true extent of the FCPA violations, the company's stock lost nearly 20% of its pre-disclosure value. This case was one of the very few successful securities cases premised on FCPA violations.

Ehrenreich v. Witter, No. 95-cv-6637 (S.D. Fla.). The firm was co-lead counsel in this case involving Sensormatic Electronics Corp., which resulted in a settlement of \$53.5 million. When it was approved in 1998, the settlement was one of the largest class action settlements in the state of Florida.

In re Thomas & Betts Securities Litigation, No. 2:00-cv-2127 (W.D. Tenn.). The firm served as co-lead counsel in this class action, which settled for more than \$51 million in 2004. Plaintiffs had accused the company and other defendants of issuing false and misleading financial statements for 1996, 1997, 1998, 1999 and the first two quarters of 2000.

In re Enterasys Networks, Inc. Securities Litigation, No. C-02-071-M (D.N.H.). Berman Tabacco acted as sole lead counsel in a case against Enterasys Networks, Inc., in which the Los Angeles County Employees Retirement Association was lead plaintiff. The company settled in October 2003 for \$17 million in cash, stock valued at \$33 million and major corporate governance improvements that opened the computer networking company to greater public scrutiny. Changes included requiring the company to back a proposal to eliminate its staggered board of directors, allowing certain large shareholders to propose candidates to the board and expanding the company's annual proxy disclosures. The settlement received final court approval in December 2003.

Giarraputo v. UNUMProvident Corp., No. 2:99-cv-00301 (D. Me.). As a member of the executive committee representing plaintiffs, Berman Tabacco secured a \$45 million settlement in a lawsuit

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stemming from the 1999 merger that created UNUMProvident. Shareholders of both predecessor companies accused the insurer of misleading the public about its business condition before the merger. The settlement received final approval in June 2002.

In re General Electric Co. Securities Litigation, No. 09 Civ. 1951 (S.D.N.Y.). The firm serves as Lead Counsel on behalf of the State Universities Retirement System of Illinois in a lawsuit against General Electric Co. and certain of its officers. A settlement in the amount of \$40 million was reached with all the parties. The court approved the settlement on September 6, 2013.

In re UCAR International, Inc. Securities Litigation, No. 98-cv-0600 (D. Conn.). The firm represented the Florida State Board of Administration as the lead plaintiff in a securities claim arising from an accounting restatement. The case settled for \$40 million cash and the requirement that UCAR appoint an independent director to its board of directors. The settlement was approved in 2000.

In re American Home Mortgage Securities Litigation, No. 07-MD-1898 (E.D.N.Y.). As co-lead counsel representing the Oklahoma Police Pension & Retirement System, the firm negotiated a \$37.25 million settlement – including \$4.75 million from auditors Deloitte & Touche and \$8.5 million from underwriters – despite the difficulties American Home’s bankruptcy posed to asset recovery. The plaintiffs contended that American Home had failed to write down the value of certain loans in its portfolio, which declined substantially in value as the credit markets unraveled. The settlement received final approval in 2010 and was distributed in 2011.

In re Avant, Securities Litigation, No. 96-cv-20132 (N.D. Cal.). Avant!, a software company, was charged with securities fraud in connection with its alleged theft of a competitor’s software code, which Avant! incorporated into its flagship software product. Serving as lead counsel, the firm recovered \$35 million for the class. The recovery resulted in eligible class claimants receiving almost 50% of their losses after attorneys’ fees and expenses.

In re SmartForce PLC d/b/a SkillSoft Securities Litigation, No. 02-cv-544 (D.N.H.). Representing the Teachers’ Retirement System of Louisiana as co-lead plaintiff, Berman Tabacco negotiated a \$30.5 million partial settlement with SkillSoft. Subsequently, the firm also negotiated an \$8 million cash settlement with Ernst & Young Chartered Accountants and Ernst & Young LLP, SkillSoft’s auditors at the time. The settlements received final approval in September 2004 and November 2005, respectively.

In re Sykes Enterprises, Inc. Securities Litigation, No. 8:00-cv-212-T-26F (M.D. Fla.). The firm represented the Florida State Board of Administration as co-lead plaintiff. Sykes Enterprises was accused of using improper means to match the company’s earnings with Wall Street’s expectations. The firm negotiated a \$30 million settlement.

In re Valence Securities Litigation, No. 95-cv-20459 (N.D. Cal.). Berman Tabacco served as co-lead counsel in this action against a Silicon Valley-based company for overstating its performance

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and the development of an allegedly revolutionary battery technology. After the Ninth Circuit reversed the district court's decision to grant summary judgment in favor of defendants, the case settled for \$30 million in Valence common stock.

In re Sybase II, Securities Litigation, No. 98-cv-0252-CAL (N.D. Cal.). Sybase was charged with inflating its quarterly financial results by improperly recognizing revenue at its wholly owned subsidiary in Japan. Acting as co-lead counsel, the firm obtained a \$28.5 million settlement.

In re Force Protection Inc. Securities Litigation, No. 08-cv-845 (D.S.C.). As co-lead counsel representing the Laborers' Annuity and Benefit System of Chicago, the firm negotiated a \$24 million settlement in a securities class action against armored vehicle manufacturer Force Protection, Inc. The settlement addressed the claims of shareholders who accused the company and its top officers of making false and misleading statements regarding financial results, failing to maintain effective internal controls over financial reporting and failing to comply with government contracting standards.

In re Zynga Inc. Securities Litigation, No. 12-cv-04007 (N.D. Cal.). As co-lead counsel, the firm negotiated a \$23 million recovery to settle claims against the company and certain of its officers. The case alleged that the company and its highest-level officers falsely touted accelerated bookings and aggressive growth through 2012, while concealing crucial information that Zynga was experiencing significant declines in bookings for its games and upcoming Facebook platform changes that would negatively impact Zynga's bookings. Then, while Zynga's stock was trading at near a class-period high, defendants obtained an early release from the IPO lock-up on their shares to enable them and a few other insiders to reap over \$593 million in proceeds in a secondary offering of personally held shares. The secondary offering was timed just three months before Zynga announced its dismal Q2 2012 earnings at the end of the class period, which caused Zynga's stock to plummet. The court granted final approval of the settlement in February 2016.

In re ICG Communications Inc. Securities Litigation, No. 00-cv-1864 (D. Colo.). As co-lead counsel representing the Strategic Marketing Analysis Fund, the firm negotiated an \$18 million settlement with ICG Communications Inc. The case alleged that ICG executives misled investors and misrepresented growth, revenues and network capabilities. The court granted final approval of the settlement in January 2007.

In re Critical Path, Inc. Securities Litigation, No. 01-cv-0551 (N.D. Cal.). The firm negotiated a \$17.5 million recovery to settle claims of accounting improprieties at a California software development company. Representing the Florida State Board of Administration, the firm was able to obtain this recovery despite difficulties arising from the fact that Critical Path teetered on the edge of bankruptcy. The settlement was approved in June 2002.

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In re Sunrise Senior Living, Inc. Securities Litigation, No. 07-cv-00102 (D.D.C.). A federal judge granted final approval of a \$13.5 million settlement between Oklahoma Firefighters Pension and Retirement System, represented by Berman Tabacco, and Sunrise Senior Living Inc.

Hallet v. Li & Fung, Ltd., No. 95-cv-08917 (S.D.N.Y.). Cyrk Inc. was charged with misrepresenting its financial results and failing to disclose that its largest customer was ending its relationship with the company. In 1998, Berman Tabacco successfully recovered more than \$13 million for defrauded investors.

In re Warnaco Group, Inc. Securities Litigation, No. 00-cv-6266 (S.D.N.Y.). Representing the Fresno County Employees' Retirement Association as co-lead plaintiff, the firm negotiated a \$12.85 million settlement with several current and former top officers of the company.

Gelfer v. Pegasystems, Inc., No. 98-cv-12527 (D. Mass.). As co-lead counsel, Berman Tabacco negotiated a settlement valued at \$12.5 million, \$4.5 million in cash and \$7.5 million in shares of the company's stock or cash, at the company's option.

Sand Point Partners, L.P. v. Pediatrix Medical Group, Inc., No. 99-cv-6181 (S.D. Fla.). Berman Tabacco represented the Florida State Board of Administration, which was appointed co-lead plaintiff along with several other public pension funds. The complaint accused Pediatrix of Medicaid billing fraud, claiming that the company illegally increased revenue and profit margins by improperly coding treatment rendered. The case settled for \$12 million on the eve of trial in 2002.

In re Molten Metal Technology Inc. Securities Litigation, No. 1:97-cv-10325 (D. Mass.), and *Axler v. Scientific Ecology Group, Inc.*, No. 1:98-cv-10161 (D. Mass.). As co-lead counsel, Berman Tabacco played a key role in settling the actions after Molten Metal and several affiliates filed a petition for bankruptcy reorganization in Massachusetts. The individual defendants and the insurance carriers in Molten Metal agreed to settle for \$11.91 million. After the bankruptcy, a trustee objected to the use of insurance proceeds for the settlement. The parties agreed to pay the trustee \$1.325 million of the Molten Metal settlement. The parties also agreed to settle claims against Scientific Ecology Group for \$1.25 million, giving Molten Metal's investors \$11.835 million.

In re CHS Electronics, Inc. Securities Litigation, No. 99-8186-CIV (S.D. Fla.). The firm helped obtain an \$11.5 million settlement for co-lead plaintiff Warburg, Dillon, Read, LLC (now UBS Warburg).

In re Summit Technology Securities Litigation, No. 96-cv-11589 (D. Mass.). Berman Tabacco, as co-lead counsel, negotiated a \$10 million settlement for the benefit of the class.

In re Exide Corp. Securities Litigation, No. 98-cv-60061 (E.D. Mich.). Exide was charged with having altered its inventory accounting system to artificially inflate profits by reselling used,

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outdated or unsuitable batteries as new ones. As co-lead counsel for the class, Berman Tabacco recovered more than \$10 million in cash for class members.

In re Fidelity/Micron Securities Litigation, No. 95-cv-12676 (D. Mass.). The firm recovered \$10 million in cash for Micron investors after a Fidelity Fund manager touted Micron while secretly selling the stock.

In re Par Pharmaceutical Securities Litigation, No. 06-cv-03226 (D.N.J.). As counsel for court-appointed plaintiff, the Louisiana Municipal Police Employees' Retirement System, Berman Tabacco obtained an \$8.1 million settlement from the company and its former CEO and CFO, which the court approved in January 2013. The case alleged that the company had misled investors about its accounting practices, including overstatement of revenues.

In re Interspeed, Inc. Securities Litigation, No. 00-cv-12090-EFH (D. Mass.). Berman Tabacco served as co-lead counsel and negotiated a \$7.5 million settlement on behalf of the class. The settlement was reached in an early stage of the proceedings, largely as a result of the financial condition of Interspeed and the need to salvage a recovery from its available assets and insurance.

In re Abercrombie & Fitch Co. Securities Litigation, No. M21-83 (S.D.N.Y.). As a member of the executive committee in this case, the firm recovered more than \$6 million on behalf of investors. The case alleged that the clothing company misled investors with respect to declining sales, which affected the company's financial condition. The court granted final approval of the settlement in January 2007.

In re WorldCom, Inc. Securities Litigation, No. 02-cv-3288 (S.D.N.Y.). As counsel to court-appointed bondholder representatives, the County of Fresno, California and the Fresno County Employees' Retirement Association, Berman Tabacco helped a team of lawyers representing the lead plaintiff, the New York State Common Retirement Fund, obtain settlements worth more than \$6.13 billion.

LEADERSHIP ROLES

The firm currently acts as lead or co-lead counsel in high-profile securities and antitrust class actions and also represents investors in individual actions, ERISA cases and derivative cases.

The following is a representative list of active class action cases in which the firm serves as lead or co-lead counsel or as executive committee member.

- *Massachusetts Laborers' Pension Fund v. Wells Fargo & Co., et al.*, C.A. No. 12997-VCG (Del. Ch. Ct.). Counsel for Massachusetts Laborers' Pension Fund and the Employees' Retirement System of the City of Providence in action under Section 220 of the Delaware General Corporation Law in order to evaluate whether the facts support a derivative suit

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on behalf of Wells Fargo against its officers and directors for breaches of their fiduciary duties.

- *Ohio Public Employees Retirement System v. BP America, Inc.*, No. 12-cv-01837 (S.D. Tex.). Counsel for plaintiffs in individual action.
- *In re Digital Domain Media Group, Inc. Securities Litigation*, No. 12-14333-CIV (S.D. Fla.). Co-lead Counsel.
- *Sullivan v. Barclays PLC*, No. 13-cv-2811 (S.D.N.Y.). Counsel for plaintiffs and represents California State Teachers' Retirement System.
- *Laydon v. Mizuho Bank, Ltd.*, No. 1:12-cv-03419 (GBD) (S.D.N.Y.), and *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 1:15-cv-05844 (GBD) (S.D.N.Y.). Counsel for plaintiffs and represents California State Teachers' Retirement System and Oklahoma Police Pension and Retirement System.
- *Trabakoolas v. Watts Water Technologies, Inc.*, No. 4:12-cv-01172-YGR (N.D. Cal.). Liaison Counsel and member of Plaintiffs' Steering Committee.
- *In re Lithium Ion Batteries Antitrust Litigation*, No. 13-md-2420-YGR (N.D. Cal.). Co-Lead Counsel.
- *Carlin v. DairyAmerica, Inc.*, No. 09-cv-00430 (E.D. Cal.). Member of the Interim Executive Committee and Liaison Counsel.
- *Automobile Antitrust Cases I and II*, Coordination Proceeding Nos. 4298 and 4303 (Cal. Super. Ct. San Francisco Cty.). Counsel for Plaintiffs.

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TRIAL EXPERIENCE

The firm has significant experience taking class actions to trial. Over the years, Berman Tabacco's attorneys have tried cases against pharmaceutical companies in courtrooms in New York and Boston, a railroad conglomerate in Delaware, one of the nation's largest trustee banks in Philadelphia, a major food retailer in St. Louis and the top officers of a failed New England bank.

The firm has been involved in more trials than most of the firms in the plaintiffs' class action bar. Our partners' trial experience includes:

- *MAZ Partners, LP v. Bruce A. Shear, et al.*, No. 1:11-cv-11049-PBS (D. Mass.). After two-week trial in 2017 in this breach of fiduciary class action, jury verdict for plaintiffs but no damage award. Following post-trial briefing, court exercised its equitable power and ordered \$3 million award by defendant.
- *Conway v. Licata*, No. 13-12193 (D. Mass.). 2015 jury verdict for defendants (firm's client) after two-week trial on the vast majority of counts, awarding the plaintiffs a mere fraction of the damages sought. Jury also returned a verdict for defendants on one of their counterclaims.
- *In re MetLife Demutualization Litigation*, No. 00-Civ-2258 (E.D.N.Y.). This case settled for \$50 million after the jury was empaneled.
- *White v. Heartland High-Yield Municipal Bond Fund*, No. 00-C-1388 (E.D. Wis.). firm attorneys conducted three weeks of a jury trial against final defendant, PwC, before a settlement was reached for \$8.25 million. The total settlement amount was \$23.25 million.
- *In re Disposable Contact Lens Antitrust Litigation*, MDL No. 1030 (M.D. Fla.). Settled for \$60 million with defendant Johnson & Johnson after five weeks of trial.
- *Gutman v. Howard Savings Bank*, No. 2:90-cv-02397 (D.N.J.). Jury verdict for plaintiffs after three weeks of trial in individual action. The firm also obtained a landmark opinion allowing investors to pursue common law fraud claims arising out of their decision to retain securities as opposed to purchasing new shares. *See Gutman v. Howard Savings Bank*, 748 F. Supp. 254 (D.N.J. 1990).
- *Hurley v. Federal Deposit Insurance Corp.*, No. 88-cv-940 (D. Mass.). Bench verdict for plaintiffs.
- *Levine v. Fenster*, No. 2-cv-895131 (D.N.J.). Plaintiffs' verdict of \$3 million following four-week trial.

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- *In re Equitec Securities Litigation*, No. 90-cv-2064 (N.D. Cal.). Parties reached a \$35 million settlement at the close of evidence following five-month trial.
- *In re ICN/Viratek Securities Litigation*, No. 87-cv-4296 (S.D.N.Y.). Hung jury with 8-1 vote in favor of plaintiffs; the case eventually settled for over \$14.5 million.
- *In re Biogen Securities Litigation*, No. 94-cv-12177 (D. Mass.). Verdict for defendants.
- *Upp v. Mellon*, No. 91-5219 (E.D. Pa.). In this bench trial, tried through verdict in 1992, the court found for a class of trust beneficiaries in a suit against the trustee bank and ordered disgorgement of fees. The Third Circuit later reversed based on lack of jurisdiction.

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OUR ATTORNEYS

Partners

DANIEL E. BARENBAUM

A partner in the firm's San Francisco office, Daniel Barenbaum focuses his practice on securities litigation. Mr. Barenbaum was one of the lead attorneys representing the California Public Employees' Retirement System in the landmark case brought against the major credit rating agencies (Standard & Poor's and Moody's) in connection with the marketing of one of the largest, most complex structured-finance securities ever devised. The case settled for a total of \$255 million. He also represented co-lead plaintiff for the common stock class Massachusetts Pension Reserves Investment Management Board in a case which settled for \$170 million against Fannie Mae; the complaint centered on misrepresentations regarding the amount of subprime and Alt-A on the company's books and the lack of adequate risk controls used and disclosed to manage those types of loans. Mr. Barenbaum has been an integral member of the firm litigation teams, such as for *In re International Rectifier Securities Litigation*, No. 07-cv-02544 (C.D. Cal.), where the firm acted as co-lead counsel representing the Massachusetts Laborers' Pension Fund for an alleged accounting fraud that originated at the company's foreign subsidiary. Mr. Barenbaum was also a key member of the team that developed the firm's individual-case strategy necessitated by the Supreme Court's decision in *Morrison v. National Australia Bank, Ltd.*, 561 U.S. 247, 130 S. Ct. 2869 (2010), in *In re BP, p.l.c. Securities Litigation*, No. 10-md-2185 (S.D. Tex.). Mr. Barenbaum also previously worked to prepare for trial *In re MetLife Demutualization Litigation*, No. 00-Civ-2258 (E.D.N.Y.) – a case before the Hon. Jack Weinstein that settled after the jury was empaneled.

Mr. Barenbaum was formerly an associate and partner at Lief, Cabraser, Heimann & Bernstein, LLP where he was a member of the securities practice group and actively litigated, among other cases, two state-court individual securities actions involving large-scale accounting fraud. The first was against McKesson HBOC, where the firm represented two Merrill Lynch mutual funds and that alleged state law claims; the case settled days before trial was to commence. The second involved Peregrine, where the firm represented individual directors whose company had been acquired by Peregrine and whose options and shares had been converted to Peregrine shares. Mr. Barenbaum worked on all facets of litigation in those cases, from dispositive motions to discovery to appeals to oral argument.

At Lief Cabraser, Mr. Barenbaum was the supervising attorney on the firm's Vioxx injury cases, where the firm had a leadership role in the multidistrict litigation. In that role, Mr. Barenbaum oversaw service pursuant to the Hague Convention of hundreds of Vioxx complaints against foreign (U.K) defendants and also acted as the primary point of contact for all foreign co-counsel. Mr. Barenbaum was also the lead associate on the Sulzer Hip Implant injury cases, where he oversaw the service of hundreds of Sulzer complaints against foreign defendants in several countries (including Switzerland).

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In 2017, Mr. Barenbaum was ranked as a Recommended Attorney in Securities Litigation by The Legal 500. Mr. Barenbaum earned his J.D. and M.B.A. degrees from Emory University in 2000, where he received the business school award for *Most Outstanding Academic Accomplishment*. He obtained his B.A. in English from Tufts University in 1994. Mr. Barenbaum was Notes and Comments Editor for 1999-2000 for the Emory Bankruptcy Developments Journal. He is the author of *Delineating Covered Class Actions Under SLUSA, Securities Litigation Report* (December-January 2005), and Contributing Author to *California Class Actions Practice and Procedures* (Elizabeth J. Cabraser, Editor-in-Chief, 2003). Having successfully obtained his Series 7 and 66 licenses, he was previously registered with the U.S. Securities and Exchange Commission as both a broker-dealer representative and an investment advisor.

Mr. Barenbaum is admitted to the state bar of California, as well as the Northern, Central, Southern, and Eastern Districts of California. He is also admitted to the Ninth Circuit of the U.S. Court of Appeals.

NORMAN BERMAN

In 1982, Norman Berman co-founded Berman Tabacco & Pease LLP, a predecessor to Berman Tabacco. He focuses his practice principally on complex securities and antitrust litigation. He also oversees and coordinates the firm's mergers and acquisitions litigation practice.

During the course of his career, Mr. Berman has litigated numerous cases to successful resolution, recovering many millions of dollars on behalf of defrauded investors. He was among the lead attorneys in the *In re Philip Services Corp. Securities Litigation*; *In re Force Protection Inc. Securities Litigation* and the *ICG Communications, Inc.* class actions. In the case against Philip Services, Mr. Berman assisted in recovering a \$79.75 million settlement in this alleged fraud at a Canadian company, which gave rise to issues of foreign discovery. Until recently, that settlement includes the largest recovery ever obtained from a Canadian auditor. In the class action against Force Protection, he assisted in securing a \$24 million settlement. In ICG Communications, he helped to successfully secure an \$18 million settlement. Co-lead plaintiffs in the case alleged that ICG executives misled investors and misrepresented ICG's growth, revenues and network capabilities throughout the class period.

Mr. Berman was also part of the team that achieved a \$750 million recovery in *Carlson v. Xerox Corp.*, in which the firm represented the Louisiana State Employees' Retirement System as co-lead counsel. Mr. Berman coordinated and conducted discovery, including a massive document review, in that international fraud class action. At the time, the recovery was the 10th largest securities class action settlement in history.

Mr. Berman has acted as trial counsel in a number of successful cases, including *Hurley v. Federal Deposit Insurance Corp.*, where the court entered an \$18 million judgment against the failed First Service Bank for Savings, and *ICN Securities Litigation*, which settled after trial for more than

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\$14.5 million in 1996. The trial team's work in *ICN* prompted positive judicial comment. Mr. Berman also acted as a senior member of the trial team in the case of *In re Biogen Securities Litigation* and as a member of the trail team in *In re Zila Inc. Securities Litigation*, which settled during trial preparation, *Poughkeepsie Savings Bank v. Morash* and other matters.

Prior to co-founding Berman Tabacco & Pease, LLP in 1982, Mr. Berman was associated with the Boston-based general practice firms Barron & Stadfeld, P.C. and Harold Brown & Associates.

Mr. Berman graduated from Boston University in 1970 and from Suffolk University Law School in 1974. While in law school, he was a member of the Public Defenders Group and, following law school, was an intern with the Massachusetts Defenders Committee.

Mr. Berman is co-author of a chapter on expert testimony in a handbook on Massachusetts Evidence published by Massachusetts Continuing Legal Education. He is AV® Preeminent™ rated by Martindale-Hubbell®, is designated a Local Litigation Star by Benchmark Litigation in 2013, 2014, 2015, 2017 and 2018, and is a 2016 Securities Litigation Super Lawyer

He is admitted to practice law in the Commonwealth of Massachusetts, the State of Connecticut and before the U.S. Supreme Court, as well as the District Courts of Colorado and Connecticut.

STEVEN J. BUTTACAVOLI

A partner in the firm's Boston office, Steven J. Buttacavoli focuses his practice on securities litigation.

At Berman Tabacco, Mr. Buttacavoli is an integral member of the litigation team representing co-lead plaintiff in *In re BP p.l.c. Securities Litigation*, where he has assisted in drafting the amended complaint, drafting the opposition to defendants' motion to dismiss, drafting plaintiffs' motion for class certification, drafting summary judgment and *Daubert* briefs, and led fact and expert discovery efforts in this matter. A \$175 million settlement has been reached, subject to final approval by the court. Mr. Buttacavoli also represents four Ohio pension funds in connection with a separate, individual action filed against BP in connection with the funds' purchase of BP ordinary shares on the London Stock Exchange. He also helped coordinate lead plaintiff's investigation and analysis of securities fraud claims against the General Electric Co., drafted the consolidated amended complaint in a class action against the company, drafted lead plaintiff's opposition to defendants' motions to dismiss and subsequent briefing with the court and conducted discovery in that matter, which settled for \$40 million in 2013. Mr. Buttacavoli also helped coordinate lead plaintiff's investigation and analysis of securities fraud claims against the former top executives of BankUnited, drafted the consolidated amended complaint and opposition to defendants' motions to dismiss and drafted materials prepared in connection with the mediation and settlement of *In re BankUnited Securities Litigation*. In addition, Mr. Buttacavoli advises whistleblowers in connection with the reporting of potential securities violations to the U.S. Securities and Exchange Commission and has advised numerous clients

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regarding potential claims involving custodian banks' foreign currency exchange pricing practices.

Prior to joining Berman Tabacco in 2009, Mr. Buttacavoli worked as an associate at Foley Hoag LLP in Boston, where he defended securities class actions and U.S. Securities and Exchange Commission enforcement actions, conducted internal investigations, responded to criminal investigations by the United States Attorney's Office and advised clients in connection with litigation risk analysis and mitigation strategies.

Mr. Buttacavoli earned an A.B. in International Relations from the College of William & Mary and a Master of Public Policy degree from Georgetown University. In 2001, he earned his J.D., *magna cum laude*, from the Georgetown University Law Center, where he was a member of the Order of the Coif. Mr. Buttacavoli was also a Senior Articles and Notes Editor for the *American Criminal Law Review*.

In 2017, Mr. Buttacavoli was ranked as a Recommended Attorney in Securities Litigation by The Legal 500. He is admitted to practice in the state and federal courts of the Commonwealth of Massachusetts and the United States Courts of Appeals for the First, Third and Fifth Circuits.

KATHLEEN M. DONOVAN-MAHER

Kathleen M. Donovan-Maher is a member of the firm's Executive Committee and manages the Boston office. She became a partner at Berman Tabacco in 1999 and, in addition to managing the firm, she focuses her work in the firm's securities and whistleblower practices.

During her career, Ms. Donovan-Maher has successfully helped to prosecute numerous class actions. She led the day-to-day prosecution of the litigation against General Electric Co., which settled for \$40 million in 2013. Ms. Donovan-Maher also served as discovery captain in the *NASDAQ Market Makers Antitrust Litigation*, which settled for \$1.027 billion and was a member of the trial team in the *ICN/Viratek Securities Litigation*, which settled for \$14.5 million after the jury deadlocked at the conclusion of the 1996 trial. Other cases in which Ms. Donovan-Maher has played a chief role include, but are not limited to, *In re BankUnited Securities Litigation*, *In re American Home Mortgage*, *Wyatt v. El Paso Corp.*, *In re Enterasys Networks, Inc. Securities Litigation* and *In re SmartForce/SkillSoft Securities Litigation*. In all cases, Ms. Donovan-Maher's efforts helped achieve significant financial recoveries for such public retirement systems as the State Universities Retirement System of Illinois, Oklahoma Police Pension & Retirement System, the Los Angeles County Employees Retirement Association and the Teachers' Retirement System of Louisiana.

In addition to a monetary award, the *Enterasys Networks* settlement also included corporate governance improvements, requiring the company to back a proposal to eliminate its staggered board of directors, allow certain large shareholders to propose candidates to the board and expand the company's annual proxy disclosures.

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In *In re Centennial Technologies Litigation*, Ms. Donovan-Maher secured a \$207 million judgment against defendant Emanuel Pinez, Centennial's founder and former CEO and Chairman of the Board of Directors who was the primary architect of one of the largest financial frauds in Massachusetts history at the time.

Ms. Donovan-Maher graduated from Suffolk University *magna cum laude* in 1988, receiving a B.S. degree in Business Administration, concentrating in Finance with a minor in Economics. Ms. Donovan-Maher earned an award for maintaining the highest grade point average among students with concentrations in Finance. She graduated from Suffolk University Law School three years later after serving two years on the *Transnational Law Review*.

A member in good standing of the state bar of Massachusetts, Ms. Donovan-Maher is admitted to practice law in the U.S. District Court for the District of Massachusetts and the U.S. Courts of Appeals in the First, Second and Third Circuits. Martindale-Hubbell® has rated her AV® Preeminent™ and selected her for the 2013 Bar Register of Preeminent Women Lawyers. She is also designated a Local Litigation Star by Benchmark Litigation in 2013, 2014 and 2015. Ms. Donovan-Maher is a frequent author on continuing legal education issues for such groups as ALI-ABA and PLI. She is also a member of Phi Delta Phi, Delta Mu Delta National Honor Society in Business Administration, Omicron Delta Epsilon International Honor Society of Economics, the American Bar Association and the Boston Bar Association.

PATRICK T. EGAN

A partner in Boston, Patrick T. Egan focuses his practice on securities litigation. Mr. Egan has litigated numerous cases to successful resolution, recovering hundreds of millions of dollars on behalf of defrauded investors.

Mr. Egan was one of the firm's lead attorneys representing the Wyoming State Treasurer and Wyoming Retirement System in the *In re IndyMac Mortgage-Backed Securities Litigation* in which the firm achieved settlements totaling \$346 million. He was also a lead attorney representing the Michigan State Retirement Systems in the *In re Bear Stearns Companies* litigation stemming from the 2008 collapse of the company. Plaintiffs successfully recovered \$294.9 million for former Bear Stearns shareholders.

Mr. Egan has worked on a number of important cases, including *Lernout & Hauspie* and the related case, *Quaak v. Dexia, S.A.* Those cases stem from a massive accounting fraud scheme at Lernout & Hauspie Speech Products, N.V., a bankrupt Belgian software company. As co-lead counsel, the firm recovered more than \$180 million on behalf of former Lernout & Hauspie shareholders.

Prior to joining the firm in 1999 and being named partner in 2006, Mr. Egan worked at the U.S. Department of Labor, where he served as an attorney advisor for the Office of Administrative

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Law Judges. Mr. Egan received a B.A. in Political Science *cum laude* from Providence College in 1993. In 1997, he graduated *cum laude* from Suffolk University Law School. While at Suffolk, Mr. Egan served on the editorial board of the *Suffolk University Law Review* and authored a note entitled, *Virtual Community Standards: Should Obscenity Law Recognize the Contemporary Community Standard of Cyberspace*, 30 Suffolk University L. Rev. 117 (1996).

Mr. Egan is admitted to practice law in the states of Massachusetts, Connecticut and New York, as well as the U.S. District Courts for the District of Massachusetts, the Southern District of New York and the Eastern District of New York. He is also admitted to practice before the U.S. Supreme Court and U.S. Courts of Appeals in the First, Second and Fourth Circuits. Mr. Egan was designated a Local Litigation Star by Benchmark Litigation in 2013, 2014, 2015 and 2018.

CHRISTOPHER T. HEFFELFINGER

Christopher T. Heffelfinger, a partner in the San Francisco office, has over 25 years of experience litigating securities cases. Mr. Heffelfinger has run a number of PSLRA cases including *In re Warnaco Group Inc. Securities Litigation*, No. 00-CIV-06266 (S.D.N.Y.), where he represented Fresno County Employees' Retirement Association and the case settled for \$12.85 million following reversal of dismissal by the Second Circuit. Mr. Heffelfinger also has extensive experience in securities class actions generally, having prosecuted, for example, *In re Avant! Securities Litigation*, No. 96-cv-20132 (N.D. Cal.) (recovering \$35 million for the class, almost 50% of losses, net of attorneys' fees and expenses). Mr. Heffelfinger has also handled a number of other types of securities cases including fiduciary duty cases. For example, as co-lead counsel in *In re OpenTV Corp. Shareholder Litigation (Foley v. Kudelski SA)*, No. C-09-04896 (N.D. Cal.), Mr. Heffelfinger reached a settlement that both cured certain aspects of the proposed transactions which were allegedly coercive and provided for additional material disclosures in an amendment to the offering materials.

Mr. Heffelfinger is also experienced in Investment Company Act of 1940 ("1940 Act") cases. He is currently prosecuting a 1940 Act case, *Northstar Financial Advisors, Inc. v. Schwab Inv.*, No. 08-04199 (N.D. Cal.), and previously represented plaintiffs in *Lapidus v. G. Randall Hecht*, No. C-98-3130 (N.D. Cal.), which settled for \$3 million after a plaintiffs' victory before the Ninth Circuit. Mr. Heffelfinger participated as counsel in *In re LDK Solar Securities Litigation*, No. C-07-05182-WHA (N.D. Cal.), a case alleging an inventory accounting fraud by this Chinese company regarding its treatment of different grades poly-silicon used in the production of solar panels. He participated in all phases of discovery including deposition practice in Hong Kong, expert work, summary judgment and trial preparation. *LDK Solar* settled for \$13 million. Similarly, Mr. Heffelfinger was requested by lead counsel in *In re Broadcom Corp., Securities Litigation*, No. 01-cv-00275 (C.D. Cal.), to conduct a series of depositions (fact and expert) in a securities case alleging the improper accounting treatment of warrants used by Broadcom to make acquisitions of other companies. *Broadcom* settled for \$150 million.

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Mr. Heffelfinger also acted as lead counsel in the following business related litigations: (i) *Stanger v. Interstate Johnson Lane* (State Court of Fulton County, GA, 1991-93), a breach of fiduciary duty case where Mr. Heffelfinger represented 100 plaintiffs in a fraud action against Interstate Johnson Lane arising from a series of failed real estate limited partnerships; a number of California plaintiffs in the action were partners from defense firms in the Northern District of California; although the specific monetary terms of the settlement were confidential, plaintiffs viewed the settlement as highly favorable and each plaintiff approved the settlement; (ii) *In re Matter of Arbitration Between Claimant and Spike Trading LLC and Alexis Carles dba Spike Trading Group* (National Futures Association Three Panel Member Arbitration, 1999), acted as lead attorney representing claimant, a retired school teacher, in a commodities fraud arbitration and conducted a four-day arbitration resulting in a total award against the clearing firm in Chicago (plus punitive damages against one of the brokers) and attorneys' fees, for a total award of \$828,302; (iii) *In re: Robert Damir, Trustee of the Chapter 7 Bankruptcy Estate of Lectus, Inc. v. Hambrecht & Quist* (Cal. Super. Ct. San Francisco Cty. 1997, with approval required from U.S. Bankruptcy Court in San Francisco), acted as lead counsel, pursuant to a bankruptcy court approved joint litigation agreement, where the Trustee hired Berman Tabacco to bring a breach of fiduciary case against a series of venture capital firms including Hambrecht & Quist, Montgomery Securities and others for having breached their fiduciary duties and a Registration Rights Agreement by failing to use due care in bringing an innovative medical technology to market, which settled on favorable terms; (iv) *In re Moorman v. Southmark Corporation* (Cal. Super. Ct. San Mateo Cty. 1998), acted as lead counsel on behalf of limited partners seeking to compel enforcement of a 1990 judgment successfully objected to an Implementation Agreement, reaching a settlement of \$11.4 million for the class. Over the years, Mr. Heffelfinger has also successfully prosecuted numerous antitrust cases.

Mr. Heffelfinger served on active duty as an infantry officer in the U.S. Marine Corps, 1977-80, and again for nine months in 1990-1991 as a Captain with a rifle company in support of Operations Desert Shield/Storm. He has lectured periodically on discovery matters, including electronically stored information, deposition practice and evidentiary foundations in commercial litigation. Mr. Heffelfinger was named a Super Lawyer by *Northern California Super Lawyers Magazine* every year since 2009 and he has an AV[®] Preeminent[™] rated by Martindale-Hubbell[®]. He was recognized by *Best Lawyers*[®] (24th Ed. 2018) for Litigation-Antitrust. Mr. Heffelfinger is admitted to practice law in the State of California, the U.S. District Court for the Northern, Eastern, Central and Southern Districts of California, the U.S. District Court for the District of Arizona and the Ninth Circuit U.S. Court of Appeals.

NICOLE LAVALLEE

Nicole Lavallee, the managing partner of the firm's San Francisco office and member of the firm's executive committee, focuses her practice on securities and derivative litigation. She is an integral member of the firm's New Case Investigations Team, which oversees the firm's portfolio monitoring program and investigates potential securities law violations to determine whether a case meets the firm's exacting standards. She also advises clients on foreign litigation.

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Since the enactment of the PSLRA, Ms. Lavallee has prosecuted numerous high-profile securities fraud cases for the firm. Most recently, she was one of the lead attorneys overseeing the *IndyMac Mortgage-Backed Securities Litigation*, which settled for \$346 million – one of the largest private MBS recoveries on record and the largest of any case where the issuer bank was in bankruptcy. She was the lead partner handling the day-to-day prosecution of numerous others cases, where she handled or oversaw case investigation and factual development and briefing (including appeal briefing), conducted depositions, argued key motions (including motions to dismiss, motions for summary judgment and/or discovery motions), and participated in settlement negotiations.

Examples receiving favorable judicial commentary include: (i) *In re KLA-Tencor Corp. Securities Litigation*, No. C06-04065 (N.D. Cal.), an options-backdating class action, representing co-lead plaintiff the Louisiana Municipal Police Employees' Retirement System, which settled for \$65 million; (ii) *In re International Rectifier Securities Litigation*, No. 07-cv-02544 (C.D. Cal.), on behalf of the co-lead plaintiff Massachusetts Laborers' Pension Fund, alleging manipulation of the company's financial results, which settled for \$90 million in 2009; (iii) *Oracle Cases*, Coordination Proceeding, Special Title (Rule 1550(b)), No. JCCP 4180 (Cal. Super. Ct. San Mateo Cty.), a derivative case alleging that Lawrence Ellison engaged in illicit insider trading, and which settled weeks before trial when Mr. Ellison agreed to make \$100 million in charitable donations in Oracle's name; and (iv) opt-out actions on behalf of State of Michigan Retirement System and Fresno County Employees' Retirement Association against Countrywide Financial Corp. (*State Treasurer of The State of Michigan v. Countrywide Financial Corp.*, No. CV-11-00809 (C.D. Cal.) and *Fresno County Employees Retirement Association v. Countrywide Financial Corp.*, No. CV-11-00811 (C.D. Cal.)). She also played a key role in trial preparation for the *In re GenesisIntermedia, Inc. Securities Litigation*, No. CV 01-9024 (N.D. Cal.), class action. She also acted as local counsel in a number of cases where she played a significant role such as *State of Oregon v. McKesson HBOC, Inc.*, Master File No. 307619 (Cal. Super. Ct. San Francisco Cty.), an individual opt out action brought on behalf of the retirement systems for Colorado, Utah and Minnesota, which settled very favorably. Most recently, she oversaw the prosecution of *In re Zynga, Inc. Securities Litigation*, No. 12-cv-04007 (N.D. Cal.), which settled for \$23 million in February 2016.

Ms. Lavallee has an AV[®] Preeminent[™] rating from Martindale-Hubbell[®] and was named a Super Lawyer in 2017 by Super Lawyers Magazine. She was also recognized as a Recommended Attorney in Securities Litigation by the Legal 500 in 2017. She has authored numerous articles and lectured on securities litigation. She is also co-chair for the 2016 Cross-Border Litigation Forum, a gathering of the most senior legal practitioners in U.S./Canada cross-border litigation (was also on the Steering Committee for the 2012 and 2014 forums). Ms. Lavallee is admitted to practice in California (1993), all federal courts in the Ninth Circuit and the Ninth Circuit of the U.S. Courts of Appeals.

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KRISTIN J. MOODY

Kristin J. Moody is a partner in the firm's San Francisco office, where she focuses her practice on securities litigation. She has successfully litigated numerous class actions that have resulted in substantial settlements for defrauded investors.

Currently, Ms. Moody serves as the lead partner for the firm overseeing the prosecution of several consumer class actions, including *City of Wyoming v. Procter & Gamble Company*, an action on behalf of entities that own, manage or operate wastewater treatment systems against the leading manufacturers of wipes marketed as "flushable" as these wipes are not in fact "flushable" as they do not pass through the wastewater treatment system with adequate degradation thus causing damage to the facilities. Ms. Moody also serves as local counsel to certified classes of borrowers with mortgages owned and serviced by Wells Fargo who have received payoff statements that fail to disclose property insurance claim funds or are entitled to receive payoff statements in *McLaughlin v. Wells Fargo Bank, N.A.*, a case which is brought under the Truth in Lending Act. The parties recently reached a settlement of the matter, pending Court approval, which will provide \$880,000 to the damages class (which will provide more than \$2,900 for each damages class member) for resolution of the statutory damages class, which is 88% of the total maximum statutory damages that could have been recovered if fully litigated, and will require defendant to disclose insurance claim funds on all of its payoff statements going forward, which is a benefit that exceeds what could be achieved after a trial. Recently, Ms. Moody represented lead plaintiff in *In re Zynga, Inc. Securities Litigation*, where she investigated and drafted the complaint and the successful opposition to the motion to dismiss, conducted discovery and participated in mediation. The case reached a settlement of \$23 million, which received final approval in February 2016. Ms. Moody also investigated and drafted the consolidated amended complaint in a class action against General Electric Co., certain of its officers and directors and underwriters of its public offering, drafted lead plaintiff's opposition to defendants' motions to dismiss and subsequent briefing with the court and conducted discovery in this matter. The case settled for \$40 million. Further, Ms. Moody assisted in the litigation of *In re BP p.l.c. Securities Litigation*, where she helped draft the amended complaint and the successful opposition to defendants' motion to dismiss. BP and Lead Plaintiffs for the "post-explosion" agreed to a settlement in the amount of \$175 million, subject to final court approval.

Ms. Moody also managed litigation, coordinated and conducted discovery, counseled clients and participated in mediation in *In re Force Protection Securities Litigation*, which settled for \$24 million. Ms. Moody also coordinated and conducted discovery, counseled the client and participated in mediation in litigation against International Rectifier Corp. and several of its former officers and directors for an alleged fraud at a foreign subsidiary, which settled for \$90 million. In addition, Ms. Moody participated in the motion to dismiss briefing and mediation in *In re American Home Mortgage Securities Litigation*, which settled for \$37.25 million, despite the difficulties American Home's bankruptcy posed to asset recovery.

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Prior to joining Berman Tabacco, Ms. Moody practiced at Holland & Knight, LLP in Boston and Morrison & Foerster, LLP in San Francisco. While at Morrison & Foerster, Ms. Moody represented clients in complex commercial litigation matters with a focus on securities litigation. At Holland & Knight, she represented clients in a range of white-collar criminal matters, government and regulatory investigations and complex civil litigation, including securities litigation. Ms. Moody has also represented clients in a number of *pro bono* matters, including discrimination and political asylum cases.

Ms. Moody has published several articles in the areas of accounting fraud, securities class actions and derivative suits. She has also taught business law courses at Fisher College and previously sat on the Fisher College Advisory Board. Ms. Moody has also served as an Advisory Board member for the non-profit Generation Citizen.

Ms. Moody earned an LL.M. from New York University School of Law in 2003, a J.D. *cum laude* from Boston College Law School in 1999, and a B.A. in English and Legal Studies *cum laude* from Bucknell University in 1995. While in law school, she was Notes and Comments Editor of the *Boston College International and Comparative Law Review* and was active in the Women's Law Center.

Ms. Moody is a member in good standing of the state bars of Massachusetts and California and is also admitted to practice in the U.S. District Court for the Northern, Central, Eastern and Southern Districts of California, the U.S. District Court for the District of Massachusetts and the U.S. Courts of Appeals for the First, Third, Ninth and Federal Circuits.

MATTHEW D. PEARSON

A partner in the firm's San Francisco office, Matthew D. Pearson focuses his practice on securities, antitrust and consumer protection litigation. Mr. Pearson is an integral member of the firm's New Case Investigations Team and now devotes a substantial amount of his time to evaluating and investigating potential new cases. Mr. Pearson also monitors foreign securities litigation, tracks developments in foreign class action and securities law and advises clients concerning litigation in various foreign jurisdictions.

Since joining the firm in 2005, Mr. Pearson has served in key roles on a number of the firm's leading securities and antitrust cases. On the securities side, Mr. Pearson was part of the litigation team in *In re The Bear Stearns Cos. Inc. Securities, Derivative and ERISA Litigation*, Master File No. 08-MDL No. 1963 (S.D.N.Y.), which resulted in settlements totaling \$294.9 million for aggrieved investors. Mr. Pearson also has extensive experience briefing motions for appointment of lead plaintiff under the PSLRA.

In his antitrust practice, Mr. Pearson has been a prominent member of the firm's team leading the *In re New Motor Vehicles Canadian Export Antitrust Litigation*, No. 03-md-1532 (D. Me.), and the related California action, involving allegations that major automakers unlawfully conspired

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to stop the export of cheaper new Canadian vehicles into the United States. Mr. Pearson has been involved in all aspects of this nationwide, multi-jurisdictional litigation, including discovery, class certification, extensive expert reports, summary judgment, appeals in multiple courts and settlement. To date, the firm has achieved settlements totaling over \$55 million for class members. The litigation continues in California state court, with the California Court of Appeal having recently reversed the trial court's grant of summary judgment in favor of defendant Ford Canada. Mr. Pearson also assisted in the firm's efforts to achieve a historic \$295 million settlement with De Beers, where the firm represented a class of diamond resellers alleging De Beers unlawfully monopolized the worldwide supply of diamonds. The settlement was significant because in addition to the \$295 million cash payment, the settlement included an agreement by De Beers to submit to the jurisdiction of the U.S. court to enforce the terms of the settlement and a comprehensive injunction limiting De Beers' ability to restrict the worldwide supply of diamonds in the future. The firm's work in this case – believed to be the first successful prosecution of De Beers under U.S. antitrust laws – serves as a template for corralling foreign monopolists.

Mr. Pearson co-authored an *amicus* brief submitted to the California Supreme Court on behalf of three unions in the *Kwikset* case, involving products falsely labeled as "Made in the USA." The California Supreme Court's ultimate opinion (*Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310 (2011)), was highly favorable to our clients' interests and became one of the leading opinions regarding standing under California's Unfair Competition Law.

Mr. Pearson received his law degree in 2004 from the University of California, Davis, School of Law, where he completed the King Hall Public Service Law Program. He completed his undergraduate studies at U.C.L.A., earning a Bachelor of Arts in Political Science/International Relations. Mr. Pearson has been admitted to practice law in the State of California, as well as the United States District Courts for the Northern, Central and Southern Districts of California.

TODD A. SEAVER

A partner in the San Francisco office, Todd A. Seaver litigates both antitrust and investment-related matters, with a primary focus on developing and litigating antitrust cases. He has led the day-to-day management of one of the largest antitrust class actions in history, and has litigated antitrust cases involving varied industries of high-tech, pharmaceuticals, autos, chemicals, consumer electronics, biotech, diamonds, and online retailing. He is a leader of the firm's antitrust practice group, marshalling the firm's extensive investigative resources and then litigating the cases.

Mr. Seaver is currently working in a leading role in several cases, including *In re Lithium Ion Batteries Antitrust Litigation*, where the firm is co-lead counsel for direct purchaser plaintiffs and in which he argued and defeated certain of defendants' motions to dismiss, and deposed fact witnesses and defendants' expert economist. In addition, Mr. Seaver leads plaintiffs' efforts in *In re New Motor Vehicles Canadian Export Antitrust Litigation*, in which Berman Tabacco is lead

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counsel. The case alleges that major auto manufacturers unlawfully conspired to stop the export of cheaper new Canadian vehicles into the United States for use or resale. The case has partially settled with Toyota Motor Sales U.S.A. for \$35 million and with General Motors of Canada for \$20.15 million. The litigation is ongoing in California state court, with the California Court of Appeal having recently reversed the trial court's grant of summary judgment in favor of defendant Ford Canada.

Mr. Seaver is also presently counsel for plaintiffs and represents California State Teachers' Retirement System (CalSTRS) in the Euribor (*Sullivan v. Barclays PLC, et al.*, No. 13-cv-2811 (S.D.N.Y.)) and Yen Libor (*Laydon v. Mizuho Bank, Ltd.*, No. 1:12-cv-03419 (GBD) (S.D.N.Y.)), and *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 1:15-cv-05844 (GBD) (S.D.N.Y)) antitrust cases involving Wall Street banks' manipulation of interest rate benchmarks and bid-ask spread price fixing on interest rate derivatives. He also currently represents Fresno County Employees' Retirement Association (FCERA) in *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, an antitrust class action against Wall Street banks for manipulating a foreign currency exchange rate benchmark and fixing bid-ask spreads on trillions of dollars of foreign currency exchange transactions.

Mr. Seaver led efforts for the firm in an action against Netflix and Wal-Mart, *In re Online DVD Rental Antitrust Litigation*, in which Berman Tabacco was among lead counsel. He was responsible for managing many aspects of discovery, class certification, and summary judgment, as well as for achieving partial settlement with defendant Wal-Mart. He successfully argued in Ninth Circuit Court of Appeals for that case on an issue of first impression regarding the Class Action Fairness Act and settlements involving a mix of cash consideration and electronic store gift cards. He was also one of the lead counsel in *In re Optical Disk Drive Antitrust Litigation* and also worked on a number of the firm's high-profile cases including *Cardizem CD*, still the leading generic drug competition case, which settled in 2003 for \$80 million. In the *Cardizem CD* case, Berman Tabacco was co-lead counsel representing health insurer Aetna in an antitrust class action, and obtained a pioneering ruling in the federal court of appeals regarding the "reverse payment" by a generic drug manufacturer to the brand name drug manufacturer. In a first of its kind ruling, the appellate court held that the brand name drug manufacturer's payment of \$40 million per year to the generic company for the generic to delay bringing its competing drug to market was a per se unlawful market allocation agreement. Today that victory still shapes the ongoing antitrust battle over competition in the pharmaceutical market.

Mr. Seaver spearheaded the landmark case against the major credit rating agencies (Standard & Poor's and Moody's), *California Public Employees' Retirement System v. Moody's Corp.*, No. CGC-09-490241 (Cal. Super. Ct. San Francisco Cty.). The case, filed on behalf of the nation's largest state pension fund, the California Public Employees' Retirement System (CalPERS), was groundbreaking litigation that held the rating agencies financially responsible for negligent misrepresentations in rating structured investment vehicles. Moody's and Standard & Poor's agreed to pay a total of \$255 million (\$130 million and \$125 million, respectively) to settle CalPERS' claim that "Aaa" ratings on three SIVs were negligent misrepresentations under

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California law. This case was groundbreaking in that (i) the settlements rank as the largest known recoveries from Moody's and S&P in a private lawsuit for civil damages; and (ii) it resulted in a published appellate court opinion finding that rating agencies can, contrary to decades of jurisprudence, be liable for negligent misrepresentations under California law for their ratings of privately-placed securities.

Mr. Seaver was previously associated with the law firm Devine, Millimet & Branch, P.A., where he practiced commercial litigation. He was an adjunct Professor of Law with the New England School of Law in 2003, teaching Appellate Advocacy.

Mr. Seaver graduated *magna cum laude* from Boston University in 1994 with a B.A. in International Relations. He earned a M.Sc. from the London School of Economics in 1995 and graduated *cum laude* from the American University Washington College of Law in 1999.

While in law school, Mr. Seaver served as a law clerk at the Federal Trade Commission's Bureau of Competition and as a judicial extern for the Honorable Ricardo M. Urbina, U.S. District Court for the District of Columbia.

In 2017, Mr. Seaver was ranked as a Recommended Attorney by The Legal 500 and was named a Super Lawyer by Super Lawyers Magazine. He was also named by Who's Who Legal: Competition in 2017. He has been admitted to practice law in the states of California, Massachusetts, and New Hampshire. He is also a member of the American Bar Association's Antitrust Section, and served a two-year term as a Director for the San Francisco Bar Association's Antitrust Committee in 2012-2013.

LESLIE R. STERN

A partner in Boston, Leslie R. Stern heads the New Case Investigations Team for institutional clients. The team investigates possible securities law violations, gauging clients' damages and evaluating the merits of cases to determine the best course of legal action.

In her role with the New Case Investigations Team, Ms. Stern oversees a portfolio monitoring program that combines the power of an online loss calculation system with the hands-on work of a dedicated group of attorneys, investigators and financial analysts. Her case development duties include preparing detailed case analyses and recommendations, and advising clients on their legal options.

Ms. Stern is a seasoned litigator with more than a decade of experience on cases such as *Carlson v. Xerox Corp.*, in which Berman Tabacco represented the Louisiana State Employees' Retirement System as co-lead counsel. Upon approval in January 2009, the \$750 million Xerox settlement ranked as the 10th largest securities class action recovery of all time. Ms. Stern also worked on *In re Bristol Myers-Squibb Securities Litigation*, which settled for \$300 million and *In re Zila Inc. Securities Litigation*, which settled for \$5.75 million.

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Prior to joining Berman Tabacco in 1998 and being named partner in 2003, Ms. Stern practiced general civil litigation. She earned a B.S. degree in Finance from American University in 1991 and graduated *cum laude* from Suffolk University Law School in 1995.

While at Suffolk, Ms. Stern served on the Suffolk University Law Review's editorial board and authored three publications.

Ms. Stern has been admitted to practice law in the Commonwealth of Massachusetts and the U.S. District Court for the District of Massachusetts. She has also been admitted to practice in the First and Fourth Circuits of the U.S. Courts of Appeals. Ms. Stern is a founding member of the International Financial Litigation Network and a member of both the National Association of Public Pension Attorneys and the National Association of Women Lawyers. She was also designated a Local Litigation Star by Benchmark Litigation 2013, 2014 and 2015. In 2017, she was ranked as a Recommended Attorney in Securities Litigation by The Legal 500.

JOSEPH J. TABACCO, JR.

Joseph J. Tabacco, Jr., the founding member of Berman Tabacco's San Francisco office, actively litigates antitrust, securities fraud, commercial high tech and intellectual property matters.

Prior to 1981, Mr. Tabacco served as senior trial attorney for the U.S. Department of Justice, Antitrust Division in both the Central District of California and the Southern District of New York. In that capacity, he had major responsibility for several criminal and civil matters, including the antitrust trial of *United States v. IBM*. Since entering private practice in the early 1980s, Mr. Tabacco has served as trial or lead counsel in numerous antitrust and securities cases and has been involved in all aspects of state and federal litigation. In private practice, Mr. Tabacco has also tried a number of securities cases, each of which resolved successfully at various points during or after trial, including *In re MetLife Demutualization Litigation* (settled after jury empaneled), *Gutman v. Howard Savings Bank* (plaintiffs' verdict after six-week trial), *In re Equitec Securities Litigation* (settled after six months of trial) and *In re Ramtek Securities Litigation*.

Mr. Tabacco was one of the firm's lead attorneys representing the Wyoming State Treasurer and Wyoming Retirement System in the *In re IndyMac Mortgage-Backed Securities Litigation* in which the firm achieved settlements totaling \$346 million. He also oversaw *California Public Employees' Retirement System v. Moody's Corp.*, No. CGC-09-490241 (Cal. Super. Ct. San Francisco Cty.), the pioneering case that held credit rating agencies (Standard & Poor's and Moody's) financially responsible for their negligence in rating structured investment vehicles. After settling with both McGraw Hill Companies and Moody's, California Public Employees' Retirement System' total recovery for the case was \$255 million. Over the decades, Mr. Tabacco has prosecuted numerous securities fraud and antitrust cases against both domestic and international companies. In addition, he has engaged in depositions and discovery outside the U.S., including most recently in England in *CalPERS v. Moody's Corp.*

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Mr. Tabacco is currently overseeing *In re Lithium Ion Batteries Antitrust Litigation*, No. 13-md-2420-YGR (N.D. Cal.), a case against domestic and foreign companies alleging a conspiracy to fix the prices of lithium ion rechargeable batteries, which affected the prices paid for the batteries and certain products in which the batteries are used and which the defendants sell.

Since 2008, Mr. Tabacco has served as an independent member of the Board of Directors of Overstock.com, a publicly-traded company internet retailer. He is Chair of the Board's Corporate Governance Committee and also serves as a member of the Board's Audit and Compensation Committees. He also frequently lectures and authors articles on securities and antitrust law issues and is a member of the Advisory Board of the Institute for Consumer Antitrust Studies at Loyola University Chicago School of Law and the Advisory Board of the Center for Law, Economics & Finance at the George Washington School of Law. Mr. Tabacco is also a former teaching fellow of the Attorney General's Advocacy Institute in Washington, D.C., and has served on the faculty of ALI-ABA on programs about U.S.-Canadian business litigation and trial of complex securities cases.

For 11 consecutive years, he has been among the top U.S. securities litigators ranked by *Chambers USA* and is also AV[®] Preeminent[™] rated by Martindale-Hubbell[®]. Mr. Tabacco has been featured by the *Daily Journal* as one of California's top 30 securities litigators, a group chosen from both the plaintiff and defense bars, and as one of the Top Plaintiffs Lawyers in California in 2017. He was also recognized by *Who's Who Legal: Competition*, most recently in 2017—a designation he has received for the past 4 years since the creation of the publication's Plaintiffs section. Additionally, for 14 consecutive years, Mr. Tabacco has been named a Super Lawyer by *Northern California Super Lawyer Magazine*, which features the top 5% of attorneys in the region. He was ranked as a Recommended Attorney in Securities Litigation by The Legal 500 in 2017 and a Local Litigation Star by Benchmark Litigation in 2017 and 2018. He was recognized by *Best Lawyers*[®] (24th Ed. 2018) for Litigation-Antitrust. Mr. Tabacco was also singled out by a top defense attorney for exemplifying "the finest tradition of the trial bar."

Mr. Tabacco has been admitted to practice law in the states of California, Massachusetts, New York and the District of Columbia (currently inactive).

BRYAN A. WOOD

A partner in Boston, Bryan A. Wood focuses his practice on securities and whistleblower litigation. Mr. Wood has worked on numerous securities cases on behalf of the firm's public pension fund clients including *In re BP, plc Securities Litigation*, No. 10-md-2185 (S.D. Tex.); *City of Brockton Retirement System v. Avon Products Inc.*, No. 11-cv-04665 (S.D.N.Y.), *In re Par Pharmaceutical Securities Litigation*, No. 06-cv-03226 (D.N.J.); *Dunst v. Hyundai Motor America*, No. 3:13-cv-00069 (W.D.N.C.) and *Carlson v. Xerox Corp.*, No. 00-cv-1621 (D. Conn.).

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Mr. Wood joined Berman Tabacco as an associate in 2002 and became a partner in 2009. Prior to joining the firm, Mr. Wood was a litigation associate at both Montgomery, McCracken, Walker & Rhoads, LLP in Philadelphia and Schnader Harrison Segal & Lewis in Boston. As an associate at those firms, he represented corporations and directors in shareholder and other class action lawsuits. He also represented businesses and municipalities in general contract and employment discrimination cases.

Mr. Wood graduated *cum laude* from the University of Massachusetts in 1991 with a B.A. in Sociology. In 1995, he earned an M.S. *summa cum laude* in Public Policy from the Eagleton Institute of Politics at Rutgers University and graduated *cum laude* from the Temple University Beasley School of Law in 1998. While in law school, he was the Managing Editor of the *Temple Law Review* and a board member of the Temple Law Moot Court Honor Society. In addition, Mr. Wood completed a one-year internship for the Honorable Edward R. Becker, then Chief Judge for the U.S. Court of Appeals for the Third Circuit. Mr. Wood was designated a 2013, 2014 and 2015 Local Litigation Star by Benchmark Litigation and, in 2007, *Massachusetts Super Lawyers* magazine named him a “Rising Star” in recognition of his expertise and work in securities litigation.

Mr. Wood is admitted to practice law in the Commonwealths of Massachusetts and Pennsylvania. He is also admitted to the U.S. District Courts for the Districts of Massachusetts, Colorado and Eastern Pennsylvania, as well as the U.S. Court of Appeals for the First, Second and Ninth Circuits. Additionally, Mr. Wood is a member of the Boston Bar Association and the American Bar Association.

Associates

MARK DELANEY

An associate in the Boston office of Berman Tabacco, Mark Delaney focuses his practice on securities litigation. Mr. Delaney has supervised and participated in large-scale document review and discovery projects, including preparation for the firm’s successful ERISA litigation against State Street Bank.

Prior to rejoining the firm in 2015, he worked as an associate at a number of Boston firms where he focused on securities litigation and enforcement. He was also a contract attorney for several prominent Boston law firms, including Berman Tabacco.

Mr. Delaney has extensive experience representing plaintiffs and defendants in securities litigation. He has represented corporations, their officers, directors and employees in criminal and civil enforcement actions, and in class action lawsuits stemming from alleged violations of the U.S. securities laws. Mr. Delaney also has represented companies and individuals in federal criminal proceedings relating to allegations of Taft-Hartley violations. He is experienced in

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alternative dispute resolution proceedings and represented a former corporate officer accused of securities fraud in a two-week arbitration hearing regarding indemnification rights.

Mr. Delaney received a B.A. in Political Science *summa cum laude* from Tulane University where he graduated in the top 1% of his class in 1998. In 2001, he earned his J.D. *magna cum laude* from Boston University School of Law where he graduated in the top 10% of his class and received the G. Joseph Tauro distinguished scholar award.

Mr. Delaney is admitted to practice law in the Commonwealth of Massachusetts and the U.S. District Court for the District of Massachusetts.

VICTOR S. ELIAS

An associate in the firm's San Francisco office, Victor S. Elias focuses his practice on securities fraud litigation. Mr. Elias assisted in the representation of lead plaintiff State Universities Retirement System of Illinois in *In re General Electric Co. Securities Litigation*, No. 09 Civ. 01951 (S.D.N.Y.), which settled for \$40 million, helping draft lead plaintiff's opposition to defendants' motions to dismiss and subsequent briefing with the court. Mr. Elias has also assisted in *In re Fannie Mae 2008 Securities Litigation*, No. 08 Civ. 07831 (S.D.N.Y.), which settled for \$170 million, by assisting in drafting mediation briefs, assisting in deposition preparation, drafting analyses of discovery issues, analyzing discovery productions, conducting legal research and drafting papers seeking final settlement approval and in other efforts to obtain final approval.

Mr. Elias was a member of the core litigation team that represented California Public Employees' Retirement System in the negligent misrepresentation action that held credit rating agencies Moody's and Standard & Poor's financially responsible for their negligence in rating structured investment vehicles, *California Public Employees' Retirement System v. Moody's Corp.*, No. CGC-09-490241 (Cal. Super. Ct. San Francisco Cty.). The case settled for a total of \$255 million. Mr. Elias played a prominent role in leading the discovery team and preparing and responding to discovery requests. Mr. Elias was also a member of the litigation team that represented lead plaintiff in *In re Zynga, Inc. Securities Litigation*, No. 12-cv-04007 (N.D. Cal.), having assisted in drafting the successful lead plaintiff motion and the consolidated complaint. The case reached a settlement of \$23 million, which received final approval in February 2016.

Prior to joining Berman Tabacco in 2012, Mr. Elias worked as an associate at a San Francisco Bay Area-based law firm, where he assisted in the representation of individual plaintiffs in *In re BP, p.l.c. Securities Litigation*, No. 10-md-2185 (S.D. Tex.). Mr. Elias helped draft the opposition to defendants' motion to dismiss in the matter, attended depositions conducted in the parallel tort case against the oil company and analyzed discovery obtained in the matter. He also assisted in the representation of public employee retirement systems – including the county employee retirement associations of Los Angeles County, San Diego County, Stanislaus County and the Los Angeles Department of Water and Power Employees' Retirement Plan – in a false claim and breach of contract action arising from custodian banks' foreign currency exchange pricing

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practices in *Ex rel. FX Analytics, Los Angeles County Employees Retirement Association v. The Bank of New York Mellon Corp.*, No. C 11-05683 (N.D. Cal.). He also assisted in the successful representation of a Chinese information technology company in *Jiang v. VanceInfo Technologies Inc.*, No. CIV 500979 (Cal. Super. Ct. San Mateo Cty.), a business litigation suit filed against the Beijing-based company in California state court. Mr. Elias helped in drafting a demurrer to an amended complaint and analyzed discovery obtained in the matter.

Northern California Super Lawyers Magazine named Mr. Elias a “Rising Star” in 2017. He previously served for two years as a judicial law clerk for the Honorable Michaela Alvarez at the United States District Court for the Southern District of Texas. Mr. Elias is admitted to practice law in the state of California.

STEVEN GROOPMAN

Steven L. Groopman is an associate in the firm’s Boston office who focuses his practice on securities litigation. Currently, Mr. Groopman is a member of the litigation team representing the Plymouth County Retirement Association in *North Collier Fire Control and Rescue District Firefighter Pension Plan v. MDC Partners, Inc.*, which is pending in the Southern District of New York.

Mr. Groopman joined Berman Tabacco in June 2015 after serving as a law clerk to the Hon. Dickinson R. Debevoise, on the U.S. District Court for the District of New Jersey, and working as an associate at a New York law firm.

Mr. Groopman received an A.B. in Political Science *magna cum laude* from Brown University in 2005. In 2009 he graduated from George Washington University Law School.

Mr. Groopman is admitted to practice law in the States of New York and Massachusetts, the U.S. District Courts for the Southern District of New York, the Eastern District of New York and the District of Massachusetts.

SARAH KHORASANEE MCGRATH

An associate in the firm’s San Francisco office, Sarah Khorasanee McGrath focuses her practice on antitrust litigation. Ms. McGrath joined Berman Tabacco in 2010 after working as a contract attorney for the Department of Justice, Antitrust Division. Prior to that, she was an attorney volunteer with the City and County of San Francisco Office of the Public Defender and the Eviction Defense Center.

Ms. McGrath earned a B.A. in Communications from the University of California at San Diego in 2002 and a J.D. from the New England School of Law in 2008.

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While in law school, Ms. McGrath worked as a judicial extern to the Honorable Eric Taylor, Superior Court of California, County of Los Angeles.

Northern California Super Lawyers Magazine named Ms. McGrath a “Rising Star” in 2013-2015 and 2017. She was also included in *San Francisco* magazine’s *Top Women Attorneys in Northern California* for 2013-2015 and 2017.

Ms. McGrath is the 2016 Vice President of the Federal Bar association, Northern District of California, San Francisco and was also the Co-Chair of the Federal Bar Association’s Young Lawyers Division for the Northern District of California from 2013-2015. She is admitted to practice in the State of California, the U.S. District Court for the Northern and Central Districts of California, and the U.S. Court of Appeals for the Ninth Circuit.

JESSICA MOY

Jessica Moy focuses her practice on antitrust and securities litigation. Prior to joining Berman Tabacco in 2013, Ms. Moy worked as an associate at a San Francisco law firm, where she represented plaintiffs in state and federal matters with an emphasis in antitrust, unfair competition and complex commercial litigation.

At Berman Tabacco, Ms. Moy manages and develops strategies for complex multi-national antitrust litigation as co-lead counsel, including: crafting various case protocols, creating substantive and technical architecture for document review, drafting motions, creating hearing presentations on dispositive issues, negotiating all aspects of discovery and supervising foreign language translation and review. Ms. Moy is involved in all aspects of the litigation of *In re Lithium Ion Batteries Antitrust Litigation*, a price-fixing antitrust conspiracy case brought against manufacturers of lithium-ion batteries.

Prior to attending law school, Ms. Moy spent seven months studying Chinese language at Beijing Normal University in Beijing, China as a Zeidman Fellowship recipient. Thereafter, she worked for the United States Department of Justice’s Antitrust Division, Litigation II Section in Washington, DC as part of the Department’s Honors Paralegal Program. While at the Antitrust Division, she assisted with the investigation and litigation of vertical and horizontal mergers, appraised divestiture options and assessed potential purchasers of international assets.

Ms. Moy earned her Juris Doctor degree from the University of California, Hastings College of the Law. During law school, she was an oral advocate finalist and awarded “Best Brief” in the Philip C. Jessup International Law Moot Court competition, acted as an Articles Editor for Hastings Constitutional Law Quarterly and served as an Executive Board Member of Hastings’s Asian/Pacific-American Law Students Association. In addition, Ms. Moy externed for the Honorable Maria-Elena James in the Northern District of California, San Francisco Division and was recognized with the CALI Excellence for the Future Award and the Witkin Award for Academic Excellence in Trial Advocacy.

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Northern California Super Lawyers Magazine named Ms. Moy a “Rising Star” in 2017. She is admitted to practice in California and before the U.S. Court of Appeals for the Ninth Circuit and the U.S. District Court for the Northern District of California.

NATHANIEL L. ORENSTEIN

An associate in the firm’s Boston office, Nathaniel L. Orenstein focuses his practice on securities and antitrust litigation. He is currently engaged in a number of matters to ensure that corporate directors’ meet their fiduciary obligations to their shareholders. Some of Mr. Orenstein’s representative cases include: *In re Bluegreen Corporation Shareholder Litigation*, No. 502011CA018111 (15th Judicial Cir., Florida) (\$36.5 million settlement and \$80 million in benefit to class secured to date as member of Executive Committee); *In re TPC Group, Inc. Shareholders’ Litigation*, No. 7865-VCN (Delaware Chancery) (\$79 million benefit to class while co-lead counsel); *Louisiana Municipal Police Employees’ Retirement System v. EnergySolutions, Inc.*, C.A. No. 8350-VCG (Delaware Chancery) (\$36 million benefit to class as co-lead counsel); *In re El Paso Corporation Shareholder Litigation*, No. 6949-CS (Delaware Chancery) (\$110 million benefit to class as member of Executive Committee); *In re American Home Mortgage Securities Litigation*, No. 07-MD-1898 (E.D.N.Y.) (\$37.25 million benefit to class as member of litigation team); *In re Force Protection Inc. Securities Litigation*, No. 2:08-cv-845 CWH (D.S.C.) (\$24 million benefit to class as member of litigation team); *In Re: Nexium (Esomeprazole) Antitrust Litigation*, No. 12-md-02409-WGY (D. Mass.) (\$24 million benefit to class secured to date as local counsel).

In addition to Mr. Orenstein’s legal practice at Berman Tabacco, he is on the Board of Directors for the Center for Insurance Research.

Prior to joining Berman Tabacco, Mr. Orenstein was a staff attorney for the Securities Division of the Office of the Secretary of the Commonwealth of Massachusetts. While there, he performed company examinations as well as investigated and pursued enforcement actions to detect and prevent fraud at hedge funds and related companies. Mr. Orenstein was the lead attorney on many investigations and actions against broker-dealers, investment advisors and others.

Prior to obtaining his J.D. from the New York University School of Law in 2005, Mr. Orenstein served as a member of the mutual fund and insurance brokerage investigation teams for the Office of the New York State Attorney General’s Investment Protection Bureau. As a legal intern, he assisted with the Bureau’s investigation work including, case planning, discovery and settlement negotiation.

In addition to his work for the Commonwealth and for New York State, Mr. Orenstein was the Associate Director for the Center for Insurance Research, a consumer advocacy organization. In this role, he supported Center attorneys in litigating complex insurance reorganization transactions. He also testified in regulatory and legislative proceedings on behalf of policyholders concerning market conduct and insurance rate setting.

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Mr. Orenstein is admitted to practice law in the Commonwealth of Massachusetts.

A. CHOWNING POPPLER

Chowning Poppler focuses her practice on antitrust and securities litigation. Prior to joining the firm in 2015, she worked as a litigation associate at a San Francisco law firm where she represented plaintiffs in employment-related individual and class action matters in state and federal court. Ms. Poppler started her legal career at a plaintiffs' firm in San Diego which specializes in securities and consumer class actions.

While in law school, Ms. Poppler interned at the Public Integrity Bureau of the State of New York Office of the Attorney General where she investigated alleged corruption and fraud in local governments. Ms. Poppler served on her law school's Pro Bono Legal Advocates board where she oversaw and coordinated volunteers for the unlawful detainer law clinic. She was also a member of the *San Diego International Law Journal*.

Northern California Super Lawyers Magazine named Ms. Poppler a "Rising Star" in 2017. She has served as an Executive Board Member on the ACLU – North Peninsula Chapter Board since 2012. She is admitted to practice law in the State of California and the U.S. District Courts for the Northern, Central and Eastern Districts of California.

STEPHEN RYAN JR.

Stephen Ryan Jr. is an associate in our Boston office, focusing his practice on securities litigation. Since joining the firm in 2015, Mr. Ryan has worked on multiple matters representing whistleblowers under the SEC's Whistleblower Program, established pursuant to the Dodd-Frank Act. Mr. Ryan is also presently involved in both federal and state false claims act (*qui tam*) cases. Prior to joining the firm, he gained experience as an associate at other law firms in Boston. Mr. Ryan previously focused his practice on litigating in the financial sector and insurance industry.

While in law school, Mr. Ryan was a Judicial Intern to Judge Charles Trombly at the Massachusetts Land Court, Department of the Trial Court. Mr. Ryan was also a Student Director of the Stone Moot Court Competition.

Mr. Ryan is admitted to practice law in the Commonwealth of Massachusetts and the U.S. District Court for the District of Massachusetts.

JUSTIN N. SAIF

An associate in the firm's Boston office, Justin Saif focuses his practice on securities litigation. He represented the Massachusetts Pension Reserves Investment Management Board in *In re Fannie*

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Mae 2008 Securities Litigation, which alleged that Fannie Mae and two individual defendants made material misrepresentations regarding and failed to disclose (a) that an enormous volume of mortgages on its books were “subprime” and “Alt-A” as defined internally by the company and throughout the industry, and (b) that defendants had inadequate internal controls to manage the significant risks created by the company’s purchases of those types of loans. Mr. Saif made crucial contributions to the case, including in the drafting of the Second Amended Joint Consolidated Class Action Complaint and the opposition to defendants’ motions to dismiss and preparing for and participating in mediation. That case settled for \$170 million.

Mr. Saif played a key role in drafting the consolidated class action complaint and opposition to motion to dismiss in the litigation against The Bear Stearns Companies, Inc. and its auditor, Deloitte & Touche LLP, representing the State of Michigan Retirement Systems. He also oversaw the initial document review team. That case settled for \$294.9 million. Mr. Saif was an integral member of the litigation team in *In re Force Protection Securities Litigation*, representing the Laborers’ Annuity and Benefit Fund of Chicago. He drafted discovery requests and responses, coordinated electronic document review and analysis and prepared for mediation. The *Force Protection* matter settled for \$24 million. Mr. Saif also played a vital part in *In re Par Pharmaceutical Securities Litigation*, representing the Louisiana Municipal Employees Retirement System, including preparing for and participating in a mediation that led to an \$8.1 million settlement.

Prior to joining Berman Tabacco in 2008, Mr. Saif worked as an associate at Foley Hoag LLP in Boston, where he focused on complex civil litigation including securities litigation, U.S. Securities and Exchange Commission enforcement matters and professional liability matters involving lawyers and accountants.

Mr. Saif earned an A.B. in Psychology from Harvard University in 1999, graduating *cum laude*. In 2004 he earned a J.D. from the University of Chicago. While in law school, he worked at the MacArthur Justice Center, an impact litigation firm and legal clinic focused on reforming the criminal justice system.

Mr. Saif is admitted to practice law in state and federal courts in Massachusetts and the U.S. Court of Appeals for the First Circuit. He is a member of the Boston Bar Association.

COREY SILVA

An associate at the firm’s Boston office, Corey Silva focuses his practice on securities litigation. Prior to joining Berman Tabacco, Mr. Silva attended Suffolk University Law School. He gained experience interning for both the Honorable Daniel Procaccini of the Rhode Island Superior Court and the U.S. Attorney’s Office, District of Massachusetts. He also interned for two New England law firms.

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While at Berman Tabacco, Mr. Silva has worked on securities litigation, corporate breach of fiduciary duty, and whistleblower cases.

While in law school, Mr. Silva was Managing Editor for the *Moot Court Honor Board – Journal of Trial & Appellate Advocacy*. During his undergraduate studies Mr. Silva worked in finance.

Mr. Silva is admitted to practice law in the states of Rhode Island and Massachusetts, and Massachusetts federal district court.

JENNIFER J. SOSA

An associate in the firm's Boston office, Jennifer J. Sosa focuses her practice on complex commercial litigation, including ERISA, securities, antitrust, whistleblower, consumer and e-Discovery matters. Ms. Sosa is a member of the firm's New Case Investigation Team and dedicates a significant amount of her time to investigating and evaluating potential new matters. Prior to joining the firm in May 2017, Ms. Sosa was Senior Counsel at Milberg LLP in New York City, where she focused on a wide range of complex litigation matters. Ms. Sosa was involved in all aspects of the prosecution of such cases from case evaluation to the eve of trial. She has represented investors, retirees, employees, pension funds, and hedge funds and has obtained many millions of dollars in settlements for victims of corporate wrongdoing. Ms. Sosa was also a member of Milberg's E-Discovery Practice Group and specialized in managing complex discovery issues and document review teams.

In 2011, Ms. Sosa was selected as one of fifty women worldwide to participate in the pilot W50 program at UCLA's Anderson School of Management. W50 identifies future female business leaders and provides them with training in corporate governance, business strategy and leadership. During law school at Temple University, Ms. Sosa was a Beasley Scholar, a member of the Environmental Moot Court Team, and was awarded the David Sive Award for Best Brief overall in the 2004 Pace National Environmental Law Moot Court Competition. Prior to law school, Ms. Sosa was a La Comunidad Latina en Acción Scholar at Northeastern University, where she earned her degree, *cum laude*, in Chemical Engineering. She also worked as a Chemical Engineer for a wide range of technology companies in the greater Boston area.

Ms. Sosa was named a "Rising Star" by Super Lawyers for the New York Metro region in 2014 and 2015. Ms. Sosa is a member of the New York and New Jersey state bars and is admitted to practice law in the Eastern and Southern Districts of New York and the District of New Jersey.

Special Counsel

KEVIN SHELLEY

Kevin Shelley, special counsel to the firm, is a former California Secretary of State and State Assembly leader recognized as an advocate for working people, consumers and investors.

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Mr. Shelley's political involvement began in 1978 as a staff member to U.S. Representatives Phil and Sala Burton. He then played a key role in electing their successor, former Speaker of the U.S. House of Representatives Nancy Pelosi, in 1987. His own political career began in 1990, when he won a seat on the San Francisco Board of Supervisors.

Elected to the California State Assembly in 1996, he championed the rights of workers and fought to protect civil rights. Among his accomplishments, he improved conditions at nursing homes, drafted new corporate accountability requirements and created a restitution fund for victims of corporate fraud.

Mr. Shelley, who spent five of his six years in the State Assembly as Majority Leader, won election for Secretary of State in November 2002. As the state's Chief Election Officer, he is credited with improving voter participation, calmly overseeing the historic recall election and decertifying problematic electronic voting machines.

Since 2005, Mr. Shelley has been representing consumers and plaintiffs in civil litigation.

He began working with Berman Tabacco in 2006. He earned a B.A. in Political Science from the University of California, Davis in 1978 and a law degree from the University of California Hastings College of the Law in 1983. He is the son of Jack Shelley, a former San Francisco mayor, U.S. congressman and California state senator. Mr. Shelley is admitted to practice law in the state of California and the U.S. Supreme Court.

Of Counsel

JAY ENG

Jay Eng is Of Counsel to the firm. Mr. Eng has over 14 years of experience in securities litigation, including actions brought under the PSLRA, individual and opt-out cases and mergers and acquisition litigation filed on behalf of public pension funds and retail investors. Mr. Eng has been involved in all aspects of the prosecution of such cases, including case evaluation, strategic planning, trial preparation, court appearances, settlement negotiations and jury trials.

Mr. Eng played a key role in several of the firm's most prominent cases. In *In re IndyMac Mortgage-Backed Securities Litigation*, No. 09-Civ. 04583 (S.D.N.Y.), the firm represented the Wyoming State Treasurer and the Wyoming Retirement System and negotiated settlements totaling \$346 million in connection with claims concerning the misrepresentation of IndyMac mortgage loan underwriting practices. In *In re El Paso Securities Litigation*, H-02-2717 (S.D. Tex.), the firm represented the Oklahoma Firefighters Pension & Retirement System against El Paso stemming from misrepresentations of its natural gas and oil reserves. This case resulted in a settlement totaling \$285 million, including \$12 million from auditors PricewaterhouseCoopers. In *In re Reliant Securities Litigation*, No. 02-cv-1810 (S.D. Tex.), the firm represented the Louisiana

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Municipal Police Employees' Retirement System against Reliant Energy, and later its subsidiary, Reliant Resources, in connection with accounting improprieties in the energy trading business. The firm negotiated a \$75 million cash settlement from Reliant and its accountant Deloitte & Touche LLP.

Mr. Eng was also on the trial team in *White v. Heartland High-Yield Municipal Bond Fund*, No. 00-C-1388 (E.D. Wis.), which was one of the few cases to go to trial after the passage of the PSLRA. Following three weeks of trial, the firm obtained an \$8.25 million settlement against Heartland's auditor PricewaterhouseCoopers. Mr. Eng also worked on a number of matters on behalf of the firm's public pension fund clients including: *In re WorldCom, Inc. Securities Litigation*, No. 02-cv-3288 (S.D.N.Y.) (\$6.13 billion settlement) (Fresno County Employees' Retirement Association); *In re Enterasys Networks, Inc. Securities Litigation*, No. C-02-071-M (D.N.H.) (\$50 million settlement) (Los Angeles County Employees Retirement Association); *In re Sunrise Senior Living, Inc. Securities Litigation*, No. 07-cv-00102 (D.D.C.) (\$13.5 million) (Oklahoma Firefighters Pension & Retirement System); and *In re Buca, Inc. Securities Litigation*, No. 05-cv-1762 (D. Minn.) (\$1.6 million settlement) (West Palm Beach Police Pension Fund). Recently, Mr. Eng was a member of the litigation team prosecuting *California Public Employees' Retirement System v. Moody's Corp.*, No. CGC-09-490241 (Cal. Super. Ct. San Francisco County), against credit ratings agencies based on allegedly negligent misrepresentations regarding the creditworthiness of three structured investment vehicles. The firm achieved settlements totaling \$255 million from Moody's (defendants Moody's Corp. and Moody's Investors' Services, Inc.) and McGraw Hill Companies, Inc. (S&P). The settlements rank as the largest known recoveries from Moody's and S&P in a private lawsuit for civil damages relating to ratings.

Mr. Eng currently serves as counsel for lead plaintiffs in *In re Digital Domain Media Group, Inc. Securities Litigation*, No. 12-14333-CIV (S.D. Fla.), a securities class action stemming from the rapid collapse of the digital production company Digital Domain Media Group, Inc., which filed for bankruptcy less than one year after going public.

Mr. Eng is a member of the State Bar of Florida, the U.S. District Court for the Southern, Middle and Northern Districts of Florida, the U.S. District Court for the Eastern District of Wisconsin, the U.S. Court of Appeals for the Eighth and Eleventh Circuits and the United States Supreme Court. He has served as a trial court law clerk in Florida state and federal courts. He is also a member of the Public Investors Arbitration Bar Association and currently serves on the Board of Editors of the PIABA Bar Journal. He was recognized as a Rising Star in the 2010 and 2011 editions of Florida Super Lawyers® and has been awarded a rating of AV® Preeminent™ by Martindale-Hubbell®.

MARC J. GREENSPON

Marc J. Greenspon became Of Counsel to the firm in 2009 and concentrates his practice in the area of antitrust litigation.

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Mr. Greenspon, formerly an associate with the firm from 2003 to 2007, worked on significant antitrust, consumer and securities class actions before starting an independent law practice counseling corporate clients. He maintains his independent law practice, which is not affiliated with the firm.

Mr. Greenspon earned an LL.M. in Securities and Financial Regulation from the Georgetown University Law Center in 2003, a J.D. from Nova Southeastern University in 2002 and a B.A. from the State University of New York at Buffalo in 1999. He co-authored *Securities Arbitration: Bankrupt, Bothered & Bewildered*, 7 Stan. J.L. Bus. & Fin. 131 (2002).

Mr. Greenspon is admitted to practice law in the State of Florida, as well as in the U.S. District Courts for the Southern, Middle and Northern Districts of Florida. Mr. Greenspon is a member of the American Bar Association Section of Antitrust Law and the American Bar Association Committee on Derivatives and Futures Law.

ANNE F. O'BERRY

Since joining the firm in 2000, Anne F. O'Berry has specialized primarily in securities class action litigation, helping to achieve substantial recoveries for institutional investors in cases such as *IndyMac MBS*, *El Paso*, *Lernout & Hauspie*, *Reliant*, *International Rectifier Corp.*, *Sykes* and *WorldCom*.

She has also assisted in several of the firm's antitrust and consumer protection cases, including *Canadian Motor Vehicles*, *Citrus Canker*, *LCD Flat Panel*, *Marine Hose*, *State Street Bank and Trust Co.* and *Bear Stearns*, which settled for \$294.9 million.

Ms. O'Berry began her legal career as a commercial litigation associate at the New York firm of Debevoise & Plimpton and thereafter worked as a staff attorney for a federally funded agency representing indigent death row inmates in state and federal post-conviction litigation, as co-director of a non-profit agency representing incarcerated battered women seeking executive clemency, as a central staff attorney at Florida's Fourth District Court of Appeal and as an adjunct professor at St. Thomas University Law School.

Ms. O'Berry has also served on several law-related committees, including serving as Secretary of the Civil Rights Committee of the Association of the Bar of the City of New York and as Vice President of the National Lawyers Guild's Southern Region. She is presently a member of the Guild's South Florida chapter, Animal Rights Activism Committee and Environmental Human Rights Committee, and is also a member of the Animal Legal Defense Fund.

Ms. O'Berry obtained her B.A. from the University of Pennsylvania in 1983, graduating *summa cum laude* and *Phi Beta Kappa*, and earned her J.D. from New York University School of Law in 1986, where she was the director of the Women in Prison Project at Riker's Island, a member of

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the Civil Rights Litigation Clinic and an Articles Editor on the *Annual Survey of American Law*, where she published the article *Annual Survey of American Law* 325.

While in law school, Ms. O'Berry interned for Judge Abraham D. Sofaer, U.S. District Court for the Southern District of New York and for Judge A. Leon Higginbotham, Jr., U.S. Court of Appeals for the Third Circuit.

Following law school, Ms. O'Berry served as a law clerk to Judge Dickinson R. Debevoise, U.S. District Court for the District of New Jersey, and then as a research and teaching associate to Judge Higginbotham, with whom she co-authored: *The 'Law Only As An Enemy': The Legitimization of Racial Powerlessness Through the Colonial and Antebellum Criminal Laws of Virginia*, 70 N.C. L. Rev. 969 (1992).

Ms. O'Berry is admitted to practice before the New York and Florida Bars, the U.S. Supreme Court and the U.S. District Courts for the Southern and Eastern Districts of New York and the Southern District of Florida.

JOHN H. SUTTER

John H. Sutter focuses on securities litigation and is a member of the firm's whistleblower practice group. He joined Berman Tabacco as Of Counsel in early 2010 after working with the firm for several years as a contract attorney.

Mr. Sutter has participated in a number of the firm's important cases. He was lead associate on the securities litigation against The Bear Stearns Companies, Inc. and their auditors Deloitte and Touche arising out of Bear Stearns's collapse which resulted in a \$294.9 million recovery. Mr. Sutter is currently involved in several active whistleblower actions filed with the U.S. Securities and Exchange Commission. He also drafted investigative memoranda and mediation statements in the *Xerox* litigation, which resulted in a \$750 million recovery for plaintiffs from the company and its auditor, KPMG. He also participated in extensive document review and discovery preparation in the *State Street Bank ERISA* litigation and the *Nortel II* litigation, each of which resulted in a substantial recovery for plaintiffs. He worked on the *General Electric Co.* securities litigation, which settled for \$40 million in 2013.

Before working with Berman Tabacco, Mr. Sutter was both a corporate and litigation associate for two prominent Boston law firms. He also served as an in-house assistant general counsel with Biogen, Inc., focusing in particular on securities and compliance issues.

Mr. Sutter graduated second in a class of nearly 400 from Boston University School of Law, *summa cum laude*, in 1995. He served on the *Boston University Law Review* and was a charter member of the *Phi Delta Phi* Legal Fraternity. He also was a distinguished scholar for all three years and was the recipient of the William L. and Lillian Berger Award for Distinguished Academic Achievement. He graduated from Suffolk University in 1992 with a B.A. in English Literature.

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He is admitted to practice law in the Commonwealth of Massachusetts, the U.S. District Court for the District of Massachusetts and the United States Court of Appeals for the First Circuit.

Staff Attorneys

MACKLINE BASTIEN

Mackline Bastien joined the firm in 2015 as a staff attorney. Prior to joining Berman Tabacco, Ms. Bastien managed a solo practice in the Boston area where she represented clients in family law, business formation and housing matters. In addition, she represented an individual in a civil dispute as well as a buyer purchasing a business.

Ms. Bastien received her J.D. from Thomas M. Cooley Law School. While in law school, Ms. Bastien completed an externship at Hubbard Law Offices, P.C., in Lansing, Michigan where she assisted the general counsel for the Michigan Association of County Drain Commissioner regarding land-use issues and property rights matters. She is admitted to practice law in the Commonwealth of Massachusetts.

BRIAN J. DRAKE

A staff attorney at the firm's Boston office, Brian J. Drake has participated in extensive document review and issue analysis in the BP litigation.

Prior to Berman Tabacco, Mr. Drake was a staff attorney at a number of prominent law firms in Washington, D.C. and Boston, where he developed a broad range of expertise, primarily in the areas of anti-trust and tax litigation.

Mr. Drake received his J.D. from the George Washington University Law School. He is admitted to practice law in the state of Virginia and the District of Columbia.

BERNA LEE

A staff attorney in the firm's Boston office, Berna M. Lee joined the firm in 2015, prior to which, Ms. Lee worked as an associate at a number of New York law firms.

Ms. Lee earned a B.A. in English Literature from Dartmouth College. She received her J.D., *cum laude*, from the Georgetown University Law Center, where she served on the *Georgetown Journal of Legal Ethics*, was a member of the Appellate Litigation Clinic and interned for the Hon. Gladys Kessler of the U.S. District Court for the District of Columbia.

Ms. Lee is admitted to practice law in Rhode Island, New York and the U.S. District Courts of the Southern and Eastern Districts of New York.

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ELLE K. MCKIM

A staff attorney in the firm's Boston office, Ellee K. McKim is a member of the firm's document discovery team. Prior to joining the firm, Ms. McKim served as an associate attorney at a commercial litigation firm in Boston.

At Northeastern University School of Law, Ms. McKim interned for Judge Joyce London Alexander of the United States District Court for the District of Massachusetts. She also served as lawyering fellow for the law school's social justice program.

Ms. McKim is admitted to practice law in the Commonwealth of Massachusetts, the U.S. District Court for the District of Massachusetts and the U.S. Court of Appeals for the First Circuit.

Project Attorneys

LAURA M. FALARDEAU

A project attorney in the firm's Boston office, Laura M. Falardeau is a member of the document discovery team, which helps uncover and compile evidence to prove our cases.

Ms. Falardeau joined the firm in 2011 after working as a contract attorney for several major law firms. Earlier in her career, Ms. Falardeau served as an associate attorney at a law firm in the Boston area.

At Northeastern University School of Law, Ms. Falardeau interned for Judge Peter W. Agnes, Jr. of the Massachusetts Superior Court. During law school Ms. Falardeau also represented victims of domestic violence at Greater Boston Legal Services and served as a Hearings Officer at the Boston Public Health Commission.

Ms. Falardeau is admitted to practice law in the Commonwealth of Massachusetts.

Other Key Personnel

RONALD J. KEATING, DIRECTOR OF INVESTIGATIONS

Based in the firm's Boston office, Ronald J. Keating is a fraud investigator and forensic accountant with nearly three decades of field experience, including 21 years as a Special Agent for the Federal Bureau of Investigation. Mr. Keating directs, manages and conducts complex financial investigations into fraud schemes. A Certified Public Accountant (CPA), Certified Fraud Examiner, FINRA Dispute Resolution Arbitrator and licensed Private Investigator, Mr. Keating joined the firm in 2008. He devotes his skills and energies to uncovering evidence of fraud, often non-public information obtained through interviews with former employees at suspect companies.

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Mr. Keating served as a Special Agent in the FBI's Boston office from 1979-1988 and again from 1995-2007. While with the Bureau, he directed all aspects of complex financial fraud investigations, including securities fraud, Ponzi schemes, financial institution fraud, financial statement fraud and economic crimes. Cases that Mr. Keating investigated in conjunction with federal and state regulators – including the U.S. Securities and Exchange Commission and the Financial Industry Regulatory Authority (formerly the National Association of Securities Dealers) – resulted in criminal penalties, multi-million-dollar settlements and asset forfeiture.

From 1993 to 1995, Mr. Keating served as Senior Special Investigator for the Board of Governors of the Federal Reserve System in Washington D.C., where he directed investigations related to violations of federal money laundering, bank fraud and bank secrecy laws.

Mr. Keating became a CPA in 1979. He is a Massachusetts-licensed Private Investigator, a Certified Fraud Examiner, Certified in Financial Forensics by the American Institute of Certified Public Accountants and a Certified Anti-Money Laundering Specialist. From 2004 to 2011, Mr. Keating was an adjunct faculty member of Southern New Hampshire University's Graduate School of Business, where he taught forensic accounting and fraud examination.

He earned a Master of Science in Taxation from Bentley College in 1988 and a B.S. in Accounting from Northeastern University in 1976.

JAMES HOUGHTON, SENIOR INVESTIGATOR

James A. Houghton is a Senior Investigator based in our firm's Boston office. A member of the Association of Certified Fraud Examiners, Mr. Houghton works closely with our litigation and investigative teams to conduct complex financial investigations into potential fraud schemes. Mr. Houghton's knowledge and insight has brought a unique handling to the process of uncovering evidence of fraud. Such processes often include obtaining nonpublic information through interviews with former employees at suspect companies and conducting research.

Prior to joining Berman Tabacco, Mr. Houghton was a Special Agent for the Defense Criminal Investigative Service, the Law Enforcement and Investigative arm of the Department of Defense Inspector General's Office. While there, he gained 18 years' experience directing all aspects of defense and financial fraud investigations. His cases frequently involved investigations of companies with receivable-based loans with banks. Mr. Houghton handled complex and sensitive investigations that led to both fraud and Qui Tam lawsuits, often working jointly with the U.S. Attorney General's Office and other federal agencies, including the Federal Bureau of Investigations. As a result of his investigations, Mr. Houghton has testified regularly in federal courts. Mr. Houghton's skill and expertise have led to him receiving the Department of Justice Award for Public Service on two separate occasions.

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Mr. Houghton has also been a Special Agent for Naval Criminal Investigative Service and a Financial Analyst for the Federal Bureau of Investigations. He has received Top Secret and Sensitive Compartmented Information Clearance.

Mr. Houghton earned a B.S. in Business Administration and Accounting from Stonehill College. He also attended the Federal Law Enforcement Training Center for White Collar Crime and Financial Fraud Training, as well as their Criminal Investigator Training Program.

JEANNINE M. SCARSCIOTTI, SENIOR PORTFOLIO ANALYST

Jeannine M. Scarsciotti, the firm's senior portfolio analyst has more than 15 years' experience in providing portfolio monitoring, loss calculation and settlement services to the firm's institutional clients. Ms. Scarsciotti works collaboratively with a team of portfolio analysts to provide clients with comprehensive monitoring services. Her team works closely with the firm's attorneys in refining loss calculations to reflect estimated recoverable damages as opposed to market losses. The portfolio analysts, along with the New Case Investigations Team attorneys, routinely work with damage experts to develop regression analyses and analyze confounding information that will impact an investor's ultimate recoverable damages. Ms. Scarsciotti also devotes a substantial portion of her time offering guidance to the firm's institutional clients in understanding their eligibility in securities class action settlements and helping clients with any custodian bank matters or data reconciliation issues that may arise.

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Exhibit 2

EXHIBIT 2*In re Lithium Ion Batteries Antitrust Litigation, Case No. 13-MD-2420 YGR*

BERMAN TABACCO

Reported Hours and Lodestar on a Historical Basis

June 1, 2013 through August 31, 2017

NAME	STATUS	YEAR	TOTAL HOURS	HISTORICAL HOURLY RATE	LODESTAR
ATTORNEYS					
Tabacco, Joseph J.	P	2017	164.40	\$850.00	\$139,740.00
Tabacco, Joseph J.	P	2016	208.20	\$850.00	\$176,970.00
Tabacco, Joseph J.	P	2015	223.70	\$850.00	\$190,145.00
Tabacco, Joseph J.	P	2014	256.00	\$835.00	\$213,760.00
Tabacco, Joseph J.	P	2013	302.70	\$795.00	\$240,646.50
DeValerio, Glen	P	2017	2.70	\$850.00	\$2,295.00
DeValerio, Glen	P	2015	3.90	\$850.00	\$3,315.00
DeValerio, Glen	P	2014	10.90	\$835.00	\$9,101.50
DeValerio, Glen	P	2013	6.30	\$795.00	\$5,008.50
Heffelfinger, Christopher	P	2016	63.10	\$850.00	\$53,635.00
Heffelfinger, Christopher	P	2015	115.40	\$830.00	\$95,782.00
Lavallee, Nicole	P	2016	1.00	\$850.00	\$850.00
Zoberman, Wendy	P	2013	87.60	\$750.00	\$65,700.00
Donovan, Kathleen	P	2016	0.70	\$850.00	\$595.00
Donovan, Kathleen	P	2015	0.50	\$830.00	\$415.00
Donovan, Kathleen	P	2014	0.30	\$790.00	\$237.00
Donovan, Kathleen	P	2013	0.20	\$750.00	\$150.00
Moody, Kristin	P	2015	0.30	\$690.00	\$207.00
Seaver, Todd	P	2017	80.90	\$760.00	\$61,484.00
Seaver, Todd	P	2016	406.10	\$725.00	\$294,422.50
Seaver, Todd	P	2015	191.50	\$690.00	\$132,135.00
Seaver, Todd	P	2014	563.90	\$655.00	\$369,354.50
Seaver, Todd	P	2013	362.10	\$625.00	\$226,312.50
Barenbaum, Daniel E.	P	2013	0.40	\$625.00	\$250.00
Orenstein, Nathaniel	A	2015	14.30	\$450.00	\$6,435.00
Kikuchi, Akiko	OC	2017	482.50	\$400.00	\$193,000.00
Kikuchi, Akiko	OC	2016	1,654.50	\$400.00	\$661,800.00
Kikuchi, Akiko	OC	2015	2,206.50	\$400.00	\$882,600.00
Kikuchi, Akiko	OC	2014	1,377.50	\$400.00	\$551,000.00
Watson, Marie	A	2013	45.20	\$350.00	\$15,820.00
Kim, Richard D.	OC	2016	825.00	\$395.00	\$325,875.00
Kim, Richard D.	OC	2015	941.80	\$395.00	\$372,011.00
Kim, Richard D.	OC	2013	32.00	\$395.00	\$12,640.00

EXHIBIT 2***In re Lithium Ion Batteries Antitrust Litigation, Case No. 13-MD-2420 YGR*****BERMAN TABACCO**

Reported Hours and Lodestar on a Historical Basis

June 1, 2013 through August 31, 2017

NAME	STATUS	YEAR	TOTAL HOURS	HISTORICAL HOURLY RATE	LODESTAR
DeValerio, Kyle	P	2017	22.70	\$640.00	\$14,528.00
DeValerio, Kyle	P	2016	367.60	\$610.00	\$224,236.00
DeValerio, Kyle	P	2015	60.10	\$580.00	\$34,858.00
DeValerio, Kyle	A	2014	19.00	\$410.00	\$7,790.00
Greenspon, Mark	OC	2017	1.50	\$515.00	\$772.50
Greenspon, Mark	OC	2016	58.40	\$510.00	\$29,784.00
Greenspon, Mark	OC	2015	0.20	\$450.00	\$90.00
Greenspon, Mark	OC	2014	3.10	\$380.00	\$1,178.00
Greenspon, Mark	OC	2013	1.20	\$360.00	\$432.00
Elias, Victor	A	2013	0.50	\$350.00	\$175.00
McGrath, Sarah	A	2016	9.70	\$410.00	\$3,977.00
McGrath, Sarah	A	2015	70.00	\$390.00	\$27,300.00
McGrath, Sarah	A	2014	449.60	\$370.00	\$166,352.00
McGrath, Sarah	A	2013	174.40	\$350.00	\$61,040.00
Moy, Jessica	A	2017	278.10	\$450.00	\$125,145.00
Moy, Jessica	A	2016	1,208.10	\$420.00	\$507,402.00
Moy, Jessica	A	2015	2,169.60	\$400.00	\$867,840.00
Moy, Jessica	A	2014	1,550.90	\$355.00	\$550,569.50
Moy, Jessica	A	2013	195.00	\$340.00	\$66,300.00
Bass, William	A	2017	114.00	\$360.00	\$41,040.00
Bass, William	A	2016	1,498.80	\$340.00	\$509,592.00
Bass, William	A	2015	278.90	\$330.00	\$92,037.00
NON-ATTORNEYS					
Keating, Ronald	INV	2016	24.00	\$175.00	\$4,200.00
Keating, Ronald	INV	2013	3.00	\$175.00	\$525.00
Nolan, Katherine	INV	2016	146.30	\$175.00	\$25,602.50
Scarsciotti, Jeannine	PL	2014	0.30	\$175.00	\$52.50
Becker, Kathy	PL	2017	4.50	\$175.00	\$787.50
Becker, Kathy	PL	2016	135.10	\$175.00	\$23,642.50
Becker, Kathy	PL	2015	69.40	\$175.00	\$12,145.00
Becker, Kathy	PL	2014	60.60	\$175.00	\$10,605.00
Becker, Kathy	PL	2013	28.40	\$175.00	\$4,970.00
Raney, Stephanie L.	PL	2017	15.10	\$175.00	\$2,642.50
Raney, Stephanie L.	PL	2016	39.40	\$175.00	\$6,895.00

EXHIBIT 2***In re Lithium Ion Batteries Antitrust Litigation, Case No. 13-MD-2420 YGR***

BERMAN TABACCO

Reported Hours and Lodestar on a Historical Basis

June 1, 2013 through August 31, 2017

NAME	STATUS	YEAR	TOTAL HOURS	HISTORICAL HOURLY RATE	LODESTAR
Raney, Stephanie L.	PL	2014	8.90	\$175.00	\$1,557.50
Bernardoni, Andrea R.	PL	2016	521.10	\$175.00	\$91,192.50
Bernardoni, Andrea R.	PL	2015	100.80	\$175.00	\$17,640.00
Donegan, Sean	IT	2014	4.60	\$175.00	\$805.00
Dodson, Logan	SC	2016	465.50	\$175.00	\$81,462.50
Dodson, Logan	SC	2015	257.30	\$175.00	\$45,027.50
Bass, Will	SC	2015	0.90	\$175.00	\$157.50
Bass, Will	SC	2014	104.30	\$175.00	\$18,252.50
Soboleva, Yelena	PL	2017	64.00	\$175.00	\$11,200.00
Soboleva, Yelena	PL	2016	46.50	\$175.00	\$8,137.50
Soboleva, Yelena	PL	2015	49.00	\$135.00	\$6,615.00
Soboleva, Yelena	PL	2014	76.20	\$130.00	\$9,906.00
Soboleva, Yelena	PL	2013	4.60	\$125.00	\$575.00
Cheung, Paige	PL	2015	5.00	\$80.00	\$400.00
TOTAL:			21,398.30		\$9,021,126.00

(P) Partner
(A) Associate
(OC) Of Counsel
(SC) Summer Clerk
(INV) Investigator
(PL) Paralegal

Exhibit 3

EXHIBIT 3***In re Lithium Ion Batteries Antitrust Litigation, Case No. 13-MD-2420 YGR***

BERMAN TABACCO

Expenses Incurred

June 1, 2013 through August 31, 2017

CATEGORY	AMOUNT INCURRED
Court Fees (filing, etc.)	
Computer Research (Lexis, Westlaw, PACER, etc.)	\$21,578.06
Document Production	
Experts / Consultants	
Messenger Delivery	\$1,606.95
Photocopies - In House*	\$29,353.88
Photocopies - Outside	\$2,940.03
Postage	\$348.35
Service of Process	\$636.00
Overnight Delivery (Federal Express, etc.)	\$2,578.16
Telephone / Facsimile	\$6,223.72
Transcripts (Hearings, Depositions, etc.)	\$2,061.78
Travel (Airfare, Ground Travel)	\$25,881.17
Travel (Meals and Lodging)	\$5,391.33
Total:	\$98,599.43

* In-House Photocopies are charged at \$.20/per page for single-sided copies and \$.12/per side for double-sided copies.

Exhibit 4

Law Offices
PEARSON, SIMON & WARSHAW, LLP
44 MONTGOMERY STREET, SUITE 2450
SAN FRANCISCO, CALIFORNIA 94104
(415) 433-9000
FAX (415) 433-9008
WWW.PSWLAW.COM

SAVERI & SAVERI, INC.
706 SANSOME STREET
SAN FRANCISCO, CALIFORNIA 94111
TELEPHONE: (415) 217-6810
TELECOPIER: (415) 217-6813



BERMAN DEVALERIO

May 21, 2013

Privileged and Confidential

RE: *In re Lithium Ion Batteries Antitrust Litigation*
Case No. 12-cv-5129-YGR, MDL No. 2420
Protocols for Maintaining and Reporting Time and Expenses

Dear Colleagues:

Lead Counsel have determined that the fairest way to ensure that work in this case is equitably distributed, duplication of effort minimized and maximum efficiency achieved is that a strictly-enforced protocol shall apply for all of the law firms that wish to participate in the joint prosecution of the Direct Purchaser Action. Accurate and timely reporting is an essential management tool necessary for Lead Counsel to fulfill their obligations to the Class and the Court and also to ensure fair and equitable treatment of all of the law firms that perform work. Any firm that hopes and expects to be compensated for their efforts in the event of a recovery for the Class needs to strictly comply with these protocols.

Accordingly, no later than the 15th calendar day of each month, every firm shall be responsible for submitting a time and expense report for all time expended by each of the lawyers and professionals that such firm would seek an award of fees or reimbursement of expenses if the case is prosecuted to a successful conclusion. Joe Tabacco's San Francisco office Berman DeValerio, will be the repository for reporting and tracking time. Such reports shall be electronically submitted using an Excel spreadsheet format attached hereto. Please send such reports electronically to ysoboleva@bermandevalerio.com.

The Report from your firm shall set forth the identity of the attorney or professional performing work on the case, the level of seniority of such attorney or professional, *i.e.* partner, senior associate junior associate, paralegal, investigator, the current and customary hourly rates charged by your law firm for such attorneys/ professionals and the hours expended by each such individual by category of task performed as set forth in the Excel template. If your hourly rates

May 21, 2013

Page 2

change during the course of the litigation, you are responsible for advising Lead Counsel of the same. In addition, again using the same Excel template, your firm shall report expenses incurred by category during the reporting month.

In addition, the following Rules and Protocols shall apply to the time and expense reporting process:

1. Maximum allowed Hourly Rates for the duration of the case, unless otherwise amended by Lead Counsel or the Court shall be as follows:

- a. the highest hourly rates for Attorneys at the highest Partner level shall be capped at \$850 per hour;
- b. the highest hourly rates for Attorneys at the Of-counsel/Special counsel level for substantive work shall be capped at \$650 per hour, which excludes document review;
- c. the highest hourly rates for Attorneys at the highest Associate level for substantive work shall be capped at \$450 per hour, which excludes document review;
- d. the highest hourly rates for Attorneys at the Associate level engaged in English-language document review shall be capped at \$350 per hour; (a cap of \$400 per hour may be granted where reviewer has special skill set, such as foreign language translation, however any such exceptions must be approved by Lead Counsel in advance or any such work performed shall be subject to this maximum hourly rate); and
- e. the highest hourly rates for Paralegals and investigators shall be capped at \$175 per hour.

2. Detailed time records must reflect assignment. The detailed explanation of work performed must identify the assignment for which the task is performed, including the identity of the Lead Counsel who assigned or otherwise authorized the work performed. For example, "Assigned by Attorney __: analyze FTAIA case law and draft memorandum to Atty __."

3. Read and Review time. Ordinarily, no time shall be allowed to be billed for any attorneys or professionals who engage in general read and review time. Read and review time shall only be allowed where such activity is a necessary part of performing specific assignments for work as given by Lead Counsel. Attorneys are expected to keep generally apprised of the status of the case sufficient to allow their participation in carrying out specific assignments but the Class should not be burdened with Attorneys from several firms in the case, for example, billing for reading the same ECF notice unless it is germane and specific to their assignments and responsibilities in the case.

May 21, 2013

Page 3

4. Travel time shall not be reimbursable unless the same the Attorney or Professional is actively engaged in preparation or work in connection with a particular assignment made by Lead Counsel which necessitated the travel (*i.e.* while on an airplane, preparing for a deposition is billable but watching a movie is not).

5. Expenses, usual and customary expenses incurred by your firm in connection with specific assignments of work in the case will be allowed. However, to avoid potential abuse, the following restrictions shall apply:

- a. Application to the Court for reimbursement of air travel, of less than 4 hours duration, shall be for coach class only. (Absent extraordinary circumstances) reimbursement for international travel may be sought at business class rates.
- b. Application to the Court for hotel and meals reimbursement shall be at no more than 150% per day of the U.S. government per-diem approved for selected cities. See <http://www.gsa.gov> (*i.e.* San Francisco in summer time \$154 hotel plus \$71 meals x 150% =\$337.50 per day).
- c. Photocopy/facsimile charges will ordinarily not be allowed, absent extraordinary circumstances.
- d. Unless authorized in advance by Lead Counsel, expenditures for experts, document repositories or management, staff overtime shall not be allowed.

6. Failure to submit timely and accurate reports shall be grounds for disallowing any time and expenses claimed.

Lead Counsel may, but is not required to, provide notice of delinquency or tardy reporting. Further, as warranted, Lead Counsel may request detailed time records backing up claimed reported time or expenses. It is the responsibility of each participating law firm to insure that they have submitted timely and accurate reports in order to participate in the case.

7. Please submit your time and expense reports in the Excel Format for each separate month from the inception of your work on these cases through May 31, 2013. The deadline for this submission is June 14, 2013. Thereafter, monthly submissions shall be due no later than the 15th day of the preceding month. Please forward the reports in the template form provided herewith to ysoboleva@bermandevalerio.com.

Also, please sign and PDF a copy of this letter to Joe Tabacco c/o ysoboleva@bermandevalerio.com acknowledging that you have read these protocols and agree to comply with these terms as a condition for participating in the prosecution of the case.

May 21, 2013

Page 4

We look forward to working with you in the months ahead and achieving a successful result for our clients and the class.

Warmest regards,

/s/ R. Alexander Saveri

R. Alexander Saveri

/s/ Bruce L. Simon

Bruce L. Simon

/s/ Joseph J. Tabacco, Jr.

Joseph J. Tabacco, Jr.

Read and acknowledged

By: _____

[print name and law firm]

Exhibit 5

EXHIBIT 5***In re Lithium Ion Batteries Antitrust Litigation, Case No. 13-MD-2420 YGR*****ALL PLAINTIFFS' COUNSEL | TOTAL HOURS AND LODESTAR**

FIRM	HOURS	LODESTAR
<i>Co-Lead Counsel</i>		
Berman Tabacco	21,398.30	\$9,021,126.00
Pearson, Simon & Warshaw, LLP	27,014.60	\$11,068,884.50
Saveri & Saveri, Inc.	13,117.40	\$5,522,710.00
<i>Other Plaintiffs' Counsel</i>		
Barrack Rodos & Bacine	5,533.70	\$2,122,124.50
Berger & Montague, P.C.	52.30	\$25,215.00
Boni & Zack LLC	708.30	\$183,380.00
Brutzkus Gubner Rozansky Seror Weber LLP	3,469.10	\$1,405,338.00
Fine, Kaplan and Black, R.P.C.	1,751.10	\$756,925.00
Finkelstein Thompson LLP	228.80	\$101,995.00
Freed Kanner London & Millen LLC	6,824.55	\$3,341,728.50
Grant & Eisenhofer P.A.	3,518.10	\$1,418,353.50
Gray Plant Mooty	-	\$0.00
Glancy Prongay & Murray LLP	4,184.10	\$1,862,711.50
Gross & Belsky P.C.	4,881.60	\$1,782,090.00
Gustafson Gluek PLLC	5,290.80	\$2,455,765.00
Heins Mills & Olson, P.L.C.	11,728.30	\$4,613,202.50
Hulett Harper Stewart LLP	-	\$0.00
Kaplan Fox & Kilshimer LLP	4,542.40	\$1,843,330.00
Kellogg, Hansen, Todd, Figel & Frederick,	3,284.70	\$1,193,265.50
Law Offices of Francis O. Scarpulla	98.35	\$29,867.50
Lite DePalma Greenberg, LLC	3,003.80	\$951,520.00
Lockridge Grindal Nauen P.L.L.P.	4,201.30	\$1,612,791.50
MoginRubin LLP	491.10	\$184,091.50
NastLaw LLC	1.20	\$738.00
Nussbaum Law Group	2,443.10	\$1,134,045.00
Polsinelli LLP	10,233.70	\$4,929,045.00
Pritzker Levine LLP	2,075.30	\$868,757.25
Reinhardt Wendorf & Blanchfield	4,950.40	\$1,976,748.50
Saltz, Mongeluzzi, Barrett & Bendesky, P.C.	6,030.50	\$2,333,189.50
Shulman Law	38.80	\$25,220.00
Spector Roseman Kodroff, P.C.	9,280.40	\$3,721,655.00
Steyer Lowenthal Boodrookas Alvarez & Smith	6,031.80	\$2,636,666.50
Stueve Siegel Hanson LLP	254.60	\$113,921.00
Weinstein Kitchenoff & Asher LLC	2,306.10	\$956,232.50
Zelle LLP	4,894.60	\$2,296,433.50
TOTALS HOURS AND LODESTAR:	173,863.20	\$72,489,066.75

Exhibit 6

92 N.Y.U. L. Rev. 937

New York University Law Review
 October, 2017

Conference

Theodore Eisenberg^{a1} Geoffrey Miller^{d1} Roy Germano^{r1}

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ATTORNEYS' FEES IN CLASS ACTIONS: 2009-2013

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INTRODUCTION

When a class action settles (or, rarely, when it generates a litigated outcome), the court is faced with the job of awarding an appropriate attorneys' fee. The issue is important. If fees are set too low, counsel will not receive fair compensation for their services to the class. Worse yet, if fees are too low, then qualified counsel will not bring these cases in the first place. Injured parties will receive no *938 redress, and potential wrongdoers will no longer be deterred out of fear of potential class action liability. If fees are set too high, attorneys will receive an unjustified windfall, and some of the benefits that should have gone to class members will be diverted to class counsel. Excessive class counsel fees might also induce class counsel to bring weak cases. Setting an appropriate counsel fee is thus crucial to the effective functioning of class action litigation.

But how is the court to determine the fee? In ordinary cases, the fee is determined by private negotiation between lawyer and client, subject only to minimal regulations against unfair or exorbitant fees. Not so for class actions: In these cases, there is no negotiation over fees between class counsel and absent class members. There may be a retainer agreement between counsel and the representative plaintiff, which can provide valuable information, but the retainer agreement cannot bind absent class members. Unlike most issues presented to a court in litigation, moreover, the judge cannot rely on adversarial presentation to inform her of the possibilities for decision. In “common fund” cases, the fee is taken out of the class recovery.¹ At this stage, class counsel has a potential conflict with their own clients because each dollar that goes to the attorneys is a dollar that does not go to class members. Defendants, for their part, have no stake in how the settlement amounts are distributed between class counsel and class members. Even in consumer cases where the defendant agrees to pay the class's counsel fees, the adversarial process is disarmed because the settlement includes

the defendant's agreement to pay the fee up to a specified amount. Adversarial presentation is not completely absent: Objectors may take issue with the size of the fee request, for example. But even when their objections are bona fide, objectors can rarely mount an effective challenge to the fee request: They usually have limited time and resources and have limited access to the relevant facts.

*939 A review of other class action fee awards is central to the court's analysis.² But here, too, the courts face a difficulty. Over the past few decades, courts have ruled on thousands of class action fee requests. No judge has the time to engage in a comprehensive review of awards in similar cases, and the cases provided to the court by counsel may not be an unbiased sample of awards in similar cases because counsel's interest is in persuading the court that their fee request is reasonable.

Here is where the empirical analysis of law can offer genuine help. Although courts are not able to conduct a thorough review of awards in similar cases, empirical researchers can do so. The analysis of class counsel fees is thus a telling example of the potential benefits of empirical analysis of law as a discipline: It can both illuminate legal practices and help researchers better understand the operation of our legal system, and it can also offer judges concrete assistance when deciding important and difficult litigation issues.

Federal judges recognize the value of empirical research in the area of class action attorneys' fees and rely extensively on those studies when assessing fee requests in particular cases.³ The leading empirical studies are papers by two of the authors of the present paper (Eisenberg and Miller) published in 2004 and 2010, and a 2010 paper by Professor Brian Fitzpatrick.⁴ These authors use contrasting, but complementary, approaches to the topic. Eisenberg and Miller's studies are broad--covering all reported decisions in which fees could be determined over two time periods: The first Eisenberg and Miller paper reported on 362 opinions issued in the years 1993-2002,⁵ and the second Eisenberg and Miller paper examined data from nearly 700 common-fund settlements between 1993 and 2008.⁶ Fitzpatrick, in contrast, focused on a shorter time period but included unreported as *940 well as reported cases: He analyzed nearly 700 common-fund settlements in 2006 and 2007.⁷ The whole of this literature is more than the sum of its parts; even though Eisenberg/Miller and Fitzpatrick examined somewhat different data sets, the empirical results they reported were remarkably consistent.

The data examined in these studies did not extend past 2008. Much has happened during the ensuing years--most importantly, the financial crisis of 2007-2009, and the legal, political, and attitudinal changes associated with that event.⁸ Those events were of such a magnitude as to raise the question whether the patterns observed in previous years would continue as they had before, or whether some significant long-term changes would be observed.

This study seeks to answer that question. We study 458 cases reported in the five years from 2009-2013. Our present study examined a larger number of cases per year than we had examined in previous research, due to the increased availability of PACER as a resource to supplement information that could be obtained from reported decisions alone. This resulted in more comprehensive coverage and also generated a somewhat greater number of smaller-value cases in the overall mix. The overarching headline of the present study is that despite the financial crisis and its many effects on our national life, little has changed in class action attorneys' fees. Average fee percentages are in line with prior studies. We continue to find a "scaling" effect, in the sense that fees as a percentage of the recovery tend to decrease as the size of the recovery increases--an effect that appears to be due to the economies of scale that can sometimes be achieved in very large cases.⁹ The key fee determinant continues to be the size of the class recovery: The amazingly regular relationship between these variables continues in the present data.¹⁰ As in the previous *941 Eisenberg/Miller studies,¹¹ we find that fees are a function of the risk of the case--large fees in high-risk cases--although in the most recent data the effect is only weakly statistically significant. As in prior work,¹² we document an inverse relationship between the percentage fee and the lodestar multiplier (the enhancement factor that applies when fees are determined on the basis of hours and

hourly rate):¹³ Cases with lower percentage fees are associated with higher multipliers--a factor we associate with the economies of scale that can be realized for legal representation in large cases. Likewise, and for similar reasons, lodestar multipliers tend to rise with the size of class recovery.

I

EMPIRICAL ANALYSIS

Our data set consists of all class action cases reported during the 2009-2013 period from which usable information on counsel fees could be obtained.¹⁴ We harvested this data using the same technique as in our prior studies: We conducted a search of reported cases using *942 computerized legal research tools, and then supplemented that research by examining the federal court's PACER database in order to locate additional pertinent information.¹⁵ This resulted in a larger number of cases harvested and analyzed per year because the PACER data was more comprehensive in the more recent data. We begin by examining short- and long-term trends in recoveries and fees over time. We follow by investigating potential determinants of fee awards and fee percentages.

A. Class Recoveries and Attorneys' Fees over Time

Figure 1 shows mean and median recoveries and mean and median attorneys' fees from 2003-2013. The data have been adjusted for inflation and transformed into base 10 logarithms to account for the fact that the distributions are skewed heavily to the left with a few extreme outliers. Logging the data helps to normalize the distributions and reduce the influence of outliers on the mean. These units are interpretable as powers of 10. A value of 6, for instance, is equal to 10^6 , or \$1,000,000. Figure 1a shows recoveries and fees for all cases from 2003-2013. It appears from these data that recoveries and fees decreased over the 2003-2013 period, particularly after the onset of the financial crisis in 2007-2008. We urge caution, however, in interpreting Figure 1a. PACER, the database we used to build these data sets, became more available and more complete over the years we are examining. As a result, more cases with small recoveries came into the database over time. We therefore believe that the presence of more large-recovery cases in the earlier years of the series is driving up the mean and median values in the 2003-2008 data set compared to the 2009-2013 data set.

To account for this possibility, we split our sample into cases with recoveries of less than \$50 million (Figure 1b) and recoveries greater than \$50 million (Figure 1c). Figure 1b shows that among cases with recoveries of less than \$50 million, mean and median recoveries and fees held more or less constant between 2003 and 2013. A t-test indicates that the mean fee in 2013 was not statistically different than the mean fee in 2003. Figure 1c indicates that among cases with recoveries greater than \$50 million, recoveries and fees did not follow a discernable up or down pattern over the 2003-2013 period. It is therefore safe to say that recoveries and fees did not increase over the 2003-2013 period.

***943 FIGURE 1. CLASS RECOVERY AND ATTORNEY FEES OVER TIME, MEAN AND MEDIAN (LOG 10), 2003-20133**

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Figure 2 presents median and mean recoveries and fees during the 2009-2013 period, the focus of this article. The data have been adjusted for inflation and disaggregated by cases with recoveries of less than \$100 million (Figures 2a and 2b) and cases with recoveries greater than \$100 million (Figures 2c and 2d). The majority of cases during the 2009-2013 period (92%) had recoveries under \$100 million. Figure 2a shows that the mean recovery for these smaller cases ranged from a low of \$9 million in 2013 to a high of \$12.2 million in 2010; the median recovery ranged from a low of \$2.9 million in 2013 to a high of \$5.1 million in 2010. Figure 2b shows that the mean fee award for cases with recoveries under \$100 million increased from \$2.6 million in 2009 to \$3.1 million in 2011, then decreased to \$2.1 million by 2013. Median fees, on the other hand, decreased steadily from a high of \$1.3 million in 2009 to a low of \$695,000 in 2013.

Looking now at cases with recoveries greater than \$100 million, we see greater volatility in annual changes in mean and median recoveries and fees. Figure 2c shows that the mean recovery decreased from \$467 million in 2009 to \$158 million in 2010, then went back up to \$322 million in 2011 and back down to \$249 million in 2012. The mean recovery then surged in 2013 to a staggering \$976 million--an increase that was driven primarily by an unprecedented settlement by Visa, *944 Mastercard, and other credit card companies worth \$7.25 billion.¹⁶ As a point of reference, note that only 1.5% of class action cases over the 2009-2013 period resulted in recoveries greater than \$500 million. The three largest recoveries after \$7.25 billion were \$1.08 billion,¹⁷ \$926 million,¹⁸ and \$730 million.¹⁹ Figure 2d depicts similar volatility in mean and median fees for cases with recoveries greater than \$100 million. The mean fee, for instance, decreased from \$74.4 million in 2009 to \$37.9 million in 2010. It then rose to \$86.7 million in 2011, decreased to \$51 million in 2012, and surged to \$124 million in 2013.

FIGURE 2. RECOVERIES AND FEES IN INFLATION-ADJUSTED DOLLARS, 2009-2013.

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B. Fee Method and the Strong Linear Fee-Recovery Relationship

Attorneys' fees are calculated using the lodestar method, a percentage method, a mix of the two methods, or by leaving the fee to *945 judicial discretion. The lodestar method involves multiplying the reasonable hours expended by attorneys by a reasonable hourly rate, then using certain factors to adjust the fee award up or down. The percentage method multiplies the gross recovery by a fixed percentage to determine the fee award. The mixed method usually employs a percentage method, which is then cross-checked with the lodestar method to ensure that the percentage method has not resulted in an excessively high fee. Table 1 shows the breakdown of cases by fee calculation methodology for cases in which the methodology could be determined.²⁰

TABLE 1. FREQUENCY OF METHOD USED, 2009-2013.

	<i>N</i>	<i>% OF CASES IN TIME PERIOD</i>
Lodestar	27	6.29
Percent	230	53.61
Both	164	38.23
Discretion	8	1.86
Total	429	100

The vast majority of fee awards during the 2009-2013 period were decided using the percentage method or the mixed method. The percentage method was used in 53.61% of cases and used in combination with a lodestar check in an additional 38.23% of cases. The use of the pure lodestar method, on the other hand, was used in only 6.29% of cases

during the 2009-2013 period. This is down from 13.6% during the 1993-2002 period²¹ and 9.6% during the 2003-2008 period.²²

Not surprisingly, we find that the strong positive relationship between fee award and recovery amount that we reported in analyses of 1993-2008 data²³ persists over the 2009-2013 period as well. Figure 3a shows the relationship between fee awards and class recoveries for all cases ($n = 458$) and Figure 3b shows the relationship between fee awards and recoveries for cases where recoveries were larger than \$100 million ($n = 34$). Both figures indicate that these variables are strongly correlated, even in cases with large recoveries. When all cases are assessed, the correlation coefficient is 0.99. This is comparable to *946 what we reported in our analyses of the 1993-2008 data.²⁴ When the 34 outlying cases are assessed independently, the correlation coefficient remains high at 0.89. This 0.89 correlation is stronger than the 1.77 correlation coefficient we reported for cases with large recoveries over the 1993-2008 period.²⁵ While both correlations are strong, the stronger correlation we find in the 2009-2013 data suggests that the percentage method is being used more often in large-recovery cases in recent years compared to past years.

FIGURE 3. FEES AS A FUNCTION OF RECOVERY, 2009-2013

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An important difference between Figures 3a and 3b is the slope of the regression lines. When all cases are assessed, the slope of the line in Figure 3a is nearly equal to one. This signifies that, in general, attorneys' fees increase in direct proportion to increases in recovery amounts. As recoveries become very large, however, the fee increases at a slower pace. So although the recovery size has a significant influence on the fee size, the fee-to-recovery ratio tends to be lower in cases with very large recoveries. How much lower? Figure 4 shows the mean and median fee-to-recovery ratios over the 2009-2013 period for all cases and for cases with recoveries larger than \$100 million. Between 2009 and 2013, the mean and median ratio fluctuated from a *947 minimum of 0.25 to a maximum of 0.30. The average fee percentage during this period, in other words, was between 25% and 30% of the gross recovery. On average, fees were 27% of gross recovery during the 2009-2013 period, which is higher than the average fee percentage of 23% that we reported in our analyses of the 1993-2008 period.²⁶ Figure 4 also shows that the fee-to-recovery ratio over the 2009-2013 period was lower for cases with recoveries larger than \$100 million. Looking only at cases with recoveries larger than \$100 million, we see that mean and median fee percentages varied from a low of 16.6% in 2009 to a high of 25.5% in 2011--variation that is probably due to the significantly smaller number of very large cases in our data set.

FIGURE 4. MEAN AND MEDIAN FEE PERCENTAGES, 2009-2013

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C. Scaling Effect

The flatter slope we observed in Figure 3b and the lower fee percentages we see in Figure 4 for cases with recoveries larger than \$100 million are indicative of a scaling effect that we discussed in prior studies.²⁷ Figure 5 presents more insight into this hypothesized scaling effect by breaking recoveries into deciles of about 45 cases each and showing corresponding mean and median fee percentages for cases with recovery amounts in those ranges. The first marker on the x-axis *948 of Figure 5, for instance, represents the first decile, or cases with recovery amounts under \$400,000. The second marker represents the second decile, or cases with recovery amounts in the range of \$400,000 to \$750,000, and so on all the way up to the tenth marker, which represents the tenth decile, or cases with recovery amounts exceeding \$67.5 million. Figure 5 indicates that as recovery amount increases, the ratio of the size of the attorneys' fee relative to the size of the recovery (i.e., the fee percentage) tends to decrease. This is especially true for recoveries in ranges higher than the fifth decile, in which the maximum amount is \$3.9 million. Average fee percentages range between 28% and 31% for cases

with recoveries of less than \$3.9 million. Beyond \$3.9 million, average fee percentages fall steadily from 27.4% in the sixth decile to 22.3% in the tenth decile.

FIGURE 5. FEE PERCENTAGE, BY CLASS RECOVERY AMOUNT (DECILE RANGES), 2009-2013

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Class recovery ranges are as follows. First decile: less than \$400,000; second decile: \$400,000-\$750,000; third decile: \$750,000-\$1.4 million; fourth decile: \$1.4-\$2.65 million; fifth decile: \$2.65-\$3.9 million; sixth decile: \$3.9-\$6.5 million; seventh decile: \$6.5-\$12 million; eighth decile: \$12-\$23.4 million; ninth decile: \$23.5-\$67.5 million; tenth decile: greater than \$67.5 million.

***949 D. Locale and Case Category**

Table 2 shows the 10 federal district courts with the most class action cases. By far the largest number of class action cases was brought in the Southern District of New York and the Northern District of California. The Southern District of New York accounted for 76 of the 458 cases in the data set and the Northern District of California accounted for 53. These are the only two districts that account for more than 10% of the total cases by themselves, and combined they account for over 25% of all cases. Only one other district, the Southern District of California, accounted for more than 5% of the cases in the sample. Table 2 shows some variation in the mean and median fee percentages, attorneys' fees, and recoveries awarded in these districts. Of note is the large average recovery in the Eastern District of New York. This \$381.96 million average recovery--nearly eight times larger than the overall average recovery--is driven by the record credit card settlement mentioned earlier. Examining median values, which are less sensitive to outliers than the mean, we see that the largest median recoveries were awarded in the District of New Jersey (\$11.38 million), the Eastern District of New York (\$9.25 million), and the District of Minnesota (\$8.95 million). The lowest average fee percentages were 24%, awarded in the Central District of California and the Western District of Washington; the highest were 30%, awarded in the Eastern District of Pennsylvania and the District of New Jersey.

Table 2 shows that the difference in fee percentages between state courts and federal courts that we discussed in our analyses of the 1993-2008 period has not carried over to the 2009-2013 period.²⁸ Note that the mean and median fee percentages in state courts were 27% and 30%, respectively, which are nearly identical to the fee percentages for federal courts. It is also important to note that only a small fraction of cases were brought to state courts--1.7% of all cases in our data set. Over the 1993-2008 period, more than 10% of cases were state cases.²⁹ This shift from state to federal courts suggests that the Class Action Fairness Act of 2005³⁰ may have been successful in routing class action cases away from state courts to federal courts.³¹

***950 TABLE 2. FEE AND CLASS RECOVERIES, BY LOCALE, 2009-2013**

COURT	N	RECOVERIES		FEES		FEE PERCENTAGES	
		MEAN (MILLIONS OF DOLLARS)	MEDIAN (MILLIONS OF DOLLARS)	MEAN (MILLIONS OF DOLLARS)	MEDIAN (MILLIONS OF DOLLARS)	MEAN (%)	MEDIAN (%)
S.D.N.Y.	78	63.77	3.7	11.14	1.04	27	31
N.D. Cal.	53	37.2	5.13	10.34	1.32	26	25
S.D. Cal.	24	6.03	2.58	1.45	0.61	25	25
C.D. Cal.	21	30.88	3.63	5.36	0.88	24	25
E.D.N.Y.	21	381.96	9.25	36.08	2.56	27	30
E.D. Pa.	19	15.74	4	4.92	1	30	30
D.N.J.	18	41.78	11.38	8.66	3.77	30	33
E.D. Cal.	16	1.52	0.93	0.45	0.25	31	31
D. Minn.	10	100.43	8.95	8.55	1.99	26	29
W.D. Wash.	9	27.53	2.75	5.83	0.55	24	21
State	8	33.08	21.5	8.37	5	27	30
Federal	6	14.25	1.79	4.26	0.57	29	30
Appeal	3	30.48	42	7.65	10.5	27	25
Other	172	21.5	3.39	5.38	0.99	27	29
Total	458	48.53	3.93	8.20	0.99	27	29

At the federal level, if the circuit has issued a binding opinion regarding fee awards, that opinion will dictate how fees are awarded within the circuit. Table 3 explores variation between circuits. This table presents the mean and median of the fee award, the recovery, and fee-to-recovery ratio (excluding state cases) for each circuit. The largest median recoveries were in the Fifth Circuit (\$13.75 million), the D.C. Circuit (\$11.64 million), and the First Circuit (\$8.2 million). The highest median fees were awarded in the Fifth Circuit (\$2.66 million), the D.C. Circuit (\$2.21 million), and the Seventh Circuit (\$2.17 million). Mean fee percentages ranged from a low of 19% in the D.C. Circuit to a high of 30% in the Eleventh Circuit. The D.C. Circuit and the Eleventh Circuit also registered the highest and lowest median fee percentages at 19% and 33%, respectively.

***951 TABLE 3. FEE AND CLASS RECOVERIES, BY FEDERAL CIRCUIT, 2009-2013**

CIRCUIT	N	RECOVERIES		FEES		FEE PERCENTAGES	
		MEAN (MILLIONS OF DOLLARS)	MEDIAN (MILLIONS OF DOLLARS)	MEAN (MILLIONS OF DOLLARS)	MEDIAN (MILLIONS OF DOLLARS)	MEAN (%)	MEDIAN (%)
1st	11	45.77	8.2	9.62	1.85	26	23
2nd	116	113.14	3.38	14.31	0.99	28	30
3rd	46	24.48	6.45	5.84	1.71	29	32
4th	22	25	3.66	5.9	0.91	26	25
5th	12	27.72	13.75	6.61	2.66	23	24
6th	23	23.2	5.2	6.38	1.5	26	30
7th	14	30.76	7.38	9.17	2.17	28	30
8th	21	50.74	4.2	5.04	1.11	29	32
9th	144	23.86	3	5.96	0.78	26	25
10th	18	30.07	6.21	7.5	1.36	27	25
11th	11	2.2	2.02	0.65	0.65	30	33
D.C.	6	34.72	11.64	6.57	2.21	19	19
Fed.	6	14.25	1.79	4.26	0.57	29	30
Total	450	48.8	3.83	8.2	1	27	29

Table 4 shows the mean and median of fee, recovery, and ratio of fee to recovery by case type. The most common class action case category during the 2009-2013 period was Fair Labor Standards Act (FLSA) cases with 108 cases. The next largest case categories were Securities (74), Consumer (52), Employment (25), Labor (23), Employee Retirement Income Security Act (ERISA) (22), Civil Rights (21), and Antitrust (19). Excluding Truth in Lending Act (TILA) cases--a category with data for just two cases, one of which had a relatively low recovery and the other a very high recovery--we find that the categories with the highest median recoveries were Antitrust (\$37.3 million) and Securities (\$22.25 million). Major case categories with the lowest median recoveries were Employment (\$670,000) and FLSA (\$1,025,000). Again excluding TILA cases, the highest median fees were awarded in Antitrust (\$10.25 million), Securities (\$5.16 million), and Products Liability (\$4.56 million) cases. Major case categories with the lowest median fee awards were Employment (\$170,000), FLSA (\$300,000), and Labor (\$330,000). The mean of the fee percentage ranged from a low of 23% in Securities, up to 28%-30% in Fair Labor Standards Act, Employment, Civil Rights, and Products Liability.

***952 TABLE 4. FEE AND CLASS RECOVERIES, BY CASE CATEGORY, 2009-2013**

CASE CATEGORY	N	RECOVERIES		FEES		FEE PERCENTAGES	
		MEAN (MILLIONS OF DOLLARS)	MEDIAN (MILLIONS OF DOLLARS)	MEAN (MILLIONS OF DOLLARS)	MEDIAN (MILLIONS OF DOLLARS)	MEAN (%)	MEDIAN (%)
Antitrust	19	501.09	37.3	64.1	10.25	27	30
Civil Rights	21	6.51	3	1.66	0.91	28	30
Consumer	52	18.8	8.75	4.81	2.21	26	25
Corporate	9	19.47	16	5.01	2.2	27	29
Derivative	6	18.68	2.88	5.61	0.77	29	31
Employment	25	5.6	0.67	1.63	0.17	28	30
ERISA	22	25.75	6.6	4.92	1.75	26	26
FCRA	4	1.34	1.41	0.34	0.36	29	29
FDCPA	2	0.41	0.41	0.1	0.1	26	26
FLSA	108	4.15	1.03	1.19	0.3	30	33
Health Care	5	72.08	4	14.64	1.21	28	30
Labor	23	9.44	1	2.17	0.33	29	30
Mass Tort	13	23.34	4.2	5.5	1.11	27	28
Other	60	13.27	4.14	3.11	1.04	25	25
Products Liability	10	24.99	16.2	7.47	4.56	28	30
Securities	74	106.45	22.25	18.75	5.16	23	25
TILA	2	168.4	168.4	25.75	25.75	23	23
Unknown	3	0.86	1	0.22	0.18	27	30

Figure 6 demonstrates that the positive relationship between fee amount and recovery amount is strong across case categories. This result is consistent with findings reported for the 1993-2008 period.³²

FIGURE 6. FEE AND RECOVERY BY CASE CATEGORY, 2009-2013

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*953 Table 5 shows the breakdown of the four largest case types among the 10 district courts with the most class action cases. These case types include FLSA, Securities, Consumer, and Employment. For each case category, the first column (*N*) shows how many cases of that type were brought in various districts, while the second column (%) shows the percentage of each category's cases that were brought in a particular district. The large percentage of cases in the Southern District of New York is mostly attributable to its dominance in FLSA and Securities cases--the two most common case categories. Nearly 40% of all FLSA cases and more than 28% of Securities cases were brought in the Southern District of New York. The Southern District of New York also has a sizeable fraction of Employment cases. The Northern District of California dominates in Consumer cases and Employment. It holds twice as many Consumer cases as the District of New Jersey and nearly twice as many Employment cases as the Eastern District of California.

TABLE 5. CLASS ACTION CASES BY LOCALE AND CASE CATEGORY, 2009-2013

<i>LOCALE</i>	<i>ALL CATEGORIES</i>		<i>FLSA</i>		<i>SECURITIES</i>		<i>CONSUMER</i>		<i>EMPLOYMENT</i>	
	<i>N</i>	<i>%</i>	<i>N</i>	<i>%</i>	<i>N</i>	<i>%</i>	<i>N</i>	<i>%</i>	<i>N</i>	<i>%</i>
S.D.N.Y.	78	17.03	43	39.81	21	28.38	0	0	3	12
N.D. Cal.	53	11.57	10	9.26	5	6.76	10	19.23	7	28
S.D. Cal.	24	5.24	3	2.78	3	4.05	4	7.69	1	4
C.D. Cal.	21	4.59	5	4.63	2	2.70	4	7.69	3	12
E.D.N.Y.	21	4.59	8	7.41	4	5.41	2	3.85	1	4
E.D. Pa.	19	4.15	2	1.85	3	4.05	3	5.77	0	0
D.N.J.	18	3.93	3	2.78	3	4.05	5	9.62	0	0
E.D. Cal.	16	3.49	3	2.78	0	0	0	0	4	16
D. Minn.	10	2.18	0	0	1	1.35	1	1.92	0	0
W.D. Wash.	9	1.97	0	0	1	1.35	2	3.85	0	0
State	8	1.75	0	0	2	2.70	1	1.92	0	0
Federal	6	1.31	0	0	0	0	0	0	1	4
Appeal	3	0.66	1	0.93	1	1.35	0	0	0	0
Other	172	37.55	30	27.78	28	37.84	20	38.46	5	20

Total Number of Cases	458	100	108	100	74	100	52	100	25	100
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E. Fee Requests

In 78% of cases, the requested fee was awarded. Figure 7a shows the strong positive relationship between the fee requested and the fee awarded for all cases in our data set. This relationship holds up not only in typical cases with recoveries less than \$100 million (Figure 7b), but also in cases with recoveries greater than \$100 million (Figure 7c). Exact fee requests were not granted in 100 of the 452 cases examined. In only six of those cases did the courts grant a fee that was higher than the fee requested, and most of those were only nominally *954 higher.³³ In the remaining 94 cases, the fee granted was less than what was requested. The fee granted was between 1% and 25% lower than the amount requested in 47 of the 94 cases, between 26% and 49% lower than the amount requested in 28 of the 94 cases, and between 50% and 83% lower than the amount requested in just nine of the 94 cases. This tells us that even when courts do not grant fees exactly as requested, they typically award amounts that are close to the amount requested. Only in rare instances do courts grant fees that are significantly lower than the amount requested.

FIGURE 7. FEE AWARDS AS A FUNCTION OF FEE REQUESTS, 2009-2013

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Courts may be willing to grant fee requests because fee requests are standardized around certain common fee percentages, as evidenced by Figure 8. Figure 8 shows the frequency with which particular fee percentages were requested during the 2009-2013 period. By far, the most popular fee percentage requested was between 33% and 34%--i.e., one-third--of the gross recovery. Nearly 29% of cases were in the 33%-34% fee range. The next most popular fee requests were 25% and 30% of gross recovery. A 25% fee request was made in 12% of cases, and a fee request of 30% was made in 11% of cases. *955 Overall, a fee request between 25% and 34% of the gross recovery was made in 72% of cases during the 2009-2013 period.

FIGURE 8. COMMON FEE REQUESTS, 2009-2013

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Figure 9 suggests that judges are more likely to scrutinize fee requests in high-recovery cases. Here, we see that the likelihood that a fee request will be granted decreases as the size of the recovery increases. Cases in the two lowest-recovery deciles, for instance, had requested fees granted 85% of the time, compared to 60%-71% of the time in the two highest-recovery deciles.

***956 FIGURE 9. PERCENTAGE OF CASES WHERE FEE GRANTED WAS SAME AS FEE REQUESTED, BY CLASS RECOVERY AMOUNT (DECILE-RANGES), 2009-2013**

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Note: Class recovery ranges are as follows. First decile: less than \$400,000; second decile: \$400,000-\$750,000; third decile: \$750,000-\$1.4 million; fourth decile: \$1.4-\$2.65 million; fifth decile: \$2.65-\$3.9 million; sixth decile: \$3.9-\$6.5 million; seventh decile: \$6.5-\$12 million; eighth decile: \$12-\$23.4 million; ninth decile: \$23.5-\$67.5 million; tenth decile: greater than \$67.5 million.

Are fee requests granted in full at the same rate, or do grant rates vary according to case type or jurisdiction? Table 6 explores these questions. It discloses a surprising degree of variation. Fees were granted in full in each of the 10 Products Liability cases in the data set but only granted in full in half of the Truth in Lending, Fair Credit Reporting, and Fair Debt Collection Practices cases. The District of New Jersey granted more than 94% of fee requests in full, compared

with the Northern District of California, which granted only about 57%. The differences might be due to norms or conventions that arise in specialized contexts or particular courts.

***957 TABLE 6. PERCENTAGE OF CASES FULL FEE GRANTED, BY CASE TYPE AND DISTRICT, 2009-2013**

A. Case Type

	<i>N</i>	<i>FULL FEE REQUEST GRANTED (% OF CASES)</i>
Products Liability	10	100.0
FLSA	108	87.0
Labor	23	87.0
Derivative	6	83.3
Health Care	5	80.0
Other	60	80.0
Corporate	9	77.8
Mass Tort	13	76.9
Antitrust	19	73.7
Consumer	52	73.1
Civil Rights	21	71.4
Securities	74	70.3
Employment	25	68.0
Unknown	3	66.7
ERISA	22	63.6
FCRA	4	50.0
FDCPA	2	50.0
TILA	2	50.0

B. District

	<i>N</i>	<i>FULL FEE REQUEST GRANTED (% OF CASES)</i>
D.N.J.	18	94.4%
E.D. Pa.	19	89.5%
S.D. Cal.	24	87.5%
E.D.N.Y.	21	85.7%
E.D. Cal.	16	81.3%
S.D.N.Y.	78	74.4%
W.D. Wash.	9	77.8%
C.D. Cal.	21	61.9%
D. Minn.	10	60.0%
N.D. Cal.	53	58.5%

***958 F. Risk**

Eisenberg and Miller's study of 1993-2008 data presented evidence in support of the hypothesis that high-risk cases are associated with higher percentage fees.³⁴ They found that for each case category except one, cases with high risk resulted in a higher fee percentage on average.³⁵ Table 7, Panel A suggests that the association between risk and fee percentage continues in the 2009-2013 data. However, the association is not as clear-cut. In the four largest case categories (FLSA, Consumer, Employment, and Securities), only high-risk cases in the Consumer and Employment categories had significantly higher fee percentages compared to low- and medium-risk cases. FLSA cases show a small increase in fee percentage for high-risk cases, while Securities cases actually show a lower fee percentage for high-risk cases. Table 7, Panel B shows that when all categories are combined, we see little difference between the mean fee percentages in high-risk cases and those in low- and medium-risk cases. The high-risk cases have a mean fee percentage that is 1% greater than the low- and medium-risk cases, and that difference is not statistically significant. High-risk cases, on the other hand, do have larger fee awards. The mean fee award for high-risk cases was \$15.3 million, while the mean fee award for low- and medium-risk cases was \$4.76 million--a statistically significant difference ($p < 0.05$). The median fee awards are also different. The median fee award for high-risk cases was \$1.73 million, while the median fee award for low- and medium-risk cases was \$943,000--a difference of \$787,000 ($p < 0.05$).

***959 TABLE 7. MEAN FEE PERCENTAGE, BY RISK LEVEL, 2009-2013**

A. By Case Category

	<i>HIGH RISK</i>		<i>LOW/MEDIUM RISK</i>	
	<i>N</i>	<i>MEAN FEE %</i>	<i>N</i>	<i>MEAN FEE %</i>
ERISA	9	27.21	12	24.52
FCRA	1	21.42	3	31.68
FDCPA	1	27.87	1	25
FLSA	23	30.41	79	29.99
TILA	1	15.25	1	30
Antitrust	10	26.49	5	24.91
Civil Rights	4	32.5	12	27.2
Consumer	17	27.27	32	24.27
Corporate	5	30.46	4	22.02
Derivative	4	26.55	1	36.69
Employment	4	30.96	20	27.31
Health Care	2	26.67	3	28.53
Labor	12	29.11	10	28.57
Mass Tort	2	27.92	9	26.95
Products Liability	-	-	10	28.47
Securities	20	23.06	50	24.04
Other	8	28.74	47	24.58

B. All Categories Combined

	<i>N</i>	<i>MEAN FEE %</i>	<i>MEAN FEE AWARD (MILLIONS OF DOLLARS)</i>	<i>MEDIAN FEE AWARD (MILLIONS OF DOLLARS)</i>
High Risk	123	27.6	15.3	1.73

Low/Medium Risk	302	26.7	4.76	0.943
Difference		0.9	10.54	0.787

G. Opt-Outs and Objectors

Table 8 reports the relationship between the fee percentage and two class action case characteristics: whether any objection was filed (Panel A) and whether any class members opted out (Panel B). We find that cases with no objectors obtained a statistically significantly higher fee percentage on average than cases with objectors ($p < 0.01$), ***960** but a lower average fee award. The mean fee award for cases with objectors was \$13.2 million compared to a mean fee award of \$3.73 million for cases with no objectors. This difference is statistically significant ($p < 0.01$). Cases with no opt-outs generated a statistically significantly higher fee percentage on average than cases with opt-outs ($p < 0.01$), but a lower average fee award. The mean fee award for cases with opt-outs was \$6.79 million compared to a mean fee award of \$2.22 million for cases with no opt-outs.

TABLE 8. OBJECTORS AND OPT-OUTS, 2009-2013

A. Presence of an Objector

	<i>N</i>	<i>FEE</i> %	<i>MEAN FEE AWARD (MILLIONS OF DOLLARS)</i>	<i>MEDIAN FEE AWARD (MILLIONS OF DOLLARS)</i>
Objection Filed	269	24.53	13.2	2.85
No Objector	189	28.24	3.73	0.55
Difference		-3.70	9.45	2.3

B. Number of Opt-Outs

	<i>N</i>	<i>FEE</i> %	<i>MEAN FEE AWARD (MILLIONS OF DOLLARS)</i>	<i>MEDIAN FEE AWARD (MILLIONS OF DOLLARS)</i>
One or More Opt-Outs	187	26.49	6.79	1.20
No Opt-Outs	91	28.82	2.22	0.35
Difference		-2.32	4.57	0.85

We also examined the frequency of objectors and opt-outs. As in prior work,³⁶ we find that both opt-outs and objectors were uncommon. Objectors averaged only 0.115% of the class in the 286 cases for which this information was available--approximately one objector for every 1000 class members. Opt-outs averaged 0.544% of the class in the 244 cases for which this information was available--approximately one opt-out per 200 class members.

***961 H. Soft Relief**

Some class action settlements include items of “soft” relief--our term for nonpecuniary relief that is not measured in the dollar value obtained for the class. One might expect that the presence of such soft relief would lead to larger attorneys' fees because courts would reward counsel for obtaining a result that benefited class members, even if the amount of the benefit could not be quantified.³⁷ Table 9 examines this question and finds that percentage fees tended to be lower in cases where soft relief constituted an important part of the recovery obtained by the class, although the differences were only weakly significant for mean fee percentage ($p = 0.066$) and not significant for mean fee amount ($p = 0.8905$).

TABLE 9. THE IMPACT OF SOFT RELIEF ON FEES, 2009-2013

	<i>N</i>	<i>MEAN FEE %</i>	<i>MEAN FEE AWARD (MILLIONS OF DOLLARS)</i>	<i>MEDIAN FEE AWARD (MILLIONS OF DOLLARS)</i>
Not Significant	371	27.44	6.39	0.98
Significant	55	25.65	6.8	1.2

I. Settlement Classes

Many class actions are resolved as settlement classes--meaning that the parties settle the class certification issue at the same time as they settle the merits, and present both agreements to the judge for approval at the fairness hearing.³⁸ Settlement classes were common in our data, constituting approximately three-quarters of the cases: Of the 422 cases for which data were available, 318 were settlement classes and 104 were litigation classes. Table 10 shows significant variation in the frequency of settlement classes across case types.

***962 TABLE 10. FREQUENCY OF SETTLEMENT CLASSES BY CASE TYPE, 2009-2013**

	<i>TOTAL NUMBER OF CASES BY TYPE</i>	<i>NUMBER OF SETTLEMENT CLASSES</i>	<i>% SETTLEMENT CLASSES</i>
ERISA	20	15	75.00
FCRA	4	4	100.00

FDCPA	2	0	0.00
FLSA	99	83	83.84
Other	55	37	67.27
TILA	2	2	100.00
Antitrust	16	11	68.75
Civil Rights	19	14	73.68
Consumer	51	39	76.47
Corporate	7	3	42.86
Derivative	4	2	50.00
Employment	23	19	82.61
Health Care	5	3	60.00
Labor	23	17	73.91
Mass Tort	10	7	70.00
Products Liability	10	9	90.00
Securities	69	51	73.91
Unknown	3	2	66.67

Table 11 shows that settlement classes were significantly associated with higher mean fee amount ($p = 0.0069$), but not with mean fee percentage ($p = 0.695$).

TABLE 11. THE IMPACT OF SETTLEMENT CLASSES ON FEES, 2009-2013

	<i>N</i>	<i>MEAN FEE %</i>	<i>MEAN FEE AWARD (MILLIONS OF DOLLARS)</i>	<i>MEDIAN FEE AWARD (MILLIONS OF DOLLARS)</i>
No	104	26.81	16.1	1.07
Yes	318	27.15	5.6	0.99

***963 J. Costs and Expenses**

As we found with the previous data,³⁹ costs and expenses tended to make up a relatively low percentage of the recovery. For the 379 cases in this data set where data were available, the median costs as a percentage of recovery were 1.71%, while mean costs as a percentage of recovery were 3.93%. To dig deeper, we explored cost as a function of three variables: recovery, fee award, and the age of the case. These relationships are shown in Figure 10. The graphs show a strong association between costs and both recovery ($r = 0.81$) and fees ($r = 0.81$), and a relatively strong association between costs and age ($r = 0.43$).

FIGURE 10. COSTS AS A FUNCTION OF RECOVERY, FEES, AND AGE, 2009-2013

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K. Fee Methods and Multipliers

Although the pure lodestar method was rarely used during the 2009-2013 period, courts frequently used the percentage method with a lodestar check. This means computing the lodestar fee and adjusting the percentage fee if it markedly deviates from the lodestar calculation. The multiplier is calculated by dividing the fee award by the *964 lodestar. Table 12 reports the average multiplier in each federal circuit and for each case category. The mean multipliers ranged from 0.57 in the Eleventh Circuit to 2.52 in the First Circuit, and from 0.52 in FDCPA cases to 4.61 in Health Care cases. These two categories, however, have one and two cases, respectively, so they are not necessarily representative of the larger sample; of categories with at least five cases, the mean multiplier ranged from 0.92 for ERISA cases to 1.81 for Securities cases. In contrast to our analysis of 1993-2008 data,⁴⁰ we did not find a statistically significant difference in the multiplier if there was a fee-shifting statute available: The 42 cases available with no statute had an average multiplier of 1.82, and the 49 cases with a fee-shifting statute had an average multiplier of 1.63.

***965 TABLE 12. MEAN MULTIPLIER BY CIRCUIT AND CASE CATEGORY, 2009-2013**

A. Circuit

	<i>N</i>	<i>MEAN MULTIPLIER</i>
1 st	5	2.4
2 nd	76	1.93
3 rd	41	1.35
4 th	11	1.4
5 th	6	1.75
6 th	16	1.13
7 th	7	1.76
8 th	17	1.47
9 th	97	1.26
10 th	9	1.18
11 th	4	0.57
Federal	2	1.96
D.C.	2	1.33

Total	294	1.48
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B. Case Type

	<i>N</i>	<i>MEAN MULTIPLIER</i>
Antitrust	15	1.61
Civil Rights	10	1.51
Consumer	36	1.32
Corporate	6	1
Derivative	3	0.74
Employment	16	1.28
ERISA	15	0.88
FCRA	4	1.72
FDCPA	1	0.52
FLSA	68	1.54
Health Care	2	4.61
Labor	13	1.06
Mass Tort	8	1.18
Other	33	1.65
Products Liability	8	1.08
Securities	57	1.79
TILA	2	1.94
Total	297	1.48

*966 Figure 11 shows the relationship between fee percentage and multiplier and the relationship between recovery size and the multiplier. In our previous studies of the 1993-2002 and 2003-2008 periods, we hypothesized and presented evidence for a negative correlation between the multiplier and the fee percentage.⁴¹ The logic was that a high multiplier indicates that the fee percentage is too high under the percentage method and should be brought into check. As Figure 11a shows, the relationship still appears to be negative during the 2009-2013 period; however, the relationship is weaker. We suspect that this change from prior periods could be due to increasing convergence in the legal community around acceptable fee percentages. Figure 11b shows the relationship between the multiplier and recovery amount. As we found previously,⁴² higher multipliers are associated with higher recoveries.

FIGURE 11. RELATIONSHIPS BETWEEN MULTIPLIERS AND FEE PERCENT & RECOVERY SIZE, 2009-2013

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

Table 13 shows the mean and standard deviation of the multiplier by recovery size deciles. Here we see that the multiplier is relatively low in the first two deciles and relatively high in the last decile. It is worth noting that the standard deviation of the multiplier tends to *967 increase with the recovery amount, suggesting that there is more variation in the multiplier at higher recovery levels.

TABLE 13. MEAN, MEDIAN, AND STANDARD DEVIATION OF MULTIPLIER, CONTROLLING FOR CLASS RECOVERY AMOUNT, 2009-2013

<i>RANGE OF CLASS RECOVERY AMOUNT (MILLIONS)</i>	<i>MEAN</i>	<i>MEDIAN</i>	<i>SD</i>	<i>N</i>
Recovery <=0.4	0.85	0.67	0.52	33
Recovery > 0.4 <= 0.75	0.72	0.74	0.32	25
Recovery > 0.75 <= 1.4	1.49	1.42	0.93	20
Recovery > 1.4 <= 2.65	1.26	1.15	0.79	29
Recovery > 2.65 <= 3.9	1.28	1.2	0.75	26
Recovery > 3.9 <= 6.5	1.37	1.03	1.28	29
Recovery > 6.5 <=12	1.48	1.09	0.98	34
Recovery > 12 <= 23.4	1.86	1.35	1.58	29
Recovery > 23.4 <= 67.5	1.65	1.5	1.27	32
Recovery > 67.5	2.72	1.5	3.59	35

L. Regression Analysis

This section uses regression analysis to explore the effects of some of the variables mentioned above on the fees awarded in class action settlements. The dependent variable is the log-transformed fee award. The key independent variables are the log-transformed gross recovery amount and fee request, both of which we found to be strongly correlated with the fee award in figures presented earlier. Our models also control for variables that appear as if they might have an impact on the fee, such as the costs and expenses requested by the plaintiffs' attorneys, and dummy variables identifying high-risk cases, cases where the pure lodestar method was used in lieu of the percentage method or percentage method with lodestar check, cases where opt-outs and objectors were present, and cases where the defendant paid the fee. In some models we included fixed effects for case categories and federal circuits. Table 14 presents summary statistics for the dependent and independent variables.

***968 TABLE 14. SUMMARY STATISTICS**

<i>VARIABLE</i>	<i>N</i>	<i>MEAN</i>	<i>STD. DEV.</i>	<i>MIN</i>	<i>MAX</i>
Fee Award (log)	458	6.061025	0.8359642	3.736243	8.744136
Gross Recovery (log)	458	6.648762	0.8789425	4.230449	9.860338
Fee Request (log)	454	6.089077	0.8392878	3.736243	8.744136
Costs and Expenses (log)	371	4.961283	0.9602119	2.522444	7.940662
High Risk Case	425	0.2894118	0.4540238	0	1
Lodestar Method Used	429	0.0629371	0.2431333	0	1
Incentive Bonus (log)	318	4.202167	0.5929221	1.431364	7.164353
Case with Objectors	343	0.4489796	0.4981168	0	1
Case with Opt-Outs	278	0.6726619	0.4700881	0	1
Soft Relief Significant	426	0.129108	0.3357137	0	1
Settlement Class	422	0.7535545	0.4314525	0	1
Defendant Pays Fee	453	0.1059603	0.308127	0	1

Table 15 presents regression results. Considering the strong positive relationships we observed in Figures 3a and 7a, we are not surprised to find that gross recovery and fee request are reliable predictors of fee award. Models 1 and 2 show that a one-unit increase in the gross recovery or fee request results in a near-one-unit increase in the fee awarded. The R-squared for these models demonstrates that on their own, gross recovery and fee request account for 97.7% and 99% of variance in the dependent variable, respectively. When we put the variables for gross recovery and fee request on the right-hand side of the same regression model, we notice that the variable for fee request has a larger substantive effect on the dependent variable than does the gross recovery variable. This may be due to the fact that the size of the gross recovery influences the amount requested by the plaintiffs' attorneys, and the amount requested then tends to determine the fee award. The strong association between fee award and both the recovery amount and the fee request are robust to the inclusion of several additional controls (Models 4-8). These relationships continue to hold up in models where fixed effects for case category and circuit are added (Models 9-11).

Other variables that appeared to be associated with higher or lower fees in Sections A-M also demonstrate statistically significant associations in the regression models, although not to the extent that the variables for gross recovery and fee request do. First, we find that all else equal, cases determined by the pure lodestar method result in a lower fee on average than cases determined by the percentage method or the percentage method with lodestar check (Models 6-11). *969 The difference between fees determined by the lodestar method or others, however, is substantively small--only about 1% on average on the log 10 scale in which the dependent variable has been coded. Second, we find evidence that high-risk cases are more likely to result in higher fees (Model 5). The substantive effect of this variable, however, is small compared to the effects of the fee requested and gross recovery variables. In crosstabs presented in Table 8, we observed that cases with opt-outs and cases without objectors had higher average fees. The statistically significant differences we reported earlier, however, are not robust to the addition of control variables. We also included a dummy variable for cases where the defendant paid the fee. Although we found this variable to have a statistically significant effect in our

analyses of the 1993-2002 period,⁴³ it is not statistically significant here. The presence of soft relief or settlement classes is not statistically significant. Finally, the size of the incentive award is significantly associated with higher fee awards in most specifications of the model.

CONCLUSION

In sum, our regression models show that the size of the recovery and the fee requested are by far the strongest predictors of attorneys' fees in class actions. The strong associations hold up across locales and case types and are robust to the inclusion of several control variables. We also find that high-risk cases are, all else equal, associated with somewhat higher fees on average, and that cases that use the pure lodestar method are associated with somewhat lower fees. A pronounced scaling effect exists: Higher recoveries are associated with lower percentage fees and higher lodestar multipliers. There appears to be a trend towards convergence in fee awards, indicating that courts are gaining experience in this area and, possibly, that they are relying more heavily on the robust empirical literature on fee awards. Overall, our data are broadly consistent with the results of studies of fee awards in earlier time periods. Together with other empirical research, the results of our study can provide useful information to attorneys, judges, and policymakers interested in rationalizing and improving the procedures and methodology used for calculating fees in class action cases.

***970 TABLE 15. REGRESSION RESULTS. DEPENDENT VARIABLE: FEE AWARD (LOG 10)**

VARIABLES	(1) FEE (LOG)	(2) FEE (LOG)	(3) FEE (LOG)	(4) FEE (LOG)	(5) FEE (LOG)	(6) FEE (LOG)	(7) FEE (LOG)	(8) FEE (LOG)	(9) FEE (LOG)	(10) FEE (LOG)	(11) FEE (LOG)
Gross Recovery (log)	0.940 ^{aaa1}		0.230 ^{aaa1}	0.148 ^{aaa1}	0.142 ^{aaa1}	0.133 ^{aaa1}	0.166 ^{aaa1}	0.182 ^{aaa1}	0.183 ^{aaa1}	0.196 ^{aaa1}	0.196 ^{aaa1}
	(0.00677)		(0.0268)	(0.0286)	(0.0285)	(0.0289)	(0.0337)	(0.0416)	(0.0461)	(0.0434)	(0.0448)
Fee Request (log)		0.992 ^{aaa1}	0.754 ^{aaa1}	0.832 ^{aaa1}	0.832 ^{aaa1}	0.842 ^{aaa1}	0.802 ^{aaa1}	0.797 ^{aaa1}	0.798 ^{aaa1}	0.784 ^{aaa1}	0.795 ^{aaa1}
		(0.00478)	(0.0281)	(0.0298)	(0.0297)	(0.0300)	(0.0345)	(0.0430)	(0.0472)	(0.0448)	(0.0458)
Costs and Expenses (log)				0.00929	0.0114 ^{a1}	0.0102	0.0107	0.00313	0.000710	-0.00385	-0.000486
				(0.00673)	(0.00676)	(0.00682)	(0.00734)	(0.00887)	(0.00932)	(0.00913)	(0.00949)
High Risk Case					0.0179 ^{aaa1}	0.0146 ^{a1}	0.0240 ^{aaa1}	0.0224 ^{a1}	0.0200	0.0183	0.0263 ^{aaa1}
					(0.00842)	(0.00844)	(0.00923)	(0.0122)	(0.0127)	(0.0126)	(0.0128)
Lodestar Method Used						-0.0799 ^{aaa1}	-0.0756 ^{aaa1}	-0.0555 ^{aaa1}	-0.0608 ^{aaa1}	-0.0749 ^{aaa1}	-0.109 ^{aaa1}
						(0.0161)	(0.0200)	(0.0234)	(0.0267)	(0.0265)	(0.0313)
Incentive Bonus (log)							0.0269 ^{aaa1}	0.0282 ^{aaa1}	0.0274 ^{aaa1}	0.0224 ^{aaa1}	0.0146
							(0.00799)	(0.00976)	(0.0102)	(0.0101)	(0.0114)
Case with Objectors								-0.0225 ^{a1}	-0.0185	-0.00795	-0.0150

								(0.0125)	(0.0130)	(0.0125)	(0.0141)
Case with Opt-Outs								-0.0143	-0.0122	-0.0127	-0.00337
								(0.0122)	(0.0127)	(0.0124)	(0.0125)
Soft Relief Significant									-0.0143	-0.00734	-0.000316
									(0.0168)	(0.0166)	(0.0195)
Settlement Class									-0.0102	-0.0149	-0.00938
									(0.0151)	(0.0148)	(0.0157)
Defendant Pays Fee									-0.000656	-0.0252	-0.0259
									(0.0257)	(0.0247)	(0.0243)
Constant	-0.189 ^{aaa1}	0.0154	-0.0626 ^{aa1}	-0.0366	-0.0153	-0.00633	-0.0968 ^{aa1}	-0.124 ^{aa1}	-0.113 ^{a1}	-0.0670	-0.131 ^{a1}
	(0.0454)	(0.0294)	(0.0287)	(0.0299)	(0.0303)	(0.0307)	(0.0415)	(0.0582)	(0.0631)	(0.0676)	(0.0687)
Category Fixed Effects	No	No	No	No	No	No	No	No	Yes	No	Yes
Circuit Fixed Effects	No	No	No	No	No	No	No	No	No	Yes	Yes
Observations	458	454	454	371	353	339	242	142	136	136	136
R-squared	0.977	0.990	0.991	0.993	0.993	0.993	0.993	0.993	0.993	0.994	0.996
Standard errors in parentheses											

Footnotes

- aaa1 p<0.01,
- aa1 p<0.05,
- a1 p<0.10

Footnotes

- a1 Professor Eisenberg was the Henry Allen Mark Professor of Law and Adjunct Professor of Statistical Sciences at Cornell University. Although Professor Eisenberg died before this paper was written, we have followed the methodology he developed in earlier papers on attorneys' fees co-authored with Professor Miller. He is in every sense a coauthor of the present paper. The authors would like to thank the excellent research assistants who contributed to this project: Lauren Citrome, Colin S. Huston-Liter, Adam Karman, Jacob Millikin, Jack B. Neff, Joshua Matthew Pirutinsky, Jeremy Schiffres, and Peter Van Valkenburgh.
- d1 Stuyvesant Comfort Professor of Law, New York University School of Law.
- r1 Research Scholar, New York University School of Law and Adjunct Professor, New York University Program in International Relations. Copyright © 2017 by Theodore Eisenberg, Geoffrey Miller & Roy Germano.

1 See *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (noting that the common fund doctrine derives from the equitable principle that those benefitting from a fund should share costs); *Florida v. Dunne*, 915 F.2d 542, 545 (9th Cir. 1990) (endorsing percentage-of-recovery method for common fund calculation); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454 (10th Cir. 1988) (exploring the “basic differences in the rationale for calculating attorneys’ fees in common fund cases”); *In re Fine Paper Antitrust Litig.*, 751 F.2d 562, 583 & n.19 (3d Cir. 1984) (noting that there are different public policy considerations in common fund and fee-shifting cases); *In re Smithkline Beckman Corp. Sec. Litig.*, 751 F. Supp. 525, 532-33 (E.D. Pa. 1990) (explaining the rationale behind using different fee-setting methods in common fund and statutory fee-shifting cases); *Mashburn v. Nat’l Healthcare, Inc.*, 684 F. Supp. 679, 689 (M.D. Ala. 1988) (explaining the differences between common fund and statutory fee-setting).

2 See, e.g., *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974) (referring to factors for fee calculation, including “[a]wards in similar cases” (emphasis omitted)).

3 See, e.g., *In re Heartland Payments Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1080-81 (S.D. Tex. 2012) (“District courts increasingly consider empirical studies analyzing class-action-settlement fee awards to set the appropriate percentage benchmark or to test the reasonableness of a given benchmark Using these studies alleviates the concern that the number selected is arbitrary.”).

4 Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 J. EMPIRICAL LEGAL STUD. 27 (2004) [hereinafter Eisenberg & Miller I]; Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. EMPIRICAL LEGAL STUD. 248 (2010) [hereinafter Eisenberg & Miller II]; Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. EMPIRICAL LEGAL STUD. 811 (2010).

5 Eisenberg & Miller I, *supra* note 4, at 45.

6 See Eisenberg & Miller II, *supra* note 4, at 251 (stating that the total sample size was 689 cases).

7 See Fitzpatrick, *supra* note 4, at 813 (reviewing 688 published and unpublished class action settlements).

8 The financial crisis exacerbated public distrust in financial institutions and thus might have resulted in higher class action awards against those institutions, or against big business in general, and might have increased counsel fees as a way of rewarding and incentivizing litigation against these institutions. Studies of the crisis are legion; for a sampling, see, for example, BEN S. BERNANKE, *THE FEDERAL RESERVE AND THE FINANCIAL CRISIS* (2013); ALAN S. BLINDER, *AFTER THE MUSIC STOPPED: THE FINANCIAL CRISIS, THE RESPONSE, AND THE WORK AHEAD* (2013); TIMOTHY F. GEITHNER, *STRESS TEST: REFLECTIONS ON FINANCIAL CRISES* (2014); GARY B. GORTON, *SLAPPED BY THE INVISIBLE HAND: THE PANIC OF 2007* (2010); MERVYN KING, *THE END OF ALCHEMY: MONEY, BANKING AND THE FUTURE OF THE GLOBAL ECONOMY* (2016); MICHAEL LEWIS, *PANIC: THE STORY OF MODERN FINANCIAL INSANITY* (2009).

9 Eisenberg & Miller I, *supra* note 4, at 28; Eisenberg & Miller II, *supra* note 4, at 263-64.

10 Eisenberg & Miller I, *supra* note 4, at 28; Eisenberg & Miller II, *supra* note 4, at 250.

11 Eisenberg & Miller I, *supra* note 4, at 77; Eisenberg & Miller II, *supra* note 4, at 279.

12 Eisenberg & Miller I, *supra* note 4, at 39, 55; Eisenberg & Miller II, *supra* note 4, at 273-74.

13 See *infra* Section I.B describing fee calculation methods.

14 We conducted our research as follows. First, we searched the Westlaw? database for all state and federal decisions, using the search term: ““settlement” & “class action” & approv! & attorney! / 2 fee! & DA(aft 1-1-2000) & TI(“et al.” “et anon.” other! “behalf” “similarly” “class” representative! “in re” derivative! shareholder!). We reviewed the results of that search and weeded out cases that were obviously not relevant (for example, lawsuits that were neither class action nor derivative cases). Where necessary, we supplemented the information obtained from a review of the published opinion by information obtained about the case from the federal courts PACER database. We coded the cases for a variety of variables. Most of these have a straightforward interpretation. The class recovery was the total quantified recovery for the class. This included

monetary recovery and other non-monetary recovery the value of which was quantified by the court. The fee was the fee awarded by the court. We coded the method of fee calculation by a review of the methodology used by the court. Sometimes the court was explicit about its methodology; at other times, the methodology could be determined by an analysis of the court's calculations. In many cases, the court used both the percentage and the lodestar methods as cross checks. Case types were usually straightforward to code; in rare cases of ambiguity the coder used judgment to assign the case to the category that was most pertinent. As in the previous Eisenberg and Miller studies, we coded risk as "high" if the court described it in these terms in the opinion awarding fees. A case was coded as "low" in risk if the court described it in these terms or if the case followed on criminal or civil enforcement actions involving the same or overlapping facts. We coded a settlement as involving "soft relief" if it included a significant element of nonpecuniary relief that was not measured in the dollar value obtained for the class. A case was designated as a settlement class if the settlement included an agreement to certify the matter as a class action. Our measure of costs was the amount of expenses and court costs awarded to class counsel by the court (if any). We also included shareholders' derivative cases, but there were too few of these in our data set to generate reliable results.

- 15 *See Eisenberg & Miller I, supra* note 4, at 44 (describing search methodology); *Eisenberg & Miller II, supra* note 4, at 251 (same).
- 16 Robb Mandelbaum, *Visa and MasterCard Settle Lawsuit, but Merchants Aren't Celebrating*, N.Y. TIMES, Aug. 9, 2012, at B6. This settlement was thrown out in June 2016. Rachel Abrams, *Credit Card Settlement Overturned on Appeal*, N.Y. TIMES, July 1, 2016, at B3.
- 17 *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2013 WL 1365900, at *7 (N.D. Cal. Apr. 3, 2013).
- 18 *In re UnitedHealth Grp. Inc. PSLRA Litig.*, 643 F. Supp. 2d 1094, 1099 (D. Minn. 2009).
- 19 *In re Citigroup Inc. Bond Litig.*, 988 F. Supp. 2d 371, 372 (S.D.N.Y. 2013).
- 20 Often the method of calculating the fee was explicit in the cases. Where it was not, we coded the method if it could reasonably be deduced from the court's analysis; if not, we omitted the information.
- 21 Eisenberg & Miller II, *supra* note 4, at 267.
- 22 *Id.*
- 23 *Id.* at 253-54.
- 24 *See id.* at 253 (finding a 0.94 correlation coefficient).
- 25 *Id.* at 254.
- 26 *Id.* at 258.
- 27 *Id.* at 263-64; Eisenberg & Miller I, *supra* note 4, at 54-55, 64.
- 28 *See Eisenberg & Miller II, supra* note 4, at 259 tbl.3, 261 (finding that the mean feeto-recovery ratio was lower in state courts than in federal courts).
- 29 *See id.* at 257 tbl.1 (stating that 10.89% of the study's opinions were brought in state courts).
- 30 Class Action Fairness Act of 2005 (CAFA), Pub. L. No. 109-2, 119 Stat. 4 (codified as amended at 28 U.S.C. §§ 1332(d), 1453, 1711-1715 (2012)).
- 31 *See Tanoh v. Dow Chem. Co.*, 561 F.3d 945, 952 (9th Cir. 2009) ("[T]he Act's purposes make[] clear [that] CAFA was designed primarily to curb perceived abuses of the class action device which, in the view of CAFA's proponents, had often been used to litigate multi-state or even national class actions in state courts." (citing CAFA § 2)).
- 32 Eisenberg & Miller II, *supra* note 4, at 263.
- 33 In one of the six cases, however, the fee granted was significantly higher than the fee requested: 14%, or \$1.1 million.

34 Eisenberg & Miller II, *supra* note 4, at 265.

35 *Id.*

36 See Theodore Eisenberg & Geoffrey Miller, *The Role of Opt-Outs and Objectors in Class Action Litigation: Theoretical and Empirical Issues*, 57 VAND. L. REV. 1529, 1546 & tbl.1 (2004) (stating that the median percentage of opt-outs was 0.1% and the median percentage of objectors was zero).

37 See *Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003) (holding that while the value of injunctive relief can rarely be included in the calculation of the common fund, “courts should consider the value of the injunctive relief obtained as a ‘relevant circumstance’ in determining what percentage of the common fund class counsel should receive as attorneys’ fees” (quoting *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1049 (9th Cir. 2002))).

38 See FED. R. CIV. P. 23(e)(2) (stating that a proposal to settle a class action that binds class members can only be approved “after a hearing and on finding that it is fair, reasonable, and adequate”).

39 See Eisenberg & Miller II, *supra* note 4, at 274 (finding that from 1993 to 2002, mean costs were 2.8% of recovery and median costs were 1.7% while, from 2003 to 2008, mean costs were 2.7% of recovery and median costs were 1.7%).

40 *Id.* at 273.

41 *Id.* at 273-74.

42 *Id.* at 274.

43 Eisenberg & Miller I, *supra* note 4, at 77.

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Exhibit 7

EXHIBIT 7***In re Lithium Ion Batteries Antitrust Litigation, Case No. 13-MD-2420 YGR***
ALL PLAINTIFFS' COUNSEL | TOTAL EXPENSES

FIRM	EXPENSES
<i>Co-Lead Counsel</i>	
Berman Tabacco	\$98,599.43
Pearson, Simon & Warshaw, LLP	\$30,197.41
Saveri & Saveri, Inc.	\$45,651.65
<i>Other Plaintiffs' Counsel</i>	
Barrack Rodos & Bacine	\$12,283.19
Berger & Montague, P.C.	\$2,282.90
Boni & Zack LLC	\$40.10
Brutzkus Gubner Rozansky Seror Weber LLP	\$182.21
Fine, Kaplan and Black, R.P.C.	\$3,970.16
Finkelstein Thompson LLP	\$206.36
Freed Kanner London & Millen LLC	\$6,282.53
Grant & Eisenhofer P.A.	\$19,196.05
Gray Plant Mooty	\$0.00
Glancy Prongay & Murray LLP	\$4,357.72
Gross & Belsky P.C.	\$11,555.25
Gustafson Gluek PLLC	\$2,997.93
Heins Mills & Olson, P.L.C.	\$110.48
Hulett Harper Stewart LLP	\$0.00
Kaplan Fox & Kilshimer LLP	\$357.66
Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C.	\$86,819.02
Law Offices of Francis O. Scarpulla	\$0.00
Lite DePalma Greenberg, LLC	\$4,326.17
Lockridge Grindal Nauen P.L.L.P.	\$15,365.28
MoginRubin LLP	\$401.30
NastLaw LLC	\$0.00
Nussbaum Law Group	\$104.97
Polsinelli LLP (Document Hosting Fees listed below)	\$60,963.22
Pritzker Levine LLP	\$1,298.33
Reinhardt Wendorf & Blanchfield	\$874.38
Saltz, Mongeluzzi, Barrett & Bendesky, P.C.	\$850.12
Shulman Law	\$0.00
Spector Roseman Kodroff, P.C.	\$4,406.29
Steyer Lowenthal Boodrookas Alvarez & Smith LLP	\$7,204.74
Stueve Siegel Hanson LLP	\$4,822.17
Weinstein Kitchenoff & Asher LLC	\$2,958.37
Zelle LLP	\$16,403.07
Total Out-of-Pocket Firm Expenses	\$445,068.46
Deduction of Travel Expenses (Exhibit 9, attached hereto) <i>(deduction-no reimbursement sought)</i>	<i>(\$190,914.56)</i>
Litigation Fund Expenditures (Comp. Ex D [Zahid Decl.] ¶ 4 & Ex. B)	\$2,247,198.62
Total Unreimbursed Litigation Expenses (<i>Total of above 3 amounts</i>) <i>(after deduction of Total Travel Expenses)</i>	\$2,501,352.52

TOTAL EXPENSES

(1) Unreimbursed Litigation Expenses (<i>see above</i>)	\$2,501,352.52
(2) Outstanding Invoices Total (Comp. Ex D [Zahid Decl.] ¶ 6)	\$212,030.00
(3) Document Hosting Services (Comp. Ex. AA [Owen Decl. re Fees] at Ex. 3; Comp. Ex BB [Owen Decl. re Document Hosting] ¶¶ 8-23)	\$641,190.83
GRAND TOTAL (Total of (1), (2), and (3) above)	\$3,354,573.35

Exhibit 8

EXHIBIT 8

In re Lithium Ion Batteries Antitrust Litigation, Case No. 13-MD-2420 YGR
ALL PLAINTIFFS' COUNSEL | EXPENSES BY CATEGORY BROKEN DOWN BY FIRM

FIRM	Court Fees (filing, etc.)	Computer Research (Lexis, Westlaw, PACER, etc.)	Document Production	Experts / Consultants	Messenger Delivery	Photocopies - In House	Photocopies - Outside	Postage	Service of Process	Overnight Delivery (Federal Express, etc.)	Telephone / Facsimile	Transcripts (Hearings, Depos, etc.)	Travel (Airfare, Ground Travel)	Travel (Meals and Lodging)	TOTALS
<i>Co-Lead Counsel</i>															
Berman Tabacco		\$21,578.06			\$1,606.95	\$29,353.88	\$2,940.03	\$348.35	\$636.00	\$2,578.16	\$6,223.72	\$2,061.78	\$25,881.17	\$5,391.33	\$98,599.43
Pearson, Simon & Warshaw, LLP	\$107.00	\$4,945.54					\$1,417.30	\$49.68		\$954.46	\$3,215.55	\$71.10	\$10,216.90	\$9,219.88	\$30,197.41
Saveri & Saveri, Inc.	\$1,927.00	\$2,685.90		\$8,670.00		\$22,545.80		\$1,243.67	\$47.58	\$714.82	\$1,236.72	\$0.00	\$3,065.90	\$3,514.26	\$45,651.65
<i>Other Plaintiffs' Counsel</i>															
Barrack Rodos & Bacine		\$4,251.84					\$547.70	\$2.38		\$630.75	\$1,545.82		\$3,663.25	\$1,641.45	\$12,283.19
Berger & Montague, P.C.		\$2,282.90													\$2,282.90
Boni & Zack LLC		\$40.10													\$40.10
Brutzkus Gubner Rozansky Seror Weber LLP		\$153.00						\$20.21					\$9.00		\$182.21
Fine, Kaplan and Black, R.P.C.		\$3,970.16													\$3,970.16
Finkelstein Thompson LLP		\$119.50			\$61.81						\$25.05				\$206.36
Freed Kanner London & Millen LLC		\$625.40				\$2,244.20		\$73.64			\$661.10		\$1,626.14	\$1,052.05	\$6,282.53
Grant & Eisenhofer P.A.	\$342.45	\$3,621.97				\$4,799.57		\$218.82			\$123.45		\$7,784.89	\$2,304.90	\$19,196.05
Gray Plant Mooty															\$0.00
Glancy Prongay & Murray LLP		\$1,172.16							\$35.88	\$139.66			\$1,865.04	\$1,144.98	\$4,357.72
Gross & Belsky P.C.		\$7,819.89				\$93.80		\$532.66			\$193.86		\$2,025.47	\$889.57	\$11,555.25
Gustafson Gluek PLLC		\$1,094.28								\$32.50	\$90.85		\$1,206.19	\$574.11	\$2,997.93
Heins Mills & Olson, P.L.C.		\$38.50				\$51.75		\$0.98			\$19.25				\$110.48
Hulett Harper Stewart LLP															\$0.00
Kaplan Fox & Kilshimer LLP		\$132.85								\$187.81			\$37.00		\$357.66
Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C.		\$6,913.06	\$45,644.85							\$49.50	\$22.06	\$3,131.70	\$10,340.92	\$20,716.93	\$86,819.02
Law Offices of Francis O. Scarpulla															\$0.00
Lite DePalma Greenberg, LLC		\$3.00					\$844.52			\$77.91			\$1,537.52	\$1,863.22	\$4,326.17
Lockridge Grindal Nauen P.L.L.P.	\$330.00	\$6,099.54				\$3,037.05		\$6.39		\$744.53	\$541.64		\$1,185.90	\$3,420.23	\$15,365.28
MoginRubin LLP		\$401.30													\$401.30
NastiLaw LLC															\$0.00
Nussbaum Law Group		\$104.97													\$104.97
Polsinelli LLP	\$915.00	\$1,368.50	\$1,950.00		\$333.15					\$382.29	\$27.84	\$1,727.35	\$32,184.82	\$22,074.27	\$60,963.22
Pritzker Levine LLP		\$421.61						\$11.37					\$703.90	\$161.45	\$1,298.33
Reinhardt Wendorf & Blanchfield		\$219.09				\$646.40					\$8.89				\$874.38
Saltz, Mongeluzzi, Barrett & Bendesky, P.C.	\$36.00	\$725.91				\$3.00				\$85.21					\$850.12
Shulman Law															\$0.00
Spector Roseman Kodroff, P.C.		\$2,058.60				\$284.25					\$6.40			\$2,057.04	\$4,406.29
Steyer Lowenthal Boodrookas Alvarez & Smith LLP		\$3,375.34			\$36.18					\$19.30	\$27.09		\$205.63	\$3,541.20	\$7,204.74
Stueve Siegel Hanson LLP	\$700.00	\$1,435.64					\$440.66			\$331.31			\$1,548.40	\$366.16	\$4,822.17
Weinstein Kitchenoff & Asher LLC	\$305.00	\$365.67									\$22.36		\$788.62	\$1,476.72	\$2,958.37
Zelle LLP	\$133.00	\$1,826.46		\$1,094.90	\$1,200.62	\$7,318.75		\$12.60	\$468.55		\$538.89	\$181.15	\$3,117.05	\$511.10	\$16,403.07
Totals	\$4,795.45	\$79,850.74	\$47,594.85	\$9,764.90	\$3,238.71	\$70,378.45	\$6,190.21	\$2,520.75	\$1,188.01	\$6,928.21	\$14,530.54	\$7,173.08	\$108,993.71	\$81,920.85	\$445,068.46

Exhibit 9

EXHIBIT 9*In re Lithium Ion Batteries Antitrust Litigation, Case No. 13-MD-2420 YGR***ALL PLAINTIFFS' COUNSEL | TRAVEL EXPENSES**

FIRM	Travel (Airfare, Ground Travel)	Travel (Meals and Lodging)	Total Travel Expenses
<i>Co-Lead Counsel</i>			
Berman Tabacco	\$25,881.17	\$5,391.33	\$31,272.50
Pearson, Simon & Warshaw, LLP	\$10,216.90	\$9,219.88	\$19,436.78
Saveri & Saveri, Inc.	\$3,065.90	\$3,514.26	\$6,580.16
<i>Other Plaintiffs' Counsel</i>			
Barrack Rodos & Bacine	\$3,663.25	\$1,641.45	\$5,304.70
Berger & Montague, P.C.	\$0.00	\$0.00	\$0.00
Boni & Zack LLC	\$0.00	\$0.00	\$0.00
Brutzkus Gubner Rozansky Seror Weber LLP	\$9.00	\$0.00	\$9.00
Fine, Kaplan and Black, R.P.C.	\$0.00	\$0.00	\$0.00
Finkelstein Thompson LLP	\$0.00	\$0.00	\$0.00
Freed Kanner London & Millen LLC	\$1,626.14	\$1,052.05	\$2,678.19
Grant & Eisenhofer P.A.	\$7,784.89	\$2,304.90	\$10,089.79
Gray Plant Mooty	\$0.00	\$0.00	\$0.00
Glancy Prongay & Murray LLP	\$1,865.04	\$1,144.98	\$3,010.02
Gross & Belsky P.C.	\$2,025.47	\$889.57	\$2,915.04
Gustafson Gluek PLLC	\$1,206.19	\$574.11	\$1,780.30
Heins Mills & Olson, P.L.C.	\$0.00	\$0.00	\$0.00
Hulett Harper Stewart LLP	\$0.00	\$0.00	\$0.00
Kaplan Fox & Kilshimer LLP	\$37.00	\$0.00	\$37.00
Kellogg, Hansen, Todd, Figel & Frederick,	\$10,340.92	\$20,716.93	\$31,057.85
Law Offices of Francis O. Scarpulla	\$0.00	\$0.00	\$0.00
Lite DePalma Greenberg, LLC	\$1,537.52	\$1,863.22	\$3,400.74
Lockridge Grindal Nauen P.L.L.P.	\$1,185.90	\$3,420.23	\$4,606.13
MoginRubin LLP	\$0.00	\$0.00	\$0.00
NastLaw LLC	\$0.00	\$0.00	\$0.00
Nussbaum Law Group	\$0.00	\$0.00	\$0.00
Polsinelli LLP	\$32,184.82	\$22,074.27	\$54,259.09
Pritzker Levine LLP	\$703.90	\$161.45	\$865.35
Reinhardt Wendorf & Blanchfield	\$0.00	\$0.00	\$0.00
Saltz, Mongeluzzi, Barrett & Bendesky, P.C.	\$0.00	\$0.00	\$0.00
Shulman Law	\$0.00	\$0.00	\$0.00
Spector Roseman Kodroff, P.C.	\$0.00	\$2,057.04	\$2,057.04
Steyer Lowenthal Boodrookas Alvarez & Smith	\$205.63	\$3,541.20	\$3,746.83
Stueve Siegel Hanson LLP	\$1,548.40	\$366.16	\$1,914.56
Weinstein Kitchenoff & Asher LLC	\$788.62	\$1,476.72	\$2,265.34
Zelle LLP	\$3,117.05	\$511.10	\$3,628.15
TOTALS:	\$108,993.71	\$81,920.85	\$190,914.56

Exhibit 10

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

MDL No. 1917

Case No. C-07-5944 JST

This Order Relates To:

**ORDER ON ATTORNEYS’ FEES,
EXPENSES, AND INCENTIVE
AWARDS**

ALL DIRECT PURCHASER PLAINTIFFS

United States District Court
Northern District of California

Now before the Court is a motion for approval of attorneys’ fees, reimbursement of expenses, and incentive awards for the Direct Purchaser Plaintiff (“DPP”) class in connection with settlements reached with the Mitsubishi Electric and Thomson Defendants. See ECF No. 5133. The DPPs seek a combined award of attorneys’ fees in the amount of \$25,425,000 plus \$1,053,960.2 in expenses.¹ They also seek incentive awards of \$15,000 to each class representative. The Court held oral argument on this motion on June 8, 2017.

The Court has already granted final approval of the settlements. See ECF No 5168. After careful consideration and good cause appearing, the Court will grant the motion.

I. BACKGROUND

The parties are familiar with the facts of this case, and the Court has already summarized the relevant facts as to this settlement in a prior order. See id.

II. LEGAL STANDARD

“While attorneys’ fees and costs may be awarded in a certified class action where so

¹ Class Counsel already paid \$2,867,395.32 in expenses directly from the Settlement Fund, as previously authorized by the Court. ECF Nos. 1506, 1507, 1833. In this motion, Class Counsel seek reimbursement of the balance of \$1,927,392.12 that they advanced themselves.

1 authorized by law or the parties' agreement, Fed. R. Civ. P. 23(h), courts have an independent
 2 obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties have
 3 already agreed to an amount." In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 941 (9th
 4 Cir. 2011). "Where a settlement produces a common fund for the benefit of the entire class," as
 5 here, "courts have discretion to employ either the lodestar method or the percentage-of-recovery
 6 method" to determine the reasonableness of attorneys' fees. Id. at 942. "Because the benefit to
 7 the class is easily quantified in common-fund settlements," the Ninth Circuit permits district
 8 courts "to award attorneys a percentage of the common fund in lieu of the often more time-
 9 consuming task of calculating the lodestar." Id. "Applying this calculation method, courts [in the
 10 Ninth Circuit] typically calculate 25% of the fund as the 'benchmark' for a reasonable fee award,
 11 providing adequate explanation in the record of any 'special circumstances' justifying a
 12 departure." Id. (citing Six (6) Mexican Workers v. Ariz. Citrus Growers, 904 F.2d 1301, 1311
 13 (9th Cir. 1990)). However, the benchmark should be adjusted when the percentage recovery
 14 would be "either too small or too large in light of the hours devoted to the case or other relevant
 15 factors." Six (6) Mexican Workers, 904 F.2d at 1311. "[W]here awarding 25% of a 'megafund'
 16 would yield windfall profits for class counsel in light of the hours spent on the case, courts should
 17 adjust the benchmark percentage or employ the lodestar method instead." Id.; see also In re
 18 Bluetooth Headset Products Liab. Litig., 654 F.3d at 942 (citing Six (6) Mexican Workers, 904
 19 F.2d at 1311).

20 An attorney is entitled to "recover as part of the award of attorney's fees those out-of-
 21 pocket expenses that would normally be charged to a fee paying client." Harris v. Marhoefer, 24
 22 F.3d 16, 19 (9th Cir. 1994) (citation omitted). An attorney seeking an expense award should file
 23 an itemized list of her expenses by category, listing the total amount advanced for each category,
 24 allowing the Court to assess whether the expenses are reasonable. Wren v. RGIS Inventory
 25 Specialists, No. 06-cv-05778-JCS, 2011 WL 1230826, at *30 (N.D. Cal. Apr. 1, 2011),
 26 supplemented, No. 06-cv-05778-JCS, 2011 WL 1838562 (N.D. Cal. May 13, 2011).

27 III. DISCUSSION

28 The Court has already granted the DPPs' motion for attorneys' fees and expenses related to

1 their settlements with Chunghwa, Philips, Panasonic, LG, Toshiba, Hitachi, and Samsung SDI. In
 2 re: Cathode Ray Tube (Crt) Antitrust Litig., No. C-07-5944 JST, 2016 WL 183285, at *1 (N.D.
 3 Cal. Jan. 14, 2016) (“First Fee Order”). For largely the same reasons articulated in the First Fee
 4 Order, the Court concludes that the DPPs are entitled to fees totaling 30% of the settlement funds
 5 as well as their expenses.

6 **A. Attorneys’ Fees**

7 The DPPs move the Court for \$25,425,000 in aggregate attorneys’ fees, split among
 8 nineteen (19) distinct law firms. ECF No. 5133 at 1. The requested fee represents 30 percent of
 9 the overall \$84,750,000 million settlement fund. Id.

10 The “benchmark” percentage for an award of attorneys’ fees in a class action in this circuit
 11 is 25 percent. In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d at 942. But in a “megafund”
 12 settlement of this size, resort to the Ninth Circuit’s 25 percent “benchmark” is of little use in
 13 determining an appropriate attorney’s fee. See In re Washington Pub. Power Supply Sys. Sec.
 14 Litig., 19 F.3d 1291, 1297 (9th Cir. 1994) (“Because a court must consider the fund’s size in light
 15 of the circumstances of the particular case, we agree with the district court that the 25 percent
 16 ‘benchmark’ is of little assistance in a case such as this.”). Therefore, the Court looks to the
 17 factors identified by the Ninth Circuit as helpful to determining a fee award:

18 the extent to which class counsel “achieved exceptional results for the class,”
 19 whether the case was risky for class counsel, whether counsel's performance
 20 “generated benefits beyond the cash settlement fund,” the market rate for the
 21 particular field of law (in some circumstances), the burdens class counsel
 22 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.

23 In re Online DVD-Rental Antitrust Litig., 779 F.3d 934, 954–55 (9th Cir. 2015) (internal citations
 24 omitted). Here, these factors support an award of 30 percent.

25 **1. Result for the Class**

26 The DPPs obtained a strong result in their settlement with the Mitsubishi and Thomson
 27 Defendants. When added to the DPPs prior settlements, the \$75 million dollar payment here
 28 brings the settlement total to \$212,200,000, nearly 25% of the single damages estimated by the

1 DPPs' expert. ECF No. 5133 at 21. The \$75 million payment considered by itself is also
 2 substantial, particularly given that 1) it exceeds the single damages attributable to the Mitsubishi
 3 Defendants and 2) the Thomson Defendants remain in poor financial condition. Id.

4 **2. Risks of Litigation**

5 This litigation was risky in several ways. There was a real risk that class certification
 6 could have been denied, that the DPPs would not have been able to establish liability, and that a
 7 jury would award damages below what the DPPs sought. For example, Defendants, including
 8 Mitsubishi and Thomson, have argued vigorously that they did not participate in the CRT
 9 conspiracy. See, e.g., ECF No. 5128. Had Defendants prevailed in this argument, the DPPs would
 10 have recovered nothing. With regard to damages, the risk is evident from the fact that, in the
 11 related LCD litigation, a jury awarded \$87 million even though Plaintiffs had argued for damages
 12 of \$870 million. ECF No. 5133-1 ¶ 56. Simply put, this was a contested and well-litigated case
 13 where a substantial jury award was by no means assured.

14 **3. Burdens Experienced by Class Counsel**

15 As the Court noted in the First Fee Order, "counsel here has expended far more work . . .
 16 and taken upon themselves more risk—spanning eight years of litigation—than is present in a
 17 normal class action suit." 2016 WL 183285, at *2. The same is true here and favors an upward
 18 departure from the benchmark. See Vizcaino, 290 F.3d at 1047-1050 (awarding a fee in excess of
 19 25 percent for high risks, effort, sophisticated work, and good results obtained by counsel); see
 20 also In re Pac. Enters. Sec. Litig., 47 F.3d 373, 379 (9th Cir. 1995) (citing Six (6) Mexican
 21 Workers for the proposition that 25 percent is the benchmark in this circuit yet affirming an award
 22 of fees for 33 percent due, in part, to substantial risk undertaken by counsel).

23 **4. Contingency Fee Arrangement**

24 Class counsel litigated this case on a contingency basis for nearly a decade. This factor
 25 also weighs in favor of an upward adjustment. See Vizcaino, 290 F.3d 1043, 1050 (9th Cir. 2002)
 26 (finding it relevant that "counsel's representation of the class—on a contingency basis—extended
 27 over eleven years, entailed hundreds of thousands of dollars of expense, and required counsel to
 28 forgo significant other work").

1 **5. Reaction of the Class**

2 Also relevant is the fact that no class member has objected to the proposed settlement or
3 proposed fee award. ECF No. 4114; see Ching v. Siemens Indus., Inc., No. 11-CV-04838-MEJ,
4 2014 WL 2926210, at *8 (N.D. Cal. June 27, 2014).

5 **6. Lodestar Check**

6 Lastly, and most importantly, the Court has cross-checked this award against the DPPs’
7 lodestar. The Court has reviewed the documentation provided by the DPPs and agrees with their
8 calculation of an anticipated lodestar for this fee application of \$11,812,004.95.² See ECF No.
9 5133-1 at 3. The DPPs’ first fee application resulted in a lodestar of \$43,335,517.50, for a total of
10 \$55,147,522.45. Id.

11 In their motion, the DPPs say the multiplier is 1.154, which they describe as “very low.”
12 ECF No. 5133 at 25. But that is the multiplier for the overall DPP lodestar (from the first and
13 second fee applications combined) compared with the overall DPP settlement, not the multiplier
14 for this particular motion. The multiplier for *this* motion is 2.152 — \$25,425,000.00 divided by
15 \$11,812,004.95. That is double the number the DPPs tout in their motion and two and a half times
16 the multiplier for the first fee application. Although the DPPs’ calculations could have been more
17 transparent, the 2.152 multiplier still confirms the reasonableness of the award. Cf. In re High-
18 Tech Emp. Antitrust Litig., No. 11-CV-02509-LHK, 2015 WL 5158730, at *10-11 (N.D. Cal.
19 Sept. 2, 2015) (approving attorneys’ fees for less than 30 percent but with a lodestar multiplier of
20 2.5); see also Vizcaino, 290 F.3d at 1052-54 (conducting a survey of attorneys’ fees in “megafund”
21 cases and finding that 83 percent of such cases award a multiplier from 1.0-4.0).

22 **7. Similar Awards**

23 Finally the Court notes that an award of fees of this size is consistent with the First Fee
24 Order issued by this Court, as well as with decisions by Judge Illston in a similar multidistrict
25 litigation case and awards by other judges in this district. See In re TFT-LCD (Flat Panel)
26 Antitrust Litig. (“LCD”), No. MDL 3:07-MD-1827 SI, 2011 WL 7575003, at *1 (N.D. Cal. Dec.

27 _____
28 ² A sampling of DPPs time records demonstrated careful and thorough time keeping practices.

United States District Court
Northern District of California

1 27, 2011) (30 percent); LCD II, No. M 07-1827 SI, 2013 WL 149692, at *1-2 (N.D. Cal. Jan. 14,
2 2013) (30 percent); LCD III, No. M 07-1827 SI, 2013 WL 1365900, at *7-8 (N.D. Cal. Apr. 3,
3 2013), appeal dismissed (July 12, 2013), appeal dismissed (June 10, 2014), appeal dismissed (June
4 12, 2014), appeal dismissed (June 13, 2014) (28.6 percent); In re: Static Random Access Memory
5 (SRAM) Antitrust Litigation, Case No. 07-md-1819-CW (N.D. Cal. June 30, 2011) (Dkt. No.
6 1370) (30 percent); In re Dynamic Random Access Memory (DRAM) Antitrust Litig., M-02-
7 1486, 2007 WL 2416513 (N.D. Cal. Aug. 16, 2007), at *1 (25 percent); In re Optical Disk Drive
8 Antitrust Litig., Case No. 10-md-2143 RS (N.D. Cal. July 23, 2015) (Dkt. No. 1658) (30 percent).

9 ***

10 In sum, the Court concludes that an upward departure to 30% of the settlement amount is
11 warranted here and awards counsel \$25,425,000 in attorneys’ fees.

12 **B. Expenses**

13 DPPs request a total of \$1,053,960.26 in reimbursable expenses. ECF No. 5133 at 27.

14 The aggregate itemized claimed costs are as follows:

- 15 1. Document management system and database costs of \$48,616.25;
- 16 2. Payments to special masters of \$78,413.66;
- 17 3. Payments to translation services of \$32,511.71;
- 18 4. Payments to claims administrator of \$112,011.33;
- 19 5. Court filing fees and costs of \$1,010.00;
- 20 6. Payments to experts of \$732,650.80;
- 21 7. Federal Express costs of \$1,044.67;
- 22 8. Transcript costs of \$13,559.00;
- 23 9. Messenger and delivery costs of \$18.34;
- 24 10. In-house copy charges (capped at 20 cents per page) of \$29,515.79;
- 25 11. Professional copy charges of \$1,331.30;
- 26 12. Postage charges of \$366.17;
- 27 13. Service of process charges of \$397.75; and
- 28 14. Telephone and facsimile charges of \$2,513.49.

ECF No. 5133-1 ¶ 10, Ex. E.

The Court finds these expenses to be fair and reasonable, and grants the motion for the
reimbursement in the amount of \$1,053,960.26.

C. Incentive Awards

“[N]amed plaintiffs, as opposed to designated class members who are not named plaintiffs,

United States District Court
Northern District of California

1 are eligible for reasonable incentive payments.” Staton v. Boeing Co., 327 F.3d 938, 977 (9th Cir.
2 2003). “Incentive awards are discretionary . . . and are intended to compensate class
3 representatives for work done on behalf of the class, to make up for financial or reputational risk
4 undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private
5 attorney general.” Rodriguez v. W. Pub. Corp., 563 F.3d 948, 958-59 (9th Cir.2009). Further,

6 [t]he district court must evaluate [incentive] awards individually,
7 using relevant factors including the actions the plaintiff has taken to
8 protect the interests of the class, the degree to which the class has
9 benefitted from those actions, the amount of time and effort the
10 plaintiff expended in pursuing the litigation and reasonable fears of
11 workplace retaliation.

12 Staton, 327 F.3d at 977 (citation and internal quotations and alterations omitted). District courts
13 must scrutinize “all incentive awards to determine whether they destroy the adequacy of the class
14 representatives.” Radcliffe v. Experian Info. Solutions, Inc., 715 F.3d 1157, 1165 (9th Cir. 2013);
15 see also id. at 1663; Staton, 327 F.3d at 977; Dyer v. Wells Fargo Bank, N.A., 303 F.R.D. 326,
16 334-35 (N.D. Cal. Oct. 2, 2014).

17 Here, DPPs already obtained \$25,000 incentive awards for each of the class representatives
18 named in DPPs’ second amended class action complaint as a part of the first fee application. ECF
19 No. 4299. They now seek an additional \$15,000 for each class representative.

20 As the Court explained in its prior order granting incentive awards, in this Circuit, an
21 incentive award of \$5,000 is presumptively reasonable, and an award of \$25,000 or even \$10,000
22 is considered “quite high.” See Dyer, 303 F.R.D. at 335 (citing Harris v. Vector Mktg. Corp., No.
23 C-08-5198 EMC, 2012 WL 381202, at *7 (N.D. Cal. Feb. 6, 2012)). The Court granted \$25,000
24 awards because the class representatives 1) took the first step of filing this case, 2) obtained a
25 substantial settlement for the class, 3) expended extensive time and effort in pursuing the
26 litigation, and 4) risked retaliation within the CRT industry. ECF No. 4299. Moreover, the Court
27 noted that awards constituted a small percentage of the overall class recovery and that they were
28 consistent with other similar cases in this district. Id. at 5-6 (citing cases).

The Court is not convinced that the class representatives deserve an over 50% increase in
their incentive awards solely for their additional contributions related to the cases against the

United States District Court
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1 Mitsubishi and Thomson Defendants. Although the class representatives likely performed some
2 additional work beyond that described in the first fee application, the amount of the supplemental
3 request seems excessive. For example, DPPs note that the class representatives spent time
4 responding to the Mitsubishi and Thomson Defendants' discovery requests, but there was likely
5 substantial overlap with their prior discovery responses to the other Defendants. The same is true
6 for deposition preparation, keeping abreast of the major filings in the case, and the other tasks
7 DPPs describe in their motion. ECF No. 5133 at 29. Therefore, the Court will award each named
8 representative an additional \$5,000, which brings their total to \$30,000 each. This is well in line
9 with awards in similar cases. ECF No. 4299 at 5-6 (citing cases).

10 **IV. CONCLUSION**

11 The Court hereby grants in full the request for attorneys' fees in the amount of
12 \$25,425,000, and for expenses in the amount of \$1,053,960.26. The Court also grants an
13 additional \$5,000 incentive award to each of the eight class representatives.

14 IT IS SO ORDERED.

15 Dated: June 8, 2017

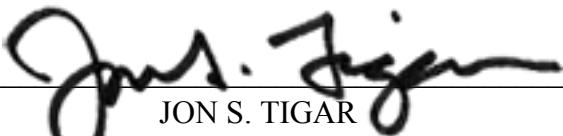
16 
17 _____
18 JON S. TIGAR
19 United States District Judge

Exhibit 11

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE OPTICAL DISK DRIVE
ANTITRUST LITIGATION

Case No. 3:10-md-02143 RS

MDL No. 2143

This Document Relates to:
ALL DIRECT PURCHASER ACTIONS

~~PROPOSED~~ ORDER GRANTING DIRECT
PURCHASER PLAINTIFFS' MOTION FOR
AN AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES, AND
CLASS REPRESENTATIVE INCENTIVE
AWARDS

Date: ~~May 14, 2015~~
Time: 1:30 p.m.
Judge: Honorable Richard Seeborg
Courtroom: 3, 17th Floor

1 The Court, having reviewed Direct Purchaser Plaintiffs’ Motion for an Award of Attorneys’
2 Fees, Reimbursement of Expenses, and Class Representative Incentive Awards (March 16, 2015)
3 (“Motion”), the pleadings and other papers on file in this action, [~~the responses of class members~~],
4 and the statements of counsel and the parties, hereby finds that:

5 1. The Motion requests an award of attorneys’ fees in the amount of \$11,370,000 or
6 30% of the \$37,900,000 Settlement Fund.¹ Further, Direct Purchaser Plaintiffs (“DPPs”) and their
7 counsel (“Class Counsel”) request reimbursement of out-of-pocket litigation costs and expenses in
8 the amount of \$1,687,905.17. In addition, DPPs request that the Court approve the \$1,593,268.18
9 in expenses paid with settlement funds. Lastly, DPPs request incentive awards for the Class
10 Representatives as follows: \$5,000 for each of the three class plaintiffs named only in the Second
11 Consolidated Amended Complaint,² and \$10,000 for each of the six class plaintiffs named in the
12 Third Consolidated Amended Complaint,³ for a total of \$75,000.

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

24
25
26 ¹ The “Settlement Fund” consists of the total proceeds of the following settlements: \$26,000,000
(HLDS), \$5,750,000 (Panasonic), and \$6,150,000 (NEC).

27 ² Univision-Crimson Holding, Inc.; Warren S. Herman; and The Stereo Shop.

28 ³ JLK Systems Group, Inc. and Jeff Kozik; Meijer, Inc. and Meijer Distribution, Inc.; Paul Nordine; Seneca Data Distributors, Inc.; Gregory Starrett; and Ashely Tremblay.

1 3. The Court has confirmed the reasonableness of DPPs’ fee request by conducting a
2 lodestar cross-check. The Court finds that Class Counsel’s reasonable lodestar was \$24,811,762.75
3 based on historic hourly rates for the period from the appointment of lead counsel until December
4 31, 2014. Class Counsel’s requested fee award represents less than 50% of their reasonable
5 lodestar. This further supports the reasonableness of Class Counsel’s fee request here.

6 4. The Court finds that Class Counsel incurred a total of \$3,281,173.35 in litigation
7 costs and expenses in prosecuting this litigation as of December 31, 2014. The Court finds that
8 these costs and expenses were reasonably incurred in the ordinary course of prosecuting this case
9 and were necessary given the complex nature and nationwide scope of the case.

10 5. Pursuant to *Radcliffe v. Experion Information Solutions*, 715 F.3d 1157 (9th Cir.
11 2013), the Court has carefully considered the requested incentive awards. The Court deems the
12 application for incentive awards reasonable and justified given: (1) the risks—reputational,
13 financial, and otherwise—faced by class representatives in bringing this lawsuit; and (2) the work
14 performed and the active participation in the litigation and settlement processes by the class
15 representatives on behalf of members of the class.

16 6. In sum, upon consideration of the Motion and accompanying Declarations, and
17 based upon all matters of record including the pleadings and papers filed in this action, the Court
18 hereby finds that the fee requested is reasonable and proper; the costs and expenses incurred by
19 Class Counsel were necessary, reasonable, and proper; and that incentive awards are appropriate
20 given the time and effort expended by the Class Representatives in the prosecution of this case.

21 Accordingly, it is hereby ORDERED and DECREED that:

22 7. Class Counsel are awarded attorneys’ fees of \$11,370,000 (30% of the \$37,900,000
23 Settlement Fund), together with a proportional share of interest earned on the Settlement Fund for
24 the same time period and at the same rate as that earned on the Settlement Fund until dispersed to
25 Class Counsel.

26 8. Class Counsel are awarded reimbursement of their litigation costs and expenses in
27 the amount of \$1,687,905.17.

1 9. The \$1,593,268.18 in costs and expenses paid directly from the Court-ordered
2 settlement funds are approved.

3 10. The SCAC Class Representatives—Univision-Crimson Holding, Inc.; Warren S.
4 Herman; and The Stereo Shop—shall each receive an incentive award in the amount of \$5,000.

5 11. The TCAC Class Representatives—JLK Systems Group, Inc. and Jeff Kozik;
6 Meijer, Inc. and Meijer Distribution, Inc.; Paul Nordine; Seneca Data Distributors, Inc.; Gregory
7 Starrett; and Ashely Tremblay—shall each receive an incentive award in the amount of \$10,000.

8 12. The attorneys’ fees awarded, reimbursement of litigation costs and expenses, and
9 incentive awards shall be paid from the Settlement Fund and the interest earned thereon.

10 13. The fees and expenses shall be allocated among Class Counsel by the Chairman of
11 the Executive Committee in a manner that, in the Chairman’s good-faith judgment, reflects each
12 firm’s contribution to the institution, prosecution, and resolution of the litigation.

13 14. This order shall be entered of this date pursuant to Rule 54(b) of the Federal Rules
14 of Civil Procedure, the Court finding that there is no just reason for delay.


15

16 **IT IS SO ORDERED.**

17

18 Dated: July 23, 2015

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HON. RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE

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Exhibit 12

1 Counsel Listed on Signature Page

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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OAKLAND DIVISION

11

IN RE STATIC RANDOM ACCESS)
MEMORY (SRAM) ANTITRUST)
LITIGATION)

Master File No. 4:07-md-01819-CW

12

MDL No. 1819

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14

This Document Relates to:)

**ORDER AWARDING CLASS
COUNSEL ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES AND
INCENTIVE AWARD**

15

**ALL DIRECT PURCHASER)
ACTIONS)**

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**ORDER AWARDING CLASS COUNSEL ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES AND INCENTIVE AWARD
Case No. 4:07-md-01819-CW; MDL No. 1819**

1 The Court, having considered Direct Purchaser Plaintiffs Motion for Award of Attorney's
2 Fees, Reimbursement for Expenses, and Incentive Award (Dkt. No. 1334) (the "Motion") and
3 the declarations in support thereof, in addition to the findings stated on the record at such
4 hearing, hereby finds that:

5 1. The Motion for Attorneys' Fees and Reimbursement of Expenses requests an
6 award of attorneys' fees of 30% of Settlement Fund, which is comprised of all of the Settling
7 Defendants' settlement payments (\$76,872,476.99), as well as the interest earned thereon.
8 Further, Plaintiff's counsel ("Class Counsel") request reimbursement of out-of-pocket litigation
9 costs and expenses, as well anticipated expenses related to administration of the Settlement
10 Fund, and an incentive award to the sole Class representative.

11 2. The Court finds that the amount of fees requested is fair and reasonable under the
12 "percentage-of-recovery" method, including as confirmed by a lodestar "cross-check."

13 3. The attorneys' fees requested were entirely contingent upon success. Class
14 Counsel risked time and effort and advanced costs and expenses with no ultimate guarantee of
15 compensation. The award of 30% is warranted for reasons including: the result obtained for the
16 class – payment by Defendants of more than \$75 million; the quality and quantity of work
17 performed by Class Counsel over more than four years of litigation – such as substantial motion
18 practice on complex issues; the risks faced at the outset and throughout the litigation – such as
19 proceeding after the Department of Justice closed its criminal investigation without seeking any
20 indictments; and, the lodestar "cross-check" – which reveals a 1.01 multiplier for Class
21 Counsel's more than 66,000 hours working on the case.

22 4. Further, the expenses sought were or will be incurred in connection with the
23 prosecution of the litigation or the anticipated administration of the Settlement Fund for the
24 benefit of the Class (and that, before Settlement funds are distributed to Class members, Class
25 Counsel will provide this Court with an accounting of the anticipated expenses that were actually
26 incurred).

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1 5. Since the filing of Direct Purchaser Plaintiffs Motion for Award of Attorney's
2 Fees, Reimbursement for Expenses, and Incentive Award (Dkt. No. 1334), Direct Purchaser
3 Plaintiffs received an invoice from Resonant Legal Media in connection with the prosecution of
4 this litigation in preparation for trial in the amount of \$38,205.66.

5 6. Additionally, the sole Class representative is entitled to the requested incentive
6 award because of its work performed for the benefit of the Class and the risks undertaken.

7 7. In excess of 5,000 notices outlining Class Counsels' requests were provided
8 to Class Members. No objections were received.

9 8. Upon consideration of the Motion and accompanying Declarations and based
10 upon all matters of record including the pleadings and papers filed in this action, the Court
11 hereby finds that the fee requested is reasonable and proper, that the costs and expenses incurred
12 by Class Counsel were necessary, reasonable and proper, and that the incentive award is
13 warranted.

14 **Accordingly, it is hereby ORDERED and DECREED that:**

15 A. Class Counsel are awarded attorneys' fees of thirty percent (30%) of the
16 Settlement Fund (\$76,872,476.99), including interest earned on the Settlement Fund up to the
17 date of disbursement to Class Counsel.

18 B. Class Counsel are awarded reimbursement of their litigation costs and expenses in
19 the amount of \$570,174.61, and are authorized to pay from the Settlement Fund expenses related
20 to administration of the Settlement Fund (that are actually incurred), but which will, except upon
21 application to the Court, not exceed a total amount of \$735,000.00.

22 C. The attorneys' fees awarded, reimbursement of litigation costs and expenses, and
23 the incentive award, shall be paid from the Settlement Fund and the interest earned thereon.

24 D. The fees and expenses shall be allocated among Class Counsel by Lead Counsel
25 (Cotchett, Pitre & McCarthy, LLP), in a manner which, in Lead Counsel's good-faith judgment,
26 reflects each firm's contribution to the institution, prosecution and resolution of the litigation.

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1 E. Direct Purchaser Plaintiffs will pay the invoice from Resonant Legal Media in
2 connection with the prosecution of this litigation in preparation for trial in the amount of
3 \$38,205.66 from the Settlement Fund.

4 F. The sole Class representative, Westell, is awarded \$50,000.00.

5 G. This order shall be entered as of this date pursuant to Rule 54(b) of the Federal
6 Rules of Civil Procedure, the Court finding that there is no just reason for delay.

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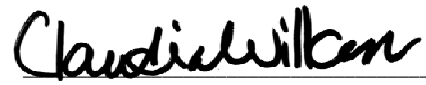
11 **IT IS SO ORDERED.**

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15 Date: June 30, 2011


THE HONORABLE CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

16

17

18 *Submitted by:*

19 JOSEPH W. COTCHETT (#36324)
STEVEN N. WILLIAMS (#175489)
20 **COTCHETT, PITRE & McCARTHY, LLP**
San Francisco Airport Office Center
840 Malcolm Road, Suite 200
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jcotchett@cpmlegal.com
23 swilliams@cpmlegal.com

24 *Lead Counsel for the Direct Purchaser Class*

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Exhibit 13

FILED

JUL X 3 2012

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: TFT-LCD (FLAT PANEL) ANTITRUST
LITIGATION

No. M 07-1827 SI
MDL No. 1827

SPECIAL VERDICT

This Order Relates To:

Direct-Purchaser Plaintiff Class Actions

We the jury unanimously find as follows on the questions submitted to us:

Question 1: Did plaintiffs prove, by a preponderance of the evidence and in accordance with the instructions given to you, that Toshiba knowingly participated in a conspiracy to fix, raise, maintain or stabilize the prices of TFT-LCD panels?

Yes

No

If your answer to this question is "Yes," please answer the next question. If your answer to this question is "No," please go to the end of the verdict form, and sign and date it where indicated.

United States District Court
For the Northern District of California

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United States District Court
For the Northern District of California

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Question 2: Did plaintiffs prove, by a preponderance of the evidence and in accordance with the instructions given to you, that the conspiracy involved TFT-LCD panels and/or finished products (notebook computers, computer monitors and televisions containing TFT-LCD panels) imported into the United States?

Yes No

If your answer to this question is "Yes," please answer the next question. If your answer to this question is "No," please go to Question 4.

Question 3: Did plaintiffs prove, by a preponderance of the evidence and in accordance with the instructions given to you, that the conspiracy involving imported TFT-LCD panels and/or finished products (notebook computers, computer monitors and televisions containing TFT-LCD panels) produced substantial intended effects in the United States?

Yes No

Please answer the next question.

Question 4: Did plaintiffs prove, by a preponderance of the evidence and in accordance with the instructions given to you, that the conspiracy involved conduct which had a direct, substantial and reasonably foreseeable effect on trade or commerce in the United States?

Yes No

If your answer to either Question 3 or Question 4 is "Yes," please answer the next question. If your answer to both Question 3 and Question 4 is "No," please go to the end of the verdict form, and sign and date it where indicated.

United States District Court
For the Northern District of California

1 **Question 5:** Did plaintiffs prove, by a preponderance of the evidence and in accordance with the
2 instructions given to you, that members of the Panel Class were injured as a result of the conspiracy in
3 which Toshiba knowingly participated?

4
5 Yes No

6
7 If your answer to this question "Yes," please answer the next question. If your answer to this question
8 is "No," please go to Question 7.

9 **Question 6:** What was the amount of damages the plaintiffs proved, by a preponderance of the evidence
10 and in accordance with the instructions given to you, that members of the Panel Class suffered as a result
11 of that injury?

12 \$ 17,000,000
13 (Please fill in a dollar amount total)

14 Please answer the next question.

15 **Question 7:** Did plaintiffs prove, by a preponderance of the evidence and in accordance with the
16 instructions given to you, that members of the Finished Product Class were injured as a result of the
17 conspiracy in which Toshiba knowingly participated?

18
19 Yes No

20
21 If your answer to this question "Yes," please answer the next question. If your answer to this question
22 is "No," please go to the end of the verdict form, and sign and date it where indicated.


23 **Question 8:** What was the amount of damages the plaintiffs proved, by a preponderance of the evidence
24 and in accordance with the instructions given to you, that members of the Finished Product Class
25 suffered as a result of that injury?

26 \$ 70,000,000
27 (Please fill in a dollar amount total)

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Date: 3 July 2012


FOREPERSON

United States District Court
For the Northern District of California