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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: LITHIUM ION BATTERIES
ANTITRUST LITIGATION

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

This Document Relates to:
ALL DIRECT PURCHASER ACTIONS

**ORDER GRANTING CO-LEAD COUNSEL
FOR DIRECT PURCHASER PLAINTIFFS'
NOTICE OF MOTION AND MOTION FOR
AN AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES AND
SERVICE AWARDS**

1 The Court, having reviewed Direct Purchaser Plaintiffs’ Motion for an Award of Attorneys’
2 Fees, Reimbursement of Expenses, and Class Representative Service Awards (February 8, 2018)
3 (“Motion,” Dkt. No. 2171), the pleadings and other papers on file in this action, the objections
4 filed, 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 \$41,790,000.00 or
6 30% of the \$139,300,000.00 Settlement Fund.¹ Further, Co-Lead Counsel request payment from
7 the Settlement Fund of a total of \$3,354,573.35 in expenses (“Total Expenses”).

8 2. Of the Total Expenses, the amount of \$2,501,352.52 is unreimbursed, out-of-pocket
9 expenses, which includes Litigation Fund expenditures of \$2,247,198.62 and Plaintiffs’ Counsel’s
10 total out-of-pocket firm expenses of \$445,068.46, less \$190,914.56 in travel, meals and lodging
11 expenses for which reimbursement is not requested.

12 3. Co-Lead Counsel request that the Court approve payment from the Settlement Fund
13 for \$212,030.00 in outstanding invoices for professional economists’ services rendered.

14 4. In addition, Co-Lead Counsel request that the Court approve payment from the
15 Settlement Fund for the charge of \$641,190.83 for document hosting services rendered.

16 5. Lastly, Co-Lead Counsel request service awards for the nine Class Representatives
17 as follows: Ritz Camera, Circuit City, and Univisions (\$30,000 each); Automation Engineering,
18 Stereo Shop and First Choice Marketing (\$10,000 each); and Charles Carte, Terri Walner, and
19 James O’Neil (\$5,000 each) for a total of \$135,000.

20 6. The Court finds that the requested fee award of \$41,790,000.00, 30% of the
21 Settlement Fund, is fair and reasonable under the percentage-of-the-recovery method based upon
22 the following factors: (i) the results obtained by Plaintiffs’ Counsel in this case; (ii) the risks and
23 complex issues involved in this case, which were significant and required a high level of skill and
24 high-quality work to overcome; (iii) that the attorneys’ fees requested were reasonable and entirely
25 contingent upon success—Plaintiffs’ Counsel risked time and effort and advanced costs with no

26 ¹ The “Settlement Fund” consists of the total proceeds of the following settlements: Sony
27 (\$19 million); NEC Corp. (\$1 million); Hitachi Maxell (\$3.45 million); Panasonic/Sanyo (\$42.5
28 million); Toshiba (\$2.9 million); LG Chem (\$41 million); Samsung SDI (\$24.5 million); NEC
Tokin (\$4.95 million).

1 ultimate guarantee of compensation; (iv) that the range of awards made in similar cases justifies an
2 award of 30% here; and (v) that Plaintiffs' Counsel's reasonable lodestar means the requested
3 attorneys' fee results in a negative, 0.58 multiplier, which obviates concern about any windfall
4 given the size of the settlement recovery. These factors justify an upward adjustment of the Ninth
5 Circuit's usual 25% benchmark.

6 Despite the size of the settlement fund at issue here, the Court does not find that fees should
7 be reduced based upon the settlement being a "megafund" or the fee percentage giving a "windfall"
8 to counsel for plaintiffs. The megafund concern arises when a percentage of the recovery would
9 result in excessive profits for class counsel in light of the hours actually spent. *In re Bluetooth*
10 *Headset Prod. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). The lodestar cross-check is meant to
11 "confirm that a percentage of [the] recovery amount does not award counsel an exorbitant hourly
12 rate." *Online DVD*, 779 F.3d at 949 (citation and internal quotation marks omitted). Here, lodestar
13 cross-check results in an effective hourly rate far below the market rate for the hours devoted to the
14 case by class counsel. Consequently, the Court finds that the requested fee award is reasonable and
15 is justified by the circumstances of this case.

16 7. Only two objections to the attorneys' fee request were submitted. Of those two
17 objections, Rinis Travel Service ("RTS") withdrew its objection prior to the hearing, with a
18 pending an order to show cause re: sanctions against it for its failure to comply with an order for
19 discovery regarding its objection. (Dkt. No. 2300.)² The other objection, by Mr. Kenneth M.
20 McInelly, President of Agency Software, Inc. ("ASI"), was filed prior to the instant attorneys' fees
21 motion. (Dkt. No. 2161, dated January 19, 2018, filed January 24, 2018.) The objection letter
22 simply states a concern about the requested fees being 30% of the settlement fund, without the
23 benefit of any information about the lodestar in this matter or the effective hourly rate given the
24 great number of hours devoted to the case. The Court finds ASI's objection insubstantial and
25 overrules it.

26
27 ² RTS's objection (Dkt. No. 2196) raised the issue of the attorneys' fees being excessive
28 because the settlement fund constituted a "megafund," an objection the Court rejects herein at
paragraph 6.

1 8. 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 \$72,489,066.75
3 based on 173,863.20 hours of work billed at historic hourly rates for the period from the
4 appointment of lead counsel until August 31, 2017, which is an average rate of \$417/hr. Co-Lead
5 Counsel's requested fee award represents 58% of their reasonable lodestar, and an effective rate of
6 \$241.82/hr. This further supports the reasonableness of Class Counsel's fee request here.

7 9. The Court finds that Plaintiffs' Counsel incurred a total of \$3,354,573.35 in total
8 unreimbursed out-of-pocket litigation costs and other expenses in prosecuting this litigation. The
9 Court finds that these costs and expenses were reasonably incurred in prosecuting this case and
10 were necessary given the complex nature and nationwide scope of the case.

11 10. Pursuant to *Radcliffe v. Experian Information Solutions, Inc.*, 715 F.3d 1157 (9th
12 Cir. 2013), the Court has carefully considered the requested incentive awards. The Court deems
13 the application for incentive awards to the nine Class Representatives reasonable and justified
14 given: (i) their willingness to serve as private attorneys general; and (ii) their work performed and
15 the active participation in the litigation on behalf of the DPP Class.

16 11. 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 attorneys' fee requested is reasonable and proper; the costs and expenses
19 incurred by Plaintiffs' Counsel were necessary, reasonable, and proper; and that incentive awards
20 are appropriate given the time and effort expended by the Class Representatives in the prosecution
21 of this case.

22 Based upon the foregoing, the Court **ORDERS** that:

23 1. Plaintiffs' Counsel are awarded attorneys' fees of **\$41,790,000.00** (30% of the
24 \$139,300,000.00 Settlement Fund), together with a proportional share of interest earned on the
25 Settlement Fund for the same time period until dispersed to Class Counsel.

26 2. Plaintiffs' Counsel are awarded reimbursement of their litigation costs and expenses
27 in the amount of **\$3,354,573.35**. This amount does not include Plaintiffs' Counsel's travel, meals,
28 and lodging expenses related to the litigation of this action.

1 3. Class Representatives Ritz Camera, Circuit City, and Univisions shall each receive
2 an incentive award in the amount of **\$30,000.00** each.

3 4. Class Representatives Automation Engineering, Stereo Shop and First Choice
4 Marketing shall each receive an incentive award in the amount of **\$10,000.00** each.

5 5. Charles Carte, Terri Walner, and James O'Neil shall each receive an incentive
6 award in the amount of **\$5,000.00** each.

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

9 7. Co-Lead Counsel will allocate the fees and expenses among Co-Lead Counsel and
10 all Plaintiffs' Counsel in a fair and equitable manner that, in Co-Lead Counsel's good-faith
11 judgment, reflects each firm's contribution to the institution, prosecution, and resolution of the
12 litigation.

13 **IT IS SO ORDERED.**

14
15 Dated: May 16, 2018


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE