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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JAN HARRISON; LEE RANALLI; MORGAN TANNER; SPENCER HATHAWAY; TODD TURLEY; DEBBIE HALE; KELI ANNO; JOHN ZULLO; CHRISTOPHER KUON-TSEN LEE; JIM BUCKINGHAM; TANDA SAXTON; JOHN WOZNIAK; JEROME SHERMAN; BEVERLY JENKINS; DAVID PETERSEN; TOM STEVER; BRIAN BAWOL; RANSOME FOOSE; and, STACY FRANKLIN.

Plaintiffs,

v.

E.I. DUPONT DE NEMOURS AND COMPANY; HUNTSMAN INTERNATIONAL, LLC; KRONOS WORLDWIDE, INC.; and, MILLENNIUM INORGANIC CHEMICALS, INC.;

Defendants.

Case No. 5:13-cv-01180-BLF

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS

Date: August 16, 2018
Time: 1:30 p.m.
Dept: Courtroom 3, 5th Floor
Judge: Honorable Beth Labson Freeman

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that at 1 :30p.m. on August 16, 2018, or as soon thereafter as the matter may be heard by the Honorable Beth Labson Freeman, of the United States District Court of the Northern District of California, located at Courtroom 3, 5th Floor, of this Court at 280 South 1st Street, San Jose, California 95113, Plaintiffs will and hereby do move the Court for an order:

1. Awarding 21 percent of the $3,500,000.00 settlement as attorneys' fees, in the amount of $750,000.00;

2. Reimbursing litigation expenses incurred in the amount of $89,813.54;

3. Providing service awards totaling $28,500.00 ($1,500.00 each for each Class Representative).

This motion is brought pursuant to Federal Rules of Civil Procedure 23(h) and 54(d)(2). The motion should be granted because: (1) the requested attorneys' fees are fair, appropriate, and commensurate to the benefit obtained for the Settlement Classes; (2) the expenses for which reimbursement is sought were reasonably and necessarily incurred in connection with the prosecution of this Action for the benefit of Plaintiffs and the proposed class; and (3) $1,500 to each Class Representative is warranted for bringing the case, reviewing the complaints, communicating with counsel, reviewing their records, and preparing to engage in discovery regarding their Architectural Paint purchases.

4. This motion is based upon the following Memorandum of Points and Authorities; the Declarations of Class Counsel and Supporting Counsel; the Proposed Order submitted herewith; such other records, pleadings, and papers filed in this action; and upon such argument and further pleadings that may be presented to the Court at the hearing on this motion.

5. This motion will be available on the website established for this case, https://www.titaniumpaintsettlement.com, for review by Settlement Class Members.

Dated: May 24, 2018

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/s/ Jonathan W. Cuneo

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I. INTRODUCTION

Plaintiffs Jan Harrison, Lee Ranalli; Morgan Tanner, Spencer Hathaway, Todd Turley, Debbie Hale, Keli Anno, John Zullo, Christopher Kuon-Tsen Lee, Jim Buckingham, Tanda Saxton, John Wozniak, Jerome Sherman, Beverly Jenkins, David Petersen, Tom Stever, Brian Bawol, Ransome Foose, and Stacy Franklin ("Class Representatives" or "Plaintiffs")[1] have negotiated settlements with all Defendants – E.I. Dupont De Nemours and Company; Huntsman International, LLC; Kronos Worldwide, Inc.; and Millennium Inorganic Chemicals, Inc. – that provide substantial benefits to the Settlement Class members, including a common fund totaling $3,500,000 ("Settlement Fund") and injunctive relief requiring Defendants to refrain, for a period of 24 months from the date of the final judicial approval of the Settlement, from engaging in conduct that constitutes a *per se* violation of Section 1 of the Sherman Act (whether characterized as price fixing, market allocation, bid rigging, or otherwise) with respect to the sale of Titanium Dioxide ("TiO2").

This result was accomplished as a result of the dedication, effort, and skill of Class Counsel and the firms working at their direction, including their multi-year investment of time and expenses. Plaintiffs and Class Counsel undertook this matter, in the face of long odds and significant risk, on a contingent basis, dedicating their time, money, and energy to thousands of consumers. Ex. A, Declaration of Jonathan W. Cuneo ("Cuneo Dec.") ¶ 6, 16. Class Counsel have invested a total of 3,164.50 hours and $89,813.54 in out-of-pocket expenses since this case began in 2013.[2] *Id.* ¶ 14. Because this case was brought by Class Counsel who regularly litigate price-fixing cases, Class Counsel applied that experience to litigate this case with exceptional efficiency. *Id.* ¶ 3. Through expert consultants, Class Counsel conducted a study of the economic

[1] All capitalized terms and phrases shall have the same meaning they have in the Settlement Agreement.

[2] Plaintiffs have expended $79,813.54 to date in the prosecution of this Action and are allowing for up to $10,000 of additional expenses in the final administration of the Settlement. Cuneo Dec. ¶ 14.

impact of Defendants' alleged price-fixing scheme in order to reach a Settlement that would ensure the Damages Settlement Class members would be made whole. *Id.* ¶ 9. They prosecuted this Action through research and preparation of legal memoranda, multiple court appearances, and difficult negotiations with defense counsel. *Id.* In light of the work and investment of time and money described above, as well as the risks Plaintiffs faced and continue to face, Class Counsel submit that this request for fees and expenses is appropriate and supported by the case law of this District. Plaintiffs therefore seek an award of attorneys' fees of $750,000.00, reimbursement of out-of-pocket expenses of $89,813.54, and service awards totaling $28,500.00 ($1,500.00 per Class Representative).

II. LITIGATION HISTORY

Plaintiffs are indirect purchasers of TiO2, an ingredient found in a multitude of products. In this Action, Plaintiffs have been appointed Class Representatives for purchasers of Architectural Paint, of which TiO2 is a principal ingredient. They have alleged that Defendants – the dominant TiO2 suppliers in the United States – engaged in a conspiracy spanning a decade to artificially manipulate, fix, raise, maintain, and stabilize the prices at which TiO2 was sold in the United States. As a result of Defendants' alleged fraudulent, deceptive, unconscionable, unfair, and anticompetitive behavior, the United States marketplace for TiO2 was controlled and manipulated while prices for TiO2 were artificially inflated. Because Plaintiffs paid a price for Architectural Paint containing TiO2 that was higher than what would have been paid in a competitive marketplace, they and the Settlement Class members suffered economic damages as a result of Defendants' wrongdoing

Plaintiffs filed their initial complaint on March 15, 2013 in the Northern District of California. On October 18, 2013, the Court appointed Don Barrett of Barrett Law Group, P.A. and Jonathan W. Cuneo of Cuneo Gilbert & LaDuca, LLP as Interim Co-Lead Counsel and Ben F. Pierce Gore as Liaison Counsel. Dkt. 61. Plaintiffs then filed their First Amended Class Action Complaint on November 4, 2013. Dkt. 62. Plaintiffs defended against four motions to dismiss

over the next two years. Dkts. 70, 120, 124, 167. Those motions raised issues related to constitutional and antitrust standing, statutes of limitations, personal jurisdiction over a foreign corporation, and complex evaluations of the antitrust and consumer protection laws of 31 states and the District of Columbia and therefore required substantial time and research to prepare oppositions. *Id.* At each step, Plaintiffs revised their complaint and narrowed their class definition to comply with this Court's orders.[3] Cuneo Dec. ¶ 9; Dkts. 1, 62, 117, 164. Defendants filed their answers to Plaintiffs' Third Amended Complaint on July 27, 2016. Dkts. 188, 189, 190, 191.

As Plaintiffs stated in their motion for preliminary approval of the Settlement, Defendants produced millions of pages of discovery and over 100 deposition transcripts from the Direct Purchaser Litigation. *See Haley Paint Co. v. E.I. DuPont de Nemours & Co., et al.*, Case No. 1:10-cv-00318-RDB (D. Md.) (filed Feb. 9, 2010); Cuneo Dec. ¶ 9. In addition, Plaintiffs consulted expert economists to better evaluate the Architectural Paint and TiO2 industries and the impact of the alleged conspiracy on consumers in the United States. Cuneo Dec. ¶ 9. And because of the record already developed in the Direct Purchaser Litigation, Plaintiffs and Class Counsel were uniquely situated to streamline this litigation and reach an early class-wide settlement. The Settlement reached between the parties will result in a full and final resolution of this Action, and it was reached after almost four years of litigation and over a year of tough, arm's length negotiations.

[3] Plaintiffs filed a Fourth Amended Class Action Complaint on June 26, 2017, pursuant to a stipulation with Defendants, to conform the proposed class definitions with the class definitions set forth in the Settlement Agreement. Dkts. 213, 214.

III. ARGUMENT

A. The Requested Fee Is Reasonable and Appropriate.

Plaintiffs request an award of $750,000.00 in attorneys' fees, which represents 21 percent of the Settlement Fund and 35.86 percent of the lodestar incurred by Class Counsel, Liaison Counsel, and Supporting Counsel from 2013 to the present.[4] *See* Cuneo Dec. ¶ 14 (summarizing the cumulative lodestar incurred by Class Counsel, Liaison Counsel, and Supporting Counsel). This fee is well below the benchmark of 25 percent set by the Ninth Circuit and reflects the swift settlement of this Action by Class Counsel. *Vizcaino v. Microsoft Corp.* ("*Vizcaino II*"), 290 F.3d 1043, 1048-50 (9th Cir. 2002).

1. Class Counsel are entitled to a fee under the common fund doctrine.

The Ninth Circuit has adopted the common fund doctrine, which provides that "'a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole.'" *Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th Cir. 2003) (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)). "Common fund fees are essentially an equitable substitute for private fee agreements where a class benefits from an attorney's work." *Id.* at 968. The Supreme Court has explained that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Van Gemert*, 444 U.S. at 478; *see also Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 392-93 (1970); *Cent. R.R. & Banking Co. of Ga. v. Pettus*, 113 U.S. 116, 123 (1885).

The common fund doctrine is particularly appropriate in antitrust actions, as the Supreme Court has repeatedly recognized that private antitrust litigation is essential to the effective enforcement of the antitrust laws. *See, e.g., Pillsbury Co. v. Conboy*, 459 U.S. 248, 262-63 (1983); *Reiter v. Sonotone Corp.*, 442 U.S. 330, 331 (1979); *Hawaii v. Standard Oil Co.*, 405

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[4] Supporting Counsel include Lovelace & Associates, P.A.; Mantese Honigman, P.C.; Larson • King, LLP; and Thrash Law Firm P.A. Cuneo Dec. ¶ 14.

U.S. 251, 266 (1972); *In re Wash. Pub. Power Supply Sys. Sec. Litig.* ("*Wash. Pub. Power*"), 19 F.3d 1291, 1296 (9th Cir. 1994). Appropriate fee awards in cases like this one encourage meritorious class actions and promote private enforcement of, and compliance with, antitrust laws.

> What we have described as "the public interest in vigilant enforcement of the antitrust laws through the instrumentality of the private treble-damage action," is buttressed by the statutory mandate that the injured party also recover costs, "including a reasonable attorney's fee." The interest in wide and effective enforcement has thus, for almost a century, been vindicated by enlisting the assistance of "private Attorneys General"; we have always attached special importance to their role because "[e]very violation of the antitrust laws is a blow to the free-enterprise system envisaged by Congress."

Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 653-54 (1985). The Supreme Court's observations apply with equal force to federal and state antitrust and consumer protection laws. Indeed, "[i]n the absence of adequate attorneys' fees awards, many antitrust actions would not be commenced." *Alpine Pharm., Inc. v. Charles Pfizer & Co., Inc.*, 481 F.2d 1045, 1050 (2d Cir. 1973).

The percentage-of-fund method is the most appropriate way to calculate a reasonable fee when, as here, contingency fee litigation has produced a common fund. *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984); *Vizcaino II*, 290 F.3d at 1047; *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). It comports with the legal marketplace because it "helps ensure that the fee award will simulate marketplace rates, since most common fund cases are the kinds of cases normally taken on a contingency fee basis, by which counsel is promised a percentage of any recovery." *See* Alan Hirsch et al., Fed. Judicial Ctr., *Awarding Attorneys' Fees & Managing Fee Litig.* at 73 (2d ed. 2005). The percentage-of-fund method aligns class counsel's interests with those of the class and properly incentivizes capable counsel, not only to accept challenging cases, but to push for the best result that can be achieved for the class. *See, e.g., Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (percentage method "directly

aligns the interests of the class and its counsel") (citation omitted). Moreover, the percentage-of-fund method encourages efficiency and discourages waste.

The lodestar method, by contrast, encourages counsel to bill time and to create opportunities to bill time. Calculating the fee here as a percentage-of-the-fund, rather than merely as a function of counsels' billed time, rewards Class Counsel for assuming the risks of this case and efficiently prosecuting it. Thus, most district courts in the Ninth Circuit use the percentage-of-the-fund method, and virtually all of the recent major antitrust class actions in the Northern District of California have applied the percentage-of-fund approach. *See, e.g.*, *In re TFT-LCD Antitrust Litig.* ("*LCD I*"), No. M 07-1827 SI, 2011 WL 7575003, at *1-2 (N.D. Cal. Dec. 27, 2011); *In re TFT-LCD Antitrust Litig.* ("*LCD II*"), No. M 07-1827 SI, 2013 WL 149692, at *1-2 (N.D. Cal. Jan. 14, 2013) (30%); *In re Static Random Access Memory Antitrust Litig.* ("*SRAM*"), No. 07-md-1819, Dkt. 1370 (N.D. Cal. June 30, 2011) (30%); *Meijer v. Abbott Labs.*, No. C-07-05985, Dkt. 514 (N.D. Cal. Aug. 11, 2011) (33⅓%).

2. The requested $750,000 fee award falls within the range of reasonableness.

In considering whether an award represents a fair percentage of the recovery, the following factors may be considered:

> [T]he extent to which class counsel "achieved exceptional results for the class," whether the case was risky for class counsel, whether counsel's performance "generated benefits beyond the cash settlement fund," the market rate for the particular field of law (in some circumstances), the burdens class counsel experienced while litigating the case (e.g., cost, duration, foregoing other work), and whether the case was handled on a contingency basis.

In re Online DVD-Rental Antitrust Litig. ("*Online DVD*"), 779 F.3d 934, 954-55 (9th Cir. 2015). The Court may also consider the volume of work performed, counsels' skill and experience, the complexity of the issues faced, and the reaction of the class. *See, e.g.*, *In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at *18 (C.D. Cal. June 10, 2005). Consideration of these factors supports the fees requested here.

a. The requested fee falls below the 25 percent benchmark.

In common fund cases, fee awards tend to be approximately 30 percent or higher. *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1377 (N.D. Cal. 1989); *see also Knight v. Red Door Salons, Inc.*, No. 08-01520 SC, 2009 WL 248367, at *6 (N.D. Cal. Feb. 2, 2009) ("[I]n most common fund cases, the award exceeds that [25%] benchmark."); *Lofton v. Verizon Wireless (VAW) LLC*, No. C 13-05665 YGR, 2016 WL 7985253, at *1 (N.D. Cal. May 27, 2016) (30% of the common fund); *Perry v. Arise Virtual Solutions Inc.*, No. 11-01488 YGR, 2013 WL 12174056, at *2 (N.D. Cal. May 15, 2013) (same); *LCD I*, 2011 WL 7575003, at *1-2 (same); *LCD II*, 2013 WL 149692, at *1-2 (same); *SRAM*, No. 07-md-1819, Dkt. 1370 (N.D. Cal. June 30, 2011) (same); *In re Static Random Access Memory Antitrust Litig.*, No. 07-md-1819, Dkt. 1407 at 2-3 (N.D. Cal. Oct. 14, 2011) (33⅓%); *Meijer*, No. C-07-05985, Dkt. 514 (N.D. Cal. Aug. 11, 2011) (33⅓%). This pattern reflects the common characteristics of these cases: hard-fought litigation spanning many years against gigantic corporations employing highly skilled and sophisticated defense counsel. Here, Class Counsels' requested fee comprises only 21 percent of the Settlement Fund (less than the 25 percent benchmark set by the Ninth Circuit) and is on the lower end of the Ninth Circuit's range of reasonableness (20 to 30 percent). *Vizcaino II*, 290 F.3d at 1047; *Online DVD*, 779 F.3d at 949. Considering the low percentage of the fund sought here and the lodestar of only 35.86 percent, Plaintiffs' requested fee easily meets (and surpasses) the Ninth Circuit's benchmark for reasonableness.

b. This Action involves significant risk.

Risk is an important factor in determining a fair fee award, and it is particularly important in this case, given its current posture. *Online DVD*, 779 F.3d at, 954-55.

First, as this Court has recognized, achieving a successful result in litigation poses risk. This Court has already expressed misgivings about the relevant statutes of limitations and whether a class could ever be certified. *See* Dkt. 180 at 12 (noting "the implausibility of the August 29, 2012 discovery date"); Dkt. 156 at 51:15-52:3 (expressing concern about "the traceability of

[TiO2] in paint," "the speculativeness of damages," and the ability to "get this class certified"). Moreover, the four motions to dismiss filed by Defendants narrowed the case and could have ended it. It is because of these kinds of issues that many courts have noted, "Antitrust litigation in general, and class action litigation in particular, is unpredictable." *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 475 (S.D.N.Y. 1998); *In re Superior Beverage/Glass Container Consol. Pretrial*, 133 F.R.D. 119, 127 (N.D. Ill. 1990).

Second, while many antitrust cases in this District share these characteristics, antitrust plaintiffs sometimes have the benefit of a concurrent criminal investigation and cooperating defendants, which closely map the conspiracy pled and proven by the plaintiffs. For example, while the plaintiffs in TFT-LCD proved a broader and longer conspiracy than the criminal enforcement authorities, nearly all the civil defendants pled guilty to something, and some pled guilty to a lengthy and continuous criminal enterprise. *In re TFT-LCD Antitrust Litig.*, No. M 07-1827 SI, 2013 WL 1365900, at *7 (N.D. Cal. Apr. 3, 2013). That case was nevertheless hard-fought and risky. Here, none of the Defendants have cooperated, pleaded guilty to, or even faced criminal charges, and they steadfastly maintain that there was no conspiracy.

c. Class Counsel achieved an excellent recovery for the Settlement Classes.

Recovery is an important factor to be considered in determining an appropriate fee award. *See Hensley v. Eckerhart*, 461 U.S. 424, 431 (1983); *In re Omnivision Tech., Inc.* ("*Omnivision*"), 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008). Here, in the face of the daunting risks set forth above, Class Counsel secured a pre-class certification Settlement Fund of $3,500,000.00, and based on claims made to date, Class Counsel expect the Damages Settlement Class members to recover a substantial sum per gallon, likely above the artificial per gallon price increase that Plaintiffs allege was passed on to them. *See* Dkt. 222 (discussing Plaintiffs' damages calculations). This recovery, which is higher than the percent recovered in similar cases, is a substantial achievement on behalf of the Damages Settlement Class and is an important factor

weighing in favor of Plaintiffs' requested $750,000.00 fee award, which is less than the percentage-of-fund fee awarded in similar cases. *See, e.g.*, *In re Medical X-Ray Film Antitrust Litig.*, No. CV-93-5904, 1998 WL 661515, at *7-8 (E.D.N.Y. Aug. 7, 1998) (court increased 25% benchmark to 33.3% where counsel recovered 17% of damages); *In re Crazy Eddie Sec. Litig.*, 824 F. Supp. 320, 326 (E.D.N.Y. 1993) (court increased 25% benchmark to 33.8% where counsel recovered 10% of damages); *In re Gen. Instr. Sec. Litig.*, 209 F. Supp. 2d 423, 431, 434 (E.D. Pa. 2001) (one-third fee awarded from settlement fund that was 11% of the plaintiffs' estimated damages); *In re Corel Corp., Inc. Sec. Litig.*, 293 F. Supp. 2d 484, 489-90, 498 (E.D. Pa. 2003) (one-third fee awarded from settlement fund that equaled about 15% of damages). Achieving these results prior to class certification is even more remarkable and of even greater value to the Damages Settlement Class, for the simple and obvious reason that the class members might otherwise face the possibility of recovering nothing.

d. A high level of skill was required to prosecute this case.

The effort and skill displayed by counsel and the complexity of the issues involved are additional factors used in determining a proper fee. *Vizcaino II*, 290 F.3d at 1048; *Omnivision*, 559 F. Supp. 2d at 1046-47; *Gustafson v. Valley Ins. Co.*, No. CV 01-1575-BR, 2004 WL 2260605, at *2 (D. Or. Oct. 6, 2004). These factors strongly support the reasonableness of the fee requested here.

As stated in their motion to appoint interim lead counsel and their preliminary approval motion, Class Counsel are highly accomplished class action lawyers with substantial experience in the antirust arena. Dkts. 49, 215. Because Plaintiffs and the Settlement Class members are the final purchasers in the chain of distribution, the economic and damages issues in this case demanded highly specialized skills and would have demanded substantial discovery from third-party manufacturers, distributors, and retail outlets. Plaintiffs were prepared to retain testifying experts to tackle the enormous task of calculating pass-through damages and assist in what would have been a daunting class certification process. They were opposed by sophisticated attorneys

from some of the best and largest firms in the country with extensive resources at their disposal. This caliber of opposing counsel is another important factor in assessing the quality of Class Counsels' work. *Vizcaino v. Microsoft Corp.*, 142 F. Supp. 2d 1299, 1303 (W.D. Wash. 2001); *In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 634 (D. Colo. 1976); *Arenson v. Bd. of Trade*, 372 F. Supp. 1349, 1354 (N.D. Ill. 1974). It also reflects the high stakes of the case and the degree of specialized skill and knowledge necessary to litigate it on either side.

e. The contingent nature of the fee justifies the requested award.

The Ninth Circuit has confirmed that a fair fee award must include consideration of the contingent nature of the fee. *See, e.g.*, *Vizcaino II*, 290 F.3d at 1050; *Online DVD*, 779 F.3d at 955 & n.14. It is well established that attorneys who take on the risk of a contingency case should be compensated for the risk they assume. *Wash. Pub. Power*, 19 F.3d at 1299. Thus far, Class Counsel have not received any compensation for five years of work on this case. This assumption of a lengthy and significant risk on behalf of the Settlement Classes supports the requested $750,000.00 fee.

3. The lodestar cross-check confirms the reasonableness of the requested award.

Finally, fees awarded below the 25 percent benchmark are particularly appropriate here, when application of the lodestar cross-check shows a multiplier of less than 0.5 in a hard-fought, intensely litigated case. The requested $750,000.00 represents approximately 35.86 percent of the total lodestar, or a 0.3586 multiplier. *See* Cuneo Dec. ¶ 14 (attesting to a total lodestar of $2,091,379.50 among Class Counsel, Liaison Counsel, and Supporting Counsel). This multiplier will ultimately be lower as Class Counsel perform additional work through the final approval process and administration of the Settlement Fund. Class Counsel have spent 3,164.50 total hours prosecuting this action. This cross-check demonstrates that the proposed fee is more than reasonable. *See Online DVD*, 779 F.3d at 955; *Vizcaino II*, 290 F.3d at 1048-50. Moreover, all of this time was reasonable and necessary for effective prosecution of this Action. *Online DVD*,

779 F.3d at 949. Class Counsel took meaningful steps to ensure that their work was efficient, and because they reached a settlement before engaging in additional discovery and litigating class certification, their cumulative lodestar of $2,091,379.50 is far less than that seen in other antitrust matters litigated in this District. *Compare* Cuneo Dec. ¶ 14 *with In re Capacitors Antitrust Litig.*, No. 3:14-cv-03264-JD, Dkt. 1458 at 12 (N.D. Cal. Jan. 30, 2017) ($44.4 million lodestar); *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. 07-cv-5944, Dkt. 4071 at 26 (N.D. Cal. Sep. 23, 2015) ($83.7 million lodestar); *In re TFT-LCD Antitrust Litig.*, No. 07-md-1827, Dkt. 6662 at 5 (N.D. Cal. Sep. 7, 2012) ($148 million lodestar). Class Counsel have also reviewed both their own and their co-counsels' time records prior to submitting this motion and eliminated time entries that were incorrect, inefficient, or duplicative. Cuneo Dec. ¶ 16. Of the hours spent on this case, 73.25 percent represent hours by Class Counsel. *Id*. ⁋ 14. The bulk of the time spent by other firms involved handling issues related to their respective client Class Representatives. *Id*. ⁋ 16. Ultimately, Class Counsels' fee request of $750,000.00 amounts to only 35.86 percent of their $2,091,379.50 lodestar. *Id*. ⁋ 14. Because the Settlement Agreement does not allow for reversion of funds, the remainder (which should exceed $2.2 million after accounting for attorneys' fees and expenses, the administrator fee, and service awards) will be distributed to the Damages Settlement Class members. This confirms its reasonableness. *See Online DVD*, 779 F.3d at 955 (fact that fee sought is less than the lodestar suggests fairness of award); *In re Portal Software, Inc. Sec. Litig.*, No. C-03-5138 VRW, 2007 WL 4171201, at *16 (N.D. Cal. Nov. 26, 2007); *LCD II*, 2013 WL 149692, at *1.

B. The Class Received Appropriate Notice of Class Counsels' Fee Application.

Class Counsels' notice to the Settlement Class through the class notice plan and this motion for fees, expenses, and service awards is sufficient to provide Class Members an opportunity to review and evaluate this fee request prior to the deadline for objections. *See In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 995 (9th Cir. 2010); N.D. Cal. Procedural

Guidance for Class Action Settlements at 3. The long-form notice advised Settlement Class Members that Class Counsel would seek "attorney's fees of $750,000.00 plus reasonable expenses for their work on behalf of you and other Class Members" as well as "an incentive award for each class representative, not to exceed $1,500.00 each, to compensate them for their time and efforts in this matter." Dkt. 222-3 at 6. The notice also advised that such a motion would be available at the settlement website. *Id*. at 9. Class Counsel is filing this motion and posting it on the settlement website on May 25, 2018, which is 20 days before the June 15, 2018 deadline to object or opt-out. And when this Court conducts its final fairness hearing in August, it will have a complete picture of the class members' reaction to this motion and the Settlement as a whole, including the number of claims, objections, and opt-outs.

C. Class Counsel Should be Authorized to Distribute Fees Among Class Counsel, Liaison Counsel, and Supporting Counsel.

Class Counsel also request the Court's authorization to distribute the awarded attorneys' fees in a manner that, in the judgment of Class Counsel, fairly compensates Class Counsel, Liaison Counsel, and Supporting Counsel for their contribution to the prosecution of Plaintiffs' and the Settlement Class members' claims. "Federal courts routinely affirm the appropriateness of a single fee award to be allocated among counsel and have recognized that lead counsel are better suited than a trial court to decide the relative contributions of each firm and attorney." *Hartless v. Clorox Co.*, 273 F.R.D. 630, 646 (S.D. Cal. 2011), *aff'd in part*, 473 F. App'x 716 (9th Cir. 2012); *see also Morganstein v. Esber*, 768 F. Supp. 725, 728 (C.D. Cal. 1991) (explaining that "inasmuch as class counsel have indicated that they are able amicably to allocate this award amongst themselves, this order does not do so"); *In re Polyurethane Foam Antitrust Litig.*, 168 F. Supp. 3d 985, 1007 (N.D. Ohio 2016); *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 533 n.15 (3d Cir. 2004) (affirming the district court's decision and declining to "deviate from the accepted practice of allowing counsel to apportion fees amongst themselves"); *Bowling v. Pfizer, Inc.*, 102 F.3d 777 (6th Cir. 1996) (suggesting the Sixth Circuit would adopt this

approach to fee distribution, the critical inquiry is whether the fee fairly reflects the work done by all plaintiffs' counsel). Accordingly, Class Counsel respectfully request that the Court authorize them to allocate the fees that are awarded among Class Counsel, Liaison Counsel, and Supporting Counsel.

D. Class Counsel Should be Reimbursed for Their Reasonable Litigation Expenses.

Attorneys who create a common fund are entitled to reimbursement of their out-of-pocket expenses so long as they are reasonable, necessary, and directly related to the prosecution of the action. *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *In re First Databank Antitrust Litig.*, 209 F. Supp. 2d 96, 100 n.4 (D.D.C. 2002); *Omnivision*, 559 F. Supp. 2d at 1048. Class Counsel therefore request reimbursement of litigation costs and expenses they incurred on behalf of the Class in the amount of $89,813.54. Cuneo Dec. ¶ 14. These expenses were reasonable and necessary for the prosecution of this Action and are customarily approved by courts as proper litigation expenses. *Id.* ¶ 12, 15. Class Counsel believe that this request for expenses is reasonable in light of the length of this case and its complexity. *Id.* ¶ 15.

E. Class Representatives Should Receive Service Awards Totaling $28,500.

Class Counsel request service awards for the Class Representatives totaling $28,500.00 ($1,500.00 each). "[Service] awards are fairly typical in class action cases." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (emphasis in original). In the Ninth Circuit, service awards "compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Id.* at 958-59. Courts have discretion to approve service awards based on the amount of time and effort spent, the duration of the litigation, and the personal benefit (or lack thereof) as a result of the litigation. *See Van Vraken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995). Each of these factors weighs in favor of compensating the Class Representatives for their service on behalf of the Settlement

Classes, which entailed bringing the case, reviewing the complaints, communicating with counsel, reviewing their records, and preparing to engage in discovery regarding their Architectural Paint purchases.

"[C]ourts in the Northern District of California have held that a $5,000 enhancement award is presumptively reasonable." *Perry*, 2013 WL 12174056, at *3 (citing *Villegas v. J.P. Morgan Chase & Co.*, No. 09-CV-00261 SBA, 2012 WL 5878390, at *7 (N.D. Cal. Nov. 21, 2012)); *see also Moore v. Verizon Commc'n, Inc.*, No. C-09-1823 SBA, 2013 WL 4610764, at *15 (N.D. Cal. Aug. 28, 2013) ("In this district, a $5,000 payment is presumptively reasonable."). Thus, in light of the Class Representatives' service and the significant discount from the presumptively reasonable rate, the $1,500 awards for each individual Class Representative are reasonable.

IV. CONCLUSION

In sum, the attorneys' fees sought here comprise only 21 percent of the Settlement Fund and 35.86 percent of the cumulative lodestar incurred by counsel while the proposed service awards are well below those sought in similar matters. For the foregoing reasons, Plaintiffs respectfully request that this Court award attorneys' fees of $750,000.00 in attorneys' fees, litigation expenses in the amount of $89,813.54, and service awards totaling $28,500.00 for the Class Representatives.

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