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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **OAKLAND DIVISION**

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

Case No. 4:07-md-1819 CW

MDL No. 1819

16 **NOTICE OF MOTION AND MOTION FOR**
AWARD OF ATTORNEY'S FEES,
17 **REIMBURSEMENT OF EXPENSES, AND**
INCENTIVE AWARDS

18 This Document Relates to:

19 ALL INDIRECT PURCHASER ACTIONS

Hearing Date: October 6, 2011
Time: 2:00 p.m.
Courtroom: 2, 4th Floor
20 Judge: Hon. Claudia Wilken
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1 **TO ALL PARTIES AND COUNSEL OF RECORD, PLEASE TAKE NOTICE** that on
2 October 6, 2011, 2:00 p.m. or at such other time as the Court may select and subject to the Court's
3 calendar, before the Honorable Claudia Wilken, United States District Court, Northern District of
4 California, 1301 Clay Street, Suite 400S, Oakland, California, Indirect Purchaser ("IP") Plaintiffs
5 and Class Counsel will and hereby do move, pursuant to Federal Rules of Civil Procedure 23(h)(1)
6 and 54(d)(2), for an Order awarding: (i) attorney's fees in the amount of one-third of the total
7 settlement fund (plus interest); (ii) reimbursement of litigation expenses in the amount of
8 \$711,756.76; and (iii) incentive awards of \$2,500 or \$5,000 to the 46 court-appointed IP class
9 representatives in the total amount of \$190,000.

10 This motion is made on grounds that: (a) such fees are fair and reasonable in light of IP
11 Class Counsel's efforts in creating the total settlement fund, and comport with Ninth Circuit case
12 law in common fund cases; (b) the litigation expenses for which reimbursement is sought were
13 reasonably and necessarily incurred in connection with the prosecution of this action; and (c)
14 reasonable payments to the IP class representatives for their efforts are warranted and appropriate.
15 This motion is based upon this Notice and Motion, the following Memorandum of Law, the
16 supporting Declaration of Christopher T. Micheletti ("Micheletti Fee Decl.") and all of its exhibits,
17 including all declarations of IP Class Counsel attached thereto, the settlements with Defendants and
18 orders granting approval thereof, the complete record in this action, and such other arguments that
19 may be presented to the Court.

20 **MEMORANDUM OF LAW**

21 **STATEMENT OF ISSUES TO BE DECIDED:**

- 22 1. Whether the requested attorneys' fees award is fair and reasonable.
23 2. Whether the costs and expenses incurred were reasonable and necessary.
24 3. Whether the requested incentive awards to the class representatives are warranted.

25 **I. INTRODUCTION**

26 IP Plaintiffs and IP Class Counsel respectfully submit this Memorandum in support of their
27 Motion for Attorney's Fees, Reimbursement of Expenses, and Incentive Awards. For more than
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1 four-and-one-half years, IP Class Counsel dedicated their time and energy to litigating this case on
2 behalf of indirect purchasers of SRAM. After years of work, IP Class Counsel successfully
3 achieved eight separate settlements with Defendants that together provide for payment of
4 \$41,322,000 (the “Settlement Fund”) into a common fund for the benefit of the Settlement Class.
5 In the successful pursuit of this recovery, IP Class Counsel faced substantial litigation risk, an
6 aggressive defense by multiple well-funded Defendants and many difficult legal and factual hurdles
7 unique to pursuit of a multi-state indirect purchaser antitrust class case.

8 IP Class Counsel pursued this case with no guarantee of any payment of fees or costs, and
9 aggressively did so even though the Department of Justice (“DOJ”) closed its SRAM investigation
10 without filing any criminal charges. IP Class Counsel also overcame the significant obstacles to
11 recovery erected by Defendants throughout the litigation, including multiple rounds of motions to
12 dismiss IP Plaintiffs’ claims; numerous hard-fought discovery battles with Defendants; over one
13 year of class certification proceedings; repeated efforts by Defendants to exclude IP Plaintiffs’
14 experts during class certification and dispositive motion practice; repeated decertification efforts by
15 Defendants; and, multiple dispositive and other substantive motions by Defendants, among many
16 other obstacles. Additionally, the many legal and factual hurdles unique to a multi-state indirect
17 purchaser antitrust class action required a tremendous amount of additional work, coordination and
18 strategic acumen by IP Class Counsel, and substantially increased the time required in the case and
19 the litigation risks they faced. These hurdles included mastering the antitrust, unfair competition,
20 consumer protection and unjust enrichment laws of 27 states; selection and qualification of
21 adequate class representatives for each state; pursuit of massive third party and defendant discovery
22 needed to investigate and prove pass-through; the incremental expert work and analysis (*i.e.*, over
23 and above that which is needed to prove a conspiracy and a price-fixing overcharge to direct
24 purchasers) needed to prove pass-through, impact and the amount of damages at the end user level;
25 among many other issues and hurdles unique to an IP antitrust case.

26 For their efforts in achieving an excellent result in the face of the above risks, obstacles and
27 other challenges, IP Class Counsel seek an award of attorney’s fees in the amount of one-third (1/3)

1 of the Settlement Fund, or \$13,774,000, and reimbursement of their unreimbursed litigation costs
2 and expenses in the amount of \$711,756.76. IP Class Counsel devoted over 76,000 hours of time
3 to these proceedings, with a total lodestar—at historical rates—of over \$30,000,000. Under the
4 circumstances, IP Class Counsel’s request for, what amounts to a fractional multiplier (or “negative
5 lodestar”) of 0.45, is fair and reasonable.

6 In the Ninth Circuit and elsewhere, courts have routinely permitted and/or upheld awards of
7 one-third of a common fund where, as here, an outstanding result was obtained in the face of
8 substantial risks, and only after long and hard-fought litigation. *See e.g., In re Pacific Enters. Sec.*
9 *Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (recognizing that a district court may adjust a benchmark
10 amount when special circumstances indicate a higher or lower percentage would be appropriate and
11 upholding an award of one-third of the common fund where counsel cited the complexity of issues
12 and risks involved); *In re Automotive Refinishing Paint Antitrust Litig.*, 2008 U.S. Dist. LEXIS
13 569, at *8-20 (E.D. Pa. Jan. 3, 2008) (one-third of \$39 million common fund awarded where the
14 DOJ closed its price-fixing investigation without seeking indictments, class counsel spent almost
15 six years prosecuting the case, and a lodestar cross-check showed a .81 multiplier or “negative
16 lodestar” and “confirm[ed] that the requested fee percent is fair and reasonable”).

17 It is also fair and reasonable that IP Class Counsel be reimbursed for the remainder of their
18 costs and expenses incurred in connection with the prosecution of this action. The Court previously
19 determined that IP Class Counsel’s costs and expenses incurred through June of 2010 were
20 reasonable and necessary. The additional costs and expenses at issue here were incurred from July
21 2010 through trial preparation and settlement approval in 2011, and included additional expert fees,
22 mediation fees, document hosting fees and other trial preparation-related expenses, and were
23 clearly necessary and reasonable.

24 Finally, IP Class Counsel’s request for incentive awards for the 46 court-appointed IP class
25 representatives, for their work and service in representing the indirect purchasers and the
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1 Settlement Class, in the amount of \$190,000 is also reasonable.¹ Without class representatives
 2 willing to initiate these actions, respond to discovery and sit for depositions, these cases could not
 3 proceed. The court-appointed class representatives devoted substantial time to the prosecution of
 4 these actions and should be rewarded for their efforts on behalf of the Class.

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

6 **A. Initiation of the Actions, Claim Overview and Defendants' Motions to Dismiss**

7 IP Class Counsel commenced work on and investigation of claims against the Defendants in
 8 October 2006. In that time frame, IP Class Counsel investigated the Defendants, the SRAM
 9 industry, consulted with experts, and prepared complaints for filing. The initial complaints in this
 10 action were filed in October 2006 in District Courts around the country, with the first IP complaints
 11 being filed on October 18, 2006. Micheletti Fee Decl. ¶7.

12 In the complaints, IP Plaintiffs allege that Defendants conspired to fix the price of SRAM.
 13 IP Plaintiffs are individuals and entities that indirectly purchased SRAM during the period
 14 November 1, 1996 through December 31, 2006 (the "Class Period"). Defendants are domestic and
 15 foreign entities that manufactured, sold or distributed SRAM in the United States during the Class
 16 Period. *See generally*, Fifth Consolidated Amended Class Action Complaint ¶¶ 110-128 (DE
 17 1067). IP Plaintiffs allege injuries incurred as a result of Defendants' conduct and seek: (i)
 18 nationwide injunctive relief pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26, for
 19 Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C. § 1; and (ii) damages or
 20 restitution under certain specified state antitrust, consumer protection and unjust enrichment laws.
 21 *See id.*, Prayer For Relief. Notably, the IP cases involved claims under the Sherman Act and under
 22 the antitrust and other laws of more than two dozen states, requiring willing and adequate IP class
 23 representatives to serve on behalf of each state class, and requiring IP Class Counsel to coordinate
 24 prosecution of multiple claims under laws in each state.

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 28 ¹ The proposed incentive awards to the IP class representatives of \$190,000 is the sum of (1)
 awards of \$5,000 each to the 31 class representatives who were deposed during class certification
 proceedings; and (2) awards of \$2,500 each to the remaining 15 class representatives who were not
 deposed (including two spouses for whom only one payment is sought). *See infra* § III.C.

1 Shortly after the initial IP complaints were filed, a motion for coordination and
2 consolidation of the proceedings was filed by plaintiffs before the Judicial Panel on Multidistrict
3 Litigation. IP Class Counsel litigated that motion, which was granted on February 9, 2007, and
4 thereafter, over 70 IP cases filed throughout the country were transferred to and/or consolidated
5 before this Court. Zelle Hofmann was appointed Interim Lead Counsel on May 3, 2007 to
6 prosecute the action on behalf of the then-putative IP classes. *See* Micheletti Fee Decl. ¶¶8-11.

7 On August 30, 2007, IP Class Counsel filed their First Consolidated Amended Complaint
8 (“CAC”)—just three months after the Supreme Court issued the seminal decision of *Bell Atlantic*
9 *Corp. v. Twombly*, 550 U.S. 544 (2007). That case disavowed language from *Conley v. Gibson*,
10 355 U.S. 41 (1957), that a motion to dismiss should not be granted “unless it appears beyond doubt
11 that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief,”
12 and held that allegations in antitrust cases must “plausibly suggest” that an agreement among
13 defendants was made. *Twombly*, 550 U.S. at 556-57. As a result, Defendants filed, Plaintiffs
14 opposed, and this Court ruled upon one of the first motions to dismiss applying the *Twombly*-
15 standard to an antitrust price-fixing case. IP Class Counsel worked diligently to review
16 Defendants’ DOJ productions, further investigate their claims and include additional factual
17 allegations in the Complaint to support their conspiracy claims. Micheletti Fee Decl. ¶¶12-14.

18 On February 14, 2008, the Court granted in part and denied in part Defendants’ motions to
19 dismiss, upholding the majority of IP Plaintiffs’ state antitrust and consumer protection claims and
20 permitting them to amend various state law claims. *See In re Static Random Access Memory*
21 *(SRAM) Antitrust Litig.*, 2008 U.S. Dist. LEXIS 15826 (N.D. Cal. Feb. 14, 2008). Pursuant to the
22 Court’s order, IP Plaintiffs filed a Second CAC on March 6, 2008 (DE 375), which Defendants
23 again moved to dismiss. On June 27, 2008, the Court again granted in part and denied in part
24 Defendants’ motion, allowing IP Plaintiffs to re-plead certain state law claims. *See Order On*
25 *Motion to Dismiss* (DE 460). IP Plaintiffs filed their Third CAC on August 1, 2008 (DE 507),
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1 which Defendants answered in September 2008.²

2 **B. Written, Document, Deposition, Third Party and Expert Discovery**

3 Deposition and interrogatory discovery was initially stayed (until June 1, 2008) because the
 4 DOJ's criminal investigation of the SRAM market was still ongoing. IP Class Counsel, however,
 5 obtained access to the millions of pages of electronic and hard copy documents that Defendants had
 6 produced to the DOJ, as well as the millions of pages of documents previously produced in the
 7 DRAM antitrust litigation (*In re DRAM Antitrust Litig.*, Case No. 02-1486-PJH (N.D. Cal.))
 8 ("DRAM Production"). The Defendants' productions—including those responding to additional
 9 formal discovery requests—thereafter took place on a rolling basis from 2007 to 2009. By the time
 10 discovery closed, Defendants had produced more than *eleven million pages* from both domestic
 11 and foreign entities – in addition to the millions of pages in the DRAM Production. Many of the
 12 documents produced were in Korean, Japanese and Chinese. *See* Micheletti Fee Decl. ¶19.
 13 Plaintiffs faced many hurdles in obtaining discovery from Defendants and, as a result, IP Class
 14 Counsel (in concert with DP counsel) were forced to engage in extensive discovery negotiations
 15 with Defendants on myriad topics and issues and to file motions to compel to obtain needed
 16 discovery from them. *See generally* Micheletti Fee Decl. ¶¶30-34.

17 IP Class Counsel loaded Defendants' massive document productions onto a database,
 18 facilitating IP Class Counsel's remote, electronic review and coding of vast quantities of the
 19 documents produced. Defendants also produce documents in hard copy form, which IP Class
 20 Counsel reviewed as well. IP Counsel identified and categorized liability and expert-related
 21 documents for purposes of proving Defendants' conspiracy, for future use in connection with
 22 merits discovery and for use in preparation of expert reports. Once potential witnesses were
 23 identified, IP Counsel also were able to and did conduct further witness-specific document searches
 24

25 _____
 26 ² *See* Micheletti Fee Decl. ¶¶15-16. IP Plaintiffs also were successful in moving to amend their
 27 Third CAC to add foreign defendant Etron Technology, Inc. as a defendant to the case in late 2009
 28 (all Etron entities settled shortly thereafter); and, in moving in the Summer of 2010, to amend their
 Fourth CAC to add a claim under New York's Donnelly Act based on then-recent Supreme Court
 authority (*i.e.*, *Shady Grove*)—both over strenuous oppositions. *See id.* ¶¶17-18.

1 in preparation for depositions of Defendant employees and alleged co-conspirators. Additionally,
2 IP Class Counsel were able to perform targeted searches of Defendants' documents seeking proof
3 of use of Defendants' SRAM in specific end products purchased by class members generally, and
4 by proposed class representatives specifically. *See* Micheletti Fee Decl. ¶20-23.

5 In addition to extensive review of millions of pages of documents produced by Defendants,
6 Plaintiffs also took dozens of depositions of Defendant percipient and 30(b)(6) witnesses, and third
7 party witnesses. More than 35 witnesses were deposed in this matter. In an effort to efficiently
8 litigate this case, IP Class Counsel coordinated with DP Class Counsel in preparing for and taking
9 these depositions. However, because of issues unique to the IP case, IP Class Counsel were
10 required to make separate preparations for these depositions and pursue their own IP-related lines
11 of examination. IP Plaintiffs also prepared and served written discovery on Defendants on issues
12 related to the liability, damages and pass-through. *See id.* ¶27.

13 All of these efforts assisted IP Class Counsel in motion practice, meet and confer efforts,
14 damages analysis, merits discovery and their timely response to the complex issues that arose
15 during this litigation; they also enhanced IP Plaintiffs' settlement negotiations, as Counsel was
16 armed with a full understanding of the strengths and weaknesses of their case. *See id.* ¶29.

17 Over the course of this litigation, IP Class Counsel also pursued extensive third party
18 discovery for purposes of investigating, analyzing and establishing pass-through of Defendants'
19 overcharges. From 2008 to 2010, IP Class Counsel served over 90 subpoenas on third parties
20 seeking relevant documents and information regarding SRAM purchases and sales, use of SRAM
21 in end-products, and other relevant information. During that time frame, multiple IP Class Counsel
22 firms engaged in extensive negotiations and meet and confer efforts with the third parties in an
23 effort to obtain relevant information from them; analyzed the productions upon receipt; and
24 pursued additional third party discovery from these and third parties as discovery continued, the
25 case evolved and IP Plaintiffs' experts requested additional information. To maintain efficiencies
26 and avoid duplication, Lead Counsel assigned particular and similarly-situated third parties to
27 particular Plaintiffs firms which would then handle all aspects of the pursuit of discovery from that
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1 entity. This third party discovery was used extensively by IP Plaintiffs' experts in their numerous
2 declarations and reports generated throughout the litigation and by IP Class Counsel in connection
3 with IP Plaintiffs' motion for class certification and their oppositions to decertification. *See id.*
4 ¶¶35-37.

5 Expert discovery in these cases was also complex and lengthy. IP Plaintiffs not only faced
6 expert issues related to conspiracy and proof of Defendants' overcharge, but also faced Defendants'
7 vociferous opposition and challenges to their experts' proof of impact, damages and pass-through.
8 The additional elements of proof in the IP case substantially increased IP Class Counsel's workload
9 and out-of-pocket expert costs as compared to the DP case. IP Class Counsel prepared their own
10 experts for multiple depositions throughout this litigation, and devoted substantial time and effort to
11 preparation for and the depositions of Defendants' multiple experts (namely, Dr. Burtis, Dr. Kalt
12 and Prof. Rubinfeld). *See id.* ¶¶42-43.

13 C. Class Certification Proceedings.

14 IP Class Counsel's work on obtaining class certification in these cases started early in the
15 case, with early expert consultation; extensive SRAM industry research and analysis; as well as
16 extensive review and analysis of named plaintiffs' SRAM-containing product purchases. On
17 January 29, 2009, IP Class Counsel filed a motion for class certification and a related motion to
18 substitute party plaintiffs. Over the ensuing months, the class certification motion was extremely
19 hard-fought. Defendants deposed IP Plaintiffs' experts and over 30 of the proposed IP class
20 representatives during February, March and April 2009 at locations throughout the U.S, requiring
21 extensive work by numerous IP Class Counsel on witness preparation, document productions and
22 written discovery. Defendants filed their class certification opposition in April (along with their
23 experts' comprehensive challenge to IP Plaintiffs' experts); a motion to exclude the expert opinions
24 of Mark Dwyer and Michael Harris in May; a motion to exclude the expert rebuttal opinions of Drs.
25 Harris and Dwyer in July; a surreply memorandum and surrebuttal expert declaration in August;
26 and a post-hearing memorandum in September. IP Class Counsel vigorously responded to
27 Defendants' barrage, including filing class certification reply memoranda and expert reports, IP
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1 Plaintiffs' own motion to exclude Defendants' expert, and briefs in opposition to Defendants'
2 multiple motions to exclude IP Plaintiffs' experts' opinions. *See* Micheletti Fee Decl. ¶¶38-39.

3 All of the above class certification-related filings, discovery and proceedings required a
4 tremendous amount of time and effort, as well as coordination of expert work, and ongoing
5 payment of expert fees and costs by IP Class Counsel. Indeed, much of this work was performed
6 while IP Plaintiffs were also pursuing merits discovery from Defendants, substantially increasing IP
7 Class Counsel's time commitment and singular focus on this litigation. On November 25, 2009,
8 the Court granted IP Plaintiffs' motion for class certification over Defendants' strenuous
9 opposition, which included challenges to the proposed class representatives, to IP Plaintiffs' proof
10 of pass-through and damages methodologies, among numerous other arguments. The Court
11 certified a national injunctive relief class, 27 IP state damages classes, appointed 46 proposed IP
12 class representatives as class representatives, and appointed Zelle Hofmann as lead counsel. *See id.*
13 ¶¶40-41. Even after the class certification motion was granted, Defendants continued their
14 challenge to class certification through the filing of a 23(f) petition to the Ninth Circuit, which IP
15 Class Counsel opposed, and which was denied in March of 2010.

16 **D. Negotiation and Final Approval of Settlements With Six Sets of Defendants.**

17 Between March 2009 and March 2010, after significant discovery, motion practice and
18 settlement negotiations, IP Class Counsel negotiated six separate settlements with various sets of
19 Defendants (*i.e.*, Micron, Hynix, Toshiba, Mitsubishi-Hitachi-Renesas, Etron and NEC)
20 (hereinafter the "2010 Settling Defendants"), resolving class claims against all Defendants except
21 Cypress and Samsung. IP Class Counsel devoted substantial time and effort to the negotiation of
22 these settlements, and to obtaining final approval of them. IP Class Counsel prepared the
23 settlement agreements, escrow agreements and class notices; prepared motions for approval of the
24 settlements and notices; responded to and overcame a handful of objections to the settlements; and
25 prepared and obtained entry of final approval orders and final judgments vis-à-vis the 2010 Settling
26 Defendants. IP Counsel prepared and filed a motion for preliminary approval of these settlements
27 in April of 2010 and this Court granted final approval of those settlements on October 6, 2010, at
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1 which time judgments of dismissal were entered as to each of the 2010 Settling Defendants. In the
2 notice provided to the Class, Class Counsel indicated that they would defer any request for fees
3 until the case was resolved with the remaining Defendants. As such, no attorneys' fees were sought
4 by IP Class Counsel at the time these settlements were approved and judgments entered. *See*
5 Micheletti Fee Decl. ¶¶57-63.

6 **E. Expert Reports, Dispositive and Other Motion Practice**

7 Following class certification in November 2009, IP Class Counsel worked diligently to
8 complete merits discovery and other third party discovery. Although fact discovery technically
9 closed in December of 2009, IP Class Counsel (and DP Counsel) had negotiated agreements with
10 certain Defendants to complete certain deposition and other discovery after that date. Indeed, IP
11 Class Counsel had negotiated a cooperation agreement with NEC which required it to produce a
12 key 30(b)(6) witness during early 2010, whose testimony strongly implicated Samsung in the price-
13 fixing conspiracy. IP Class Counsel also worked with their experts to get them needed information
14 to complete their expert reports on liability, impact, damages and pass-through. During the time
15 period March 2010 through early July 2010, IP Class Counsel worked with their experts to
16 complete their initial and reply reports addressing the foregoing issues. Expert discovery also
17 occurred during that period, with IP Class Counsel both preparing and producing their own experts
18 for depositions, and preparing for and taking the depositions of Defendants Samsung's and
19 Cypress's experts. *See* Micheletti Fee Decl. ¶42.

20 On July 15, 2010, Cypress and Samsung filed several pre-trial motions designed to wholly
21 defeat or substantially weaken IP Plaintiffs' claims – two motions for summary judgment, a motion
22 to decertify the classes, a motion to exclude IP Plaintiffs' damages expert, and a motion to limit the
23 scope of recovery under the Foreign Trade Antitrust Improvement Act ("FTAIA"). IP Class
24 Counsel were not assured of prevailing against those motions, including the challenge to certain IP
25 class representatives' ability to seek relief on behalf of the Class. IP Class Counsel, however,
26 researched, prepared and filed oppositions, and after an October 14, 2010 hearing, this Court denied
27 the vast majority of the relief requested by Samsung and Cypress. *See* DEs 1191, 1201, 1204,
28

1 1205, and 1231; Micheletti Fee Decl. ¶¶46-50.

2 **F. Trial Preparation and Settlements with Samsung and Cypress**

3 IP Class Counsel also devoted substantial time to trial preparation from October 2010 to
4 January 2011. Even though the case ultimately settled, the final settlements did not take place until
5 just months and weeks before trial, respectively, so Zelle Hofmann and other IP Plaintiffs' Counsel
6 were required to expend significant time and effort preparing for trial against the last two settling
7 Defendants – Samsung and Cypress. IP Class Counsel's trial preparation included review and
8 production of final exhibits of approximately 1000 documents, and review and objection to
9 Samsung's and Cypress' final exhibits of approximately 1200 documents; preparing a witness list,
10 and reviewing Samsung's and Cypress' witness lists; drafting a trial brief, and responding to
11 Samsung's and Cypress' trial briefs; preparing a proposed joint jury questionnaire; drafting
12 proposed jury instructions, and responding to disputed jury instructions proposed by Samsung and
13 Cypress; preparing proposed verdict forms and responses to Samsung's and Cypress' proposed
14 verdict forms; drafting proposed findings of fact and conclusions of law for injunctive relief claims;
15 reviewing and designating deposition testimony for unavailable and 30(b)(6) witnesses, and
16 reviewing, counter-designating and objecting to Samsung's and Cypress' deposition designations;
17 preparing deposition summaries for use at trial, including for possible impeachment; drafting
18 motions in limine, and responding to Samsung and Cypress' motions in limine; drafting a joint
19 pretrial conference statement, and preparing for and attending two pretrial conferences; briefing,
20 pursuant to court order, the issue of allocation of damages between direct purchasers and indirect
21 purchasers and the issue of availability of cy pres to distribute unclaimed damages; and securing
22 the attendance of numerous witness, including from already-settled Defendants to authenticate and
23 otherwise lay a foundation for admission of documents. IP Lead Counsel worked with DP Counsel
24 in these efforts to coordinate and avoid duplication of work wherever possible. *See* Micheletti Fee
25 Decl. ¶¶51-56.

26 Samsung and Cypress continued to their vigorous defense until the settlements were
27 reached – for Samsung in October 2010, and for Cypress just a few weeks before the February 7,
28

1 2011 trial date. The negotiation of these last two settlements was hard-fought and time consuming,
 2 each involving a respected mediator and weeks of negotiations.³ Earlier this year, IP Class Counsel
 3 filed motions for preliminary approval of those settlements, and the Court granted preliminary
 4 approval of the settlements with Samsung and Cypress in February and March 2011, respectively.
 5 Together, the eight settlements provide for the payment of \$41,322,000, \$25,422,000 of which is
 6 already subject to final, non-appealable approval orders and judgments dismissing the 2010 Settling
 7 Defendants. Since preliminary approval of the Samsung and Cypress settlements, IP Class Counsel
 8 have also devoted significant time and effort to development of a plan of allocation and distribution
 9 of the settlement proceeds, and a notice plan, and have filed a motion seeking preliminary approval
 10 of the plan of distribution and notice plan and the setting of a final approval hearing. *See id.* ¶¶64-
 11 68.

12 * * *

13 The preceding overview of the litigation provides only a summary of IP Class Counsel's
 14 work, and does not describe all tasks that contributed to the successful outcome of this case.
 15 Additional discovery, motion practice, expert and trial preparation work, among other work, is
 16 detailed in the declarations of IP Class Counsel. *See* Micheletti Fee Decl. ¶¶7-68 and Exs. 9-77
 17 (declarations of co-counsel describing their work). Additionally, substantial work has been done
 18 and will continue to be done in connection with the plan of distribution in terms of making
 19 distributions to Resellers and selecting, vetting and making contributions to cy pres candidates; this
 20 work is being efficiently performed by Lead Counsel and a member of the steering committee
 21 (Shepherd Finkelman). *Id.* ¶69.

22 **III. ARGUMENT**

23 **A. An Award of One-Third of the Settlement Fund is Fair and Appropriate**

24 **1. The Ninth Circuit Recognizes the Common Fund Doctrine**

25 The Supreme Court "has recognized consistently that a litigant or a lawyer who recovers a
 26

27 ³ A more detailed description of the settlement history with each Defendant is provided in the
 28 motions seeking approval of the settlements. *See, e.g.*, DE 985, 1102, 1209, and 1307.

1 common fund for the benefit of persons other than himself or his client is entitled to a reasonable
 2 attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980);
 3 *accord Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240 (1975). Ninth Circuit courts
 4 affirm the importance of the common fund doctrine. *See, e.g., Paul, Johnson, Alston & Hunt v.*
 5 *Graulty*, 886 F.2d 268, 271 (9th Cir. 1989). Fee awards in successful cases, such as this one,
 6 encourage and support meritorious class actions, and promote compliance with antitrust laws
 7 through private enforcement. As the Supreme Court has said, "Congress created the treble-
 8 damages remedy of § 4 precisely for the purpose of encouraging private challenges to antitrust
 9 violations. These private suits provide a significant supplement to the limited resources available
 10 to the Department of Justice for enforcing the antitrust laws and deterring violations." *Reiter v.*
 11 *Sonotone Corp.*, 442 U.S. 330, 344 (1979); *see also Alpine Pharmacy, Inc. v. Charles Pfizer & Co.,*
 12 *Inc.*, 481 F.2d 1045, 1050 (2d Cir. 1973) ("[i]n the absence of adequate attorneys' fee awards,
 13 many antitrust actions would not be commenced..."). Here, since IP Class Counsel's efforts
 14 created a common fund of \$41,322,000 for the benefit of the Settlement Class, it is appropriate that
 15 they be compensated from that fund.

16 **2. Ninth Circuit Courts Have Repeatedly Endorsed The Percentage-of-the-** 17 **Recovery Method in Awarding Attorney's Fees**

18 In *Blum v. Stenson*, 465 U.S. 886, 900 (1984), the Supreme Court explained that under the
 19 common fund doctrine, a reasonable fee may be based "on a percentage of the fund bestowed on
 20 the class." The Ninth Circuit has repeatedly endorsed the use of this method. *See, e.g., Graulty*,
 21 886 F.2d at 272; *Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301 (9th Cir. 1990);
 22 *Torrise v. Tucson Elec. Power Co.*, 8 F.3d 1370 (9th Cir. 1993). Ninth Circuit courts also endorse
 23 the use of a lodestar analysis to cross-check the propriety of a percentage award. *See, e.g., Vizcaino*
 24 *v. Microsoft*, 142 F. Supp. 2d 1299, 1302 (W.D. Wash. 2001).

25 **3. A One-Third Fee Award is Permitted Under Ninth Circuit Law**

26 While a 25 percent award is the benchmark in the Ninth Circuit, "a district court may
 27 exceed the benchmark if it makes clear how it arrives at the figure ultimately ordered." *Brailsford*
 28

1 *v. Jackson Hewitt, Inc. et al.*, C06-00700 CW, 2007 U.S. Dist. LEXIS 35509, at *14 (May 3, 2007
2 N.D. Cal.) (awarding 30% of the common fund and *citing Grauly*, 886 F.2d at 271). As such,
3 numerous courts in this Circuit have made fee awards exceeding 25 percent, including fee awards
4 of one-third of the common fund generated by the work of plaintiffs' counsel are permissible. *See*,
5 *e.g., In re Pacific Enterprises Securities Litig.*, 47 F.3d at 379 (upholding fee award of one-third of
6 common fund where plaintiffs cited complexity of issues and risks involved); *In re Heritage Bond*
7 *Litigation*, 2005 U.S. Dist. LEXIS 13555 (C.D. Cal. June 10, 2005) (holding that an award of one-
8 third of \$27+ million settlement fund is justified based on result obtained, Class Counsel's effort,
9 experience and skill, and the great risk assumed by Class Counsel).

10 Courts in other circuits have similarly approved fee awards of one-third of the common
11 fund in numerous cases, including in numerous antitrust actions. *See, e.g., In re Automotive*
12 *Refinishing Paint Antitrust Litig.*, 2008 U.S. Dist. LEXIS 569, at *23 (awarding one-third of \$39
13 million Settlement Fund where DOJ closed its price-fixing investigation without seeking any
14 indictments, and class counsel spent almost six years and more than 48,000 hours prosecuting the
15 case); *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 77-82 (D.Mass. 2005) (award of one-third of
16 common fund of \$67 million was justified due to, *inter alia*, skill and efficiency of counsel,
17 complexity and 4-year duration of the litigation, and class counsel's expending tens of thousands of
18 hours on the case); *In re Vitamins Antitrust Litig.*, 2001 U.S. Dist. LEXIS 25067 at *58 (D.D.C.
19 July 16, 2001) (determining that one-third award was reasonable and granting fee award of
20 approximately 34% of the total estimated settlement amount in antitrust price fixing litigation).

21 Additionally, the settlement agreements here provide that class counsel are permitted to ask
22 for one-third of the Settlement Fund without objection from defendants. *See, e.g.,* DE 1209-2
23 (Samsung Settlement Agreement at 15). As detailed below, given the recovery obtained for the
24 Class, the work performed and significant risks undertaken by counsel, and the results of a lodestar
25 crosscheck, IP Class Counsel's request for one-third fee is reasonable.

1 **4. Application of the Relevant Factors Justifies a One-third Fee Award**

2 When making a fee award using a percentage-of-the-recovery method, courts typically
3 consider the following factors: The result achieved for the class; the work performed; counsel's
4 skill and experience; the complexity of issues faced; the risks faced, including the contingency
5 nature of payment assumed by counsel; the reaction of the class; and counsel's lodestar. *See, e.g.,*
6 *In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, at *57-60.

7 **a. The Result Achieved**

8 Courts have consistently recognized that the result achieved is a major factor to be
9 considered in making a fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (“the most
10 critical factor is the degree of success obtained”); *In re King Resources Co. Sec. Litig.*, 420 F.
11 Supp. 610, 630 (D. Colo. 1976) (“the amount of the recovery, and end result achieved are of
12 primary importance, for these are the true benefit to the client”).

13 Class Counsel's recovery of \$41,322,000 is an excellent result. This recovery amounts to
14 approximately 15% of the \$276 million in damages that IP Plaintiffs' damages expert calculated for
15 trial. *See Micheletti Fee Decl.* ¶67. This result is comparable to or more favorable than settlements
16 reached in other price-fixing cases. *See, e.g., In re Medical X-Ray Film Antitrust Litig.*, 1998 U.S.
17 Dist. LEXIS 14888, 1998 WL 661515, at *7-8 (E.D.N.Y. Aug. 7, 1998) (court increased 25%
18 benchmark to 33.3% where counsel recovered 17% of damages); *In re Crazy Eddie Sec. Litig.*, 824
19 F. Supp. 320, 326 (E.D.N.Y. 1993) (court increased 25% benchmark to 33.8% where counsel
20 recovered 10% of damages); *In re General Instr. Sec. Litig.*, 209 F. Supp. 2d 423, 431, 434 (E.D.
21 Pa. 2001) (one-third fee awarded from \$48 million settlement fund that was 11% of the plaintiffs'
22 estimated damages); *In re Corel Corp., Inc. Sec. Litig.*, 293 F. Supp. 2d 484, 489-90, 498 (E.D. Pa.
23 2003) (one-third fee awarded from settlement fund that comprised about 15% of damages).

24 **b. The Effort Expended By Counsel**

25 The effort expended by counsel is another factor to be considered. *See In re Heritage Bond*,
26 2005 U.S. Dist. LEXIS 13555, at *85-88. Here, Class Counsel's effort has been lengthy, intense
27 and of the highest quality. As noted above, these actions were first commenced in late 2006, and
28

1 have been vigorously litigated by the parties for the past four-and-one-half years. Over those 4+
2 years, IP Class Counsel have devoted over 76,000 hours to prosecution of this case on behalf of the
3 Plaintiffs and Class. *See* Micheletti Fee Decl. Ex. 1. Multiple courts have awarded attorneys' fees
4 of one-third of a common fund under similar circumstances. *See Crazy Eddie*, 824 F. Supp. at 325
5 (one-third fee award justified in part due to the expenditure of 30,000 hours by 11 firms); *see also*
6 *Medical X-Ray*, 1998 U.S. Dist. LEXIS 14888, at *23 (one-third of the common fund awarded after
7 17 law firms spent about 30,000 hours litigating the case). The tremendous time commitment by IP
8 Class Counsel strongly supports a one-third fee award here.

9 The effort expended by Class Counsel here is not only demonstrated by the sheer number of
10 hours devoted to the case, but by the actual work performed from case inception to the final
11 settlement weeks before the commencement of trial.

12 *Case investigation, filing and pleading motions.* IP Class Counsel extensively investigated
13 the SRAM industry and Defendants commencing in October 2006. They filed their complaints in
14 that time frame; obtained coordination of and consolidation orders regarding the dozens of cases
15 filed nationwide; resolved issues related to the organization of plaintiffs' counsel, and obtained the
16 appointment of Lead and Steering Committee Counsel in May of 2007. *See* §II.A., *supra*.

17 From May 2007 to June 2008, IP Class Counsel devoted substantial time to preparing a
18 detailed consolidated complaint sufficient to withstand the Defendants' anticipated pleading
19 motions, including a *Twombly* motion and state law claim challenges. Defendants filed dismissal
20 motions directed to IP Plaintiffs' First and Second Consolidated Amended Complaints. IP
21 Plaintiffs defeated numerous of Defendants' arguments on the merits or successfully amended their
22 claims following orders granting leave to amend. Ultimately, IP Class Counsel successfully
23 defended and pursued claims under the antitrust, consumer protection or unjust enrichment laws of
24 27 states throughout the bulk of the litigation. IP Class Counsel also moved to amend their
25 complaints as appropriate throughout the litigation to maximize their settlement leverage and
26 chances of success. *See id.*

1 *Written, Document, Deposition, Third Party and Expert Discovery.* As detailed above, all
2 aspects of discovery in these proceedings were complex, hard-fought, massive and time-
3 consuming. First, Defendants' discovery tactics necessitated extensive discovery negotiations and
4 ultimately, motions to compel by Plaintiffs. IP Class Counsel, in consultation and coordination
5 with DP Counsel, successfully filed, among others, motions related to Defendants' production of
6 the DOJ documents, Defendants' production of PSRAM and foreign transactional data, and foreign
7 Defendants' production of documents not produced to the DOJ in connection with the criminal
8 SRAM investigation. Second, the document production ultimately made by the Defendants was
9 staggering, comprising over 11 million pages of documents from domestic and foreign entities,
10 many of which were in foreign languages and all of which needed to be electronically-stored and
11 made accessible and searchable to IP Class Counsel throughout the country. IP Class Counsel
12 reviewed and coded these documents, assembling key documents for use in the 35+ depositions
13 taken, responding to dispositive motions and preparation for trial. Third, due to the unique proof
14 requirements in an IP antitrust case and the need to prove pass-through, IP Class Counsel devoted
15 thousands of hours to preparing, serving, negotiating and reviewing third party discovery over a
16 two-year time frame from 2008 to 2010. Finally, IP Class Counsel's work included extensive
17 expert discovery taken against their experts and pursued against those of Defendants. *See* §II.B.,
18 *supra*.

19 The foregoing discovery work, in addition to the many other discovery-related tasks
20 undertaken by IP Class Counsel (*see* Micheletti Fee Decl. ¶¶19-37, 42-44), strongly support their
21 fee request here.

22 *Class Certification Proceedings.* As detailed above, IP Class Counsel's work on class
23 certification commenced shortly after the cases were initiated and resulted in a class certification
24 motion being filed in January of 2009. The class certification proceedings and IP Class Counsel's
25 class certification-related work thereafter spanned 14 months from January 2009 to March 2010,
26 and included work on briefing the class motion, a motion to substitute class plaintiffs and Plaintiffs'
27 and Defendants' motions to exclude experts' testimony; depositions of over 30 class
28

1 representatives; extensive expert discovery; a hearing on the motion; Defendants unsuccessful 23(f)
2 petition to the Ninth Circuit; and, decertification motions filed by Defendants. *See* §II.C., *supra*.

3 *Settlement Negotiations and Approvals.* IP Class Counsel's efforts during the course of this
4 litigation led to extensive and lengthy settlement negotiations with eight sets of Defendants. All of
5 the settlements occurred only after substantial discovery had occurred. Indeed, the Samsung and
6 Cypress settlements involved a separate mediation session, and resulted in settlements only months
7 and weeks before trial. IP Class Counsel also devoted significant effort to obtaining final approval
8 of the 2010 Settlements, and preliminary approval of the Samsung and Cypress settlements, as well
9 as the proposed plan of distribution. *See* §II.D., *supra*.

10 *Expert Reports, Dispositive and Other Motion Practice.* In addition to their success in
11 defending against Defendants' motion to dismiss, IP Class Counsel defeated the majority of
12 Defendants' numerous other challenges to IP Plaintiff's claims. Those challenges included two
13 motions for summary judgment; a motion to decertify the class; a motion to exclude IP Plaintiffs'
14 damages expert; a motion to limit recovery due to the FTAIA; and a further motion to decertify the
15 class based on the Court's order regarding Defendants' prior decertification motion. The
16 challenges raised by Defendants were not easy to overcome and required intense attention by IP
17 Class Counsel and in consultation with their experts. The challenges raised by Defendants not only
18 required significant legal analysis, including on novel issues, but in many cases demanded fact-
19 intensive responses. IP Class Counsel frequently marshaled supporting evidence from the vast
20 number of documents produced, deposition testimony, and/or expert reports, compiled extensive
21 materials and arguments supporting their positions, and defeated the vast majority of Defendants'
22 challenges to IP Plaintiffs' claims. *See* §II.E., *supra*.

23 *Trial Preparation.* Even though the case ultimately settled, the final settlements did not
24 take place until shortly before trial, so IP Class Counsel were required to expend significant time
25 and effort preparing for trial against the last two settling Defendants – Samsung and Cypress. As
26 set out in more detail above, IP Class Counsel's pre-trial preparation included trial exhibit
27 preparation, selection and objections; witness list preparation; preparation of deposition
28

1 designations and objections and counter-designations to Defendants' deposition designations;
2 extensive *in limine* motion practice; drafting pretrial statements; jury instruction preparation and
3 responding and objecting to Defendants' jury instructions; preparation of a proposed jury
4 questionnaire and verdict forms; preparation for and attendance at two pre-trial conferences;
5 briefing, pursuant to court order, the issue of allocation of damages between direct purchasers and
6 indirect purchasers and the issue of availability of *cy pres* to distribute unclaimed damages;
7 securing the attendance of numerous witnesses, including from already-settled Defendants to
8 authenticate and otherwise lay a foundation for admission of documents, and numerous other tasks.
9 *See* §II.F., *supra*.

10 * * *

11 By any measure, the effort expended by IP Class Counsel in this case was tremendous, and
12 strongly supports a one-third fee award here.

13 **c. The Skill and Experience of Counsel**

14 IP Class Counsel are among the most experienced class action litigators in the nation, and
15 include among them attorneys who have been litigating indirect purchaser antitrust class actions for
16 over 40 years. *See* Micheletti Fee Decl. ¶78, Ex. 5 (Zelle Hofmann firm resume), and Exs. 9-77
17 (Exhibit 1 to each such exhibit containing firm resumes and biographies of other IP Class Counsel).
18 The experience, skill and professionalism of IP Class Counsel and as well as the performance and
19 quality of opposing counsel here all weigh in favor of the requested fee. *See Vizcaino*, 142 F. Supp.
20 2d at 1303; *In re Equity Funding Corp. Sec. Litig.*, 438 F. Supp. 1303, 1337 (C.D. Cal. 1977).

21 **d. The Complexity and Difficulty of Issues**

22 Here, it is undisputed that this was a complex case which required IP Class Counsel to
23 confront many difficult legal and factual issues. Difficult factual issues included, among others,
24 those related to the technical aspects and market complexities of SRAM manufacture, sales and
25 distribution; proving that class representatives purchased Defendants' SRAM in their SRAM-
26 containing products; the lengthy class period; and, the fact that many Defendants were involved in
27 the alleged conspiracy. Difficult or novel legal issues included, among others, those related to the
28

1 Supreme Court's then-new holding in *Twombly*; potential limitations on plaintiffs' recovery
2 imposed by the FTAIA; possible limitations on recovery resulting from the direct purchaser and the
3 indirect purchaser actions being tried together as a consequence of the Class Action Fairness Act
4 ("CAFA"); the effect of Samsung's status as an amnesty applicant under Antitrust Criminal Penalty
5 Enhancement and Reform Act ("ACPERA"); and the need to prove pass-through to indirect
6 purchasers of SRAM.

7 Courts have recognized that the novelty and difficulty of issues in a case are significant
8 factors to be considered. *See, e.g., Vizcaino*, 142 F. Supp. 2d at 1306. Antitrust price-fixing
9 conspiracy cases are generally regarded as some of the most complex and difficult to litigate. *See,*
10 *e.g., In re Linerboard Antitrust Litig.*, 2004 U.S. Dist. LEXIS 10532, at *32-35 (E.D. Pa. June 2,
11 2004); *In re Cement & Concrete Antitrust Litig.*, 1981-1 Trade Cases (CCH) ¶63,892 (D. Ariz.
12 1981); *In re Art Materials Antitrust Litig.*, 100 F.R.D. 367, 372 (N.D. Ohio 1983).

13 Here, IP Class Counsel effectively managed the logistics of litigating a complex case with
14 46 court-appointed class representatives, numerous plaintiffs' firms located throughout the country,
15 and numerous defense counsel representing eight sets of corporate defendants (both foreign and
16 domestic); and, they also prevailed against Defendants on many of the difficult legal and factual
17 issues presented by this case.

18 e. The Risks of Litigation

19 Risk is an especially important factor in determining a fair award of attorney's fees.
20 *Vizcaino*, 142 F. Supp. 2d at 1303-4. Ninth Circuit courts have recognized that a high risk factor is
21 one reason for increasing attorneys' fee awards above a benchmark fee of 25%. *See id.* In
22 *Vizcaino*, the Court explained that the case was extremely risky for class counsel to pursue because
23 of negative facts, the lack of controlling law, and the vigorous defense of the case. *Vizcaino*, 142 F.
24 Supp. 2d at 1303. The *Vizcaino* court further noted that class counsel's risk in that case was even
25 greater, and their work made more difficult, because the defendant, Microsoft, was one of the
26 nation's largest and most formidable companies and it, and several law firms, defended the case
27 vigorously for several years. *See id.* Additionally, antitrust litigation is regarded as particularly
28

1 unpredictable. *See, e.g., In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 475
2 (S.D.N.Y. 1998); *In re Superior Beverage/Class Container Pretrial*, 133 F.R.D. 119, 127 (N.D. Ill.
3 1990) (“The ‘best’ case can be lost and the ‘worst’ case can be won, and juries may find liability
4 but no damages. None of these risks should be underestimated.”). Here, IP Class Counsel faced
5 many risks; the primary ones are set forth below.

6 *Defendants’ Twombly Motion.* At that time Defendants brought their *Twombly* motion to
7 dismiss, the level of specificity that plaintiffs needed to plead in support of their price-fixing
8 allegations was not clear. Indeed, at least one judge in this District had recently held that
9 allegations of meetings at trade groups, parallel pricing and a grand jury investigation were not
10 sufficiently specific. *See In re Graphics Processing Units (GPU) Antitrust Litig.*, 527 F.Supp.2d
11 1011 (N.D. Cal. 2007). IP Class Counsel worked diligently to provide ample supporting facts but
12 still faced the possibility that the Complaint would not be upheld.

13 *Class Certification.* Class certification was by no means assured. Defendants opposed the
14 certification on multiple grounds for over one year. Even after Plaintiffs prevailed, significant risk
15 remained as Defendants petitioned the Ninth Circuit to review the certification order and later
16 repeatedly sought decertification. *See* §II.C., §II.E., *supra*.

17 *Discontinued DOJ Investigation.* The DOJ looked at much of the same material as IP Class
18 Counsel and decided not to pursue criminal charges against any of the Defendants. The absence of
19 such charges and admissions here increased the risks Plaintiffs faced as compared to other cases
20 (*see In re Automotive Refinishing Paint*, 2008 U.S. Dist. LEXIS 569, at *14 (significant risk in
21 cases where prima facie liability evidence is not established by DOJ criminal enforcement)), and all
22 settlements in this matter were reached after the DOJ discontinued its investigation.

23 *Summary Judgment.* Price-fixing conspiracies are among the hardest cases to prove. *See,*
24 *e.g., In re Linerboard Antitrust Litig.*, 2004 U.S. Dist. LEXIS 10532, at *32-35. Conspiracies by
25 their very nature are “secret,” making evidence difficult to find. *See, e.g., In re High Fructose*
26 *Corn Syrup Antitrust Litig.*, 295 F.3d 651, 662 (7th Cir. 2002) (“[M]ost cases are constructed out of
27 a tissue of such [ambiguous] statements and other circumstantial evidence”). There were no guilty
28

1 pleas here and while Samsung was an amnesty applicant, it maintained that it did not violate state
2 or federal antitrust laws, and the other Defendants similarly challenged the existence of any
3 collusive, market-wide conspiracy. *See, e.g.*, Cypress’s Summary Judgment Reply (DE 1120) at 1,
4 11; Samsung’s Trial Brief (DE 1185) at 5. As such, Plaintiffs faced the possibility that this Court
5 would find insufficient proof of a market-wide conspiracy to proceed to trial, or limit the scope of
6 the conspiracy for trial. Similarly, on impact and damages, IP Plaintiffs not only faced the risk that
7 they might be unable to prove a direct overcharge, but they—unlike the DPs—faced the risk of
8 proving that the direct overcharge was passed-through to end user indirect purchasers of SRAM.
9 Defendants repeatedly challenged IP Plaintiffs’ pass-through expert’s methodologies and proof and
10 sought to exclude his testimony at class certification and at summary judgment. Thus, IP Plaintiffs
11 faced the risk that they might be unable to present sufficient evidence of pass-through, impact and
12 damages to get to a jury on those issues. *See Micheletti Fee Decl.* ¶43.

13 *Contingent Fee.* The Ninth Circuit has confirmed that a fair fee award must include
14 consideration of the contingent nature of the fee. Numerous cases recognize that in most common
15 fund cases, class counsel take on significant obligations of representation with no assurance that
16 attorneys’ fees, or even reimbursement of counsel’s out-of-pocket expenses, will be paid. *See, e.g.,*
17 *Vizcaino*, 290 F.3d at 1049-50 (“counsel’s representation of the class-on a contingency basis-
18 extended over eleven years, entailed hundreds of thousands of dollars of expense”). Fee awards
19 must be sufficient to encourage the most skilled and determined counsel to take on difficult cases
20 and see them through to completion, which could take years. *See In re Lorazepam & Clorazepate*
21 *Antitrust Litig.*, 2003 U.S. Dist. LEXIS 12293, at *27-33 (D.D.C. June 16, 2003).

22 IP Class Counsel have devoted over four years and 76,000 hours to this litigation without
23 attorneys’ fee compensation. They also incurred expenses in excess of \$4.4 million over that time
24 period as well, and carried their costs without reimbursement for four years.⁴ Whether there would
25

26 ⁴ On October 6, 2010, after the hearing on final approval for the first six settlements, this Court
27 granted IP Class Counsel’s request for an award of \$3,868,446.97 for unreimbursed out-of-pocket
28 expense incurred through June 2010. As set forth in the supporting declaration of Christopher
Micheletti, the reimbursement of \$711,756.76 that IP Class Counsel now seek is for unreimbursed

1 be a fee award or reimbursement of expenses has been a substantial risk and ultimately any fee
 2 award and further cost reimbursement is within the Court's discretion. Despite the many risks
 3 faced, IP Class Counsel committed their full resources to the case and achieved an excellent result
 4 for the Class. Given that result, the work performed, and the significant risk, Class Counsel's fee
 5 request is reasonable and should be granted.

6
 7 **f. A Lodestar Analysis Confirms That The Requested One-third
 Fee is Reasonable**

8 Ninth Circuit courts often use a lodestar-times-multiplier analysis to cross-check the
 9 reasonableness of the percentage-of-the-recovery award. *See, e.g., In re Heritage Bond*, 2005 U.S.
 10 Dist. LEXIS 13555, at *57-60. Here, such a cross-check confirms that the requested one-third fee
 11 is quite reasonable. IP Class Counsel's fees for work performed in this case, when charged at
 12 historical hourly rates, generates a lodestar of \$30,677,858.50. *See Micheletti Fee Decl. Ex. 1*.
 13 Therefore, the fee produced by the percentage-of-the-recovery method is equivalent to lodestar
 14 with a multiplier of 0.45. A fee award with such a fractional multiplier or "negative" lodestar is
 15 clearly reasonable and is well within the range of multipliers accepted by Ninth Circuit and other
 16 courts. *See, e.g., Vizcaino*, 142 F. Supp. 2d at 1305-06 (approving multiplier of 3.67); *In re*
 17 *Cendant Corp. Prides Litig.*, 243 F.3d 722, 742 (3d Cir. 2001) (surveying lodestar multipliers in
 18 large class actions and finding them in the 1.35-2.99 range). The 0.45 multiplier here, therefore,
 19 confirms the propriety of the one-third fee request. *See In re Automotive Refinishing Paint*, 2008
 20 U.S. Dist. LEXIS 569, at *18-19 (one-third fee award "fair and reasonable" where plaintiffs sought
 21 a "negative lodestar" (i.e. less than 1.0)).

22 **B. Reimbursement of Expenses Is Warranted**

23 Attorneys in a common fund case may be reimbursed for reasonable out-of-pocket
 24 expenses. Ninth Circuit courts frequently award litigation costs and expenses in addition to a
 25 percentage-of-the-recovery award of attorney's fees. *See, e.g., Vincent v. Hughes Air West, Inc.*,

26
 27
 28 out-of-pocket expenses that were not previously reimbursed and/or have subsequently been
 incurred. *See Micheletti Fee Decl. ¶71, Ex. 2.*

1 557 F.2d 759, 769 (9th Cir. Cal. 1977); *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362,
 2 1366 (N.D. Cal. 1996) (“An attorney who has created a common fund has the right to
 3 reimbursement ...”).

4 Here, IP Class Counsel are seeking \$711,756.76 for unreimbursed out-of-pocket expenses.
 5 See Micheletti Fee Decl. ¶71, Ex. 2. The Court previously determined that IP Class Counsel’s
 6 costs and expenses incurred through June of 2010 were reasonable and necessary. Amended Order
 7 Granting Interim Reimbursement Of Expenses (DE 1142). These outstanding unreimbursed costs
 8 and expenses comprise those incurred from July 2010 through the summary judgment motions, trial
 9 preparation, settlement allocation negotiations and plan of distribution development; they include
 10 expert fees (associated with trial preparation and settlement allocation negotiations), fees for
 11 document translation services, trial exhibit reproduction costs, document hosting costs, among
 12 other costs and expenses. See Micheletti Fee Decl. ¶71.⁵ The outstanding unreimbursed costs and
 13 expenses in the amount of \$711,756.76 were necessarily and reasonably incurred by IP Class
 14 Counsel and an award thereof is appropriate.

15 **C. Payment of Incentive Awards to the Class Representatives is Appropriate**

16 Class Counsel is requesting that the 46 IP class representatives receive a total payment of
 17 \$190,000 for their time, effort, and service on behalf of the Class. Specifically, Class Counsel
 18 requests that the 31 class representatives whose depositions were taken during the course of the
 19 litigation receive awards of \$5,000 each (for a subtotal of \$155,000), and that each of the remaining
 20 15 class representatives whose depositions were not taken (including two spouses for whom only
 21 one payment is sought) receive awards of \$2,500 each (for a subtotal of \$35,000). Courts often
 22 make an incentive award to class representatives for their service, including for the risks they
 23 undertake.⁶

24 _____
 25 ⁵ While IP Class Counsel previously sought and obtained reimbursement of expenses incurred in
 26 the litigation through June 2010, approximately 5 percent of those funds were expended in the
 continued litigation of the case. *Id.*

27 ⁶ See, e.g., *In re Lorazepam & Chlorazepate Antitrust Litig.*, 205 F.R.D. 369, 400 (D.D.C. 2002)
 28 (granting incentive awards totaling \$105,000.00, which represented .3% of the common fund); *In*
re Catfish Antitrust Litig., 939 F. Supp. 493, 503-4 (N.D. Miss. 1996) (acknowledging the public

1 An award of \$190,000, which represents only 0.46% of the Settlement Fund, is appropriate,
2 especially given the substantial time and effort that the 46 IP class representatives committed to the
3 prosecution of the case. The representatives played an important role in this litigation – retaining
4 counsel, producing documents, responding to written discovery, providing witnesses for
5 depositions, preparing for trial, and conferring with counsel on the litigation. See Micheletti Fee
6 Decl. ¶76-77, Ex. 4 (summarizing work performed by the class representatives). Without class
7 representatives willing to initiate these actions, respond to discovery and sit for depositions, these
8 cases could not proceed; as such, they should be rewarded for their efforts on behalf of the Class.

9 **IV. CONCLUSION**

10 For the foregoing reasons, IP Class Counsel respectfully request that the Court grant the
11 relief requested herein.

12 Dated: July 27, 2011

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26 benefits of private enforcement of antitrust laws; granting incentive awards totaling \$40,000.00,
27 which represented .15% of the common fund); *see also Reiter v. Sonotone Corp.*, 442 U.S. at 344
28 (“These private suits provide a significant supplement to the limited resources available to the
Department of Justice for enforcing the antitrust laws and deterring violations.”).