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Co-Lead Class Counsel for Plaintiffs

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

**IN RE TRANSPACIFIC PASSENGER
AIR TRANSPORTATION
ANTITRUST LITIGATION**

Civil Case No. 3:07-cv-05634-CRB

MDL No. 1913

**This Document Relates To:

ALL ACTIONS**

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR AWARD OF ATTORNEYS'
FEES AND REIMBURSEMENT OF
EXPENSES; MEMORANDUM IN SUPPORT**

Hearing Date: October 18, 2019
Judge: Hon. Charles R. Breyer
Time: 10:00 a.m.
Courtroom: 6, 17th Floor

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that the Honorable Charles R. Breyer will hear this Motion at the United States District Court for the Northern District of California, 450 Golden Gate Avenue, Courtroom 6, 17th Floor, San Francisco, California on October 18, 2019 at 10:00 a.m.

Pursuant to Federal Rule of Civil Procedure 23(e), Plaintiffs seek entry of an order granting an award of attorneys' fees of \$18,647,081.15, or 33 percent of the All Nippon Airways Ltd., Co. ("ANA") net settlement fund, and reimbursement of litigation expenses of \$157,898.48. The Court should grant the motion because (a) the fee request is fair and reasonable in light of Plaintiffs' extraordinary efforts over almost 12 years of arduous and hard-fought litigation to create a settlement fund totaling \$148,152,000, including the ANA settlement fund of \$58 million for this third and final settlement round; (b) the fee request comports with Ninth Circuit case law developed in similar common fund cases; (c) the expert declaration of attorney fee expert, Richard M. Pearl ("Pearl Declaration"), supports the fee request; and (d) the expenses for which reimbursement is sought were reasonably and necessarily incurred in connection with the prosecution of this litigation.

The motion is supported by this Notice of Motion and Motion and the accompanying Memorandum in Support, the Joint Declaration and exhibits attached thereto, the Pearl Declaration and exhibit attached thereto, argument by counsel at the hearing before this Court, any papers filed in reply, and all papers and records on file in this matter.

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STATEMENT OF ISSUE TO BE DECIDED

Whether the Court should grant an award of reasonable attorneys' fees of \$18,647,081.15, or 33 percent of the net ANA settlement fund of \$56,506,306.52, and reimbursement of reasonably and necessarily incurred expenses of \$157,898.48, pursuant to Federal Rules of Civil Procedure 54(d)(2) and 23(h) after nearly 12 years of hard-fought litigation resulting in settlements with all 13 named Defendants totaling \$148,152,000.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

After almost 12 years of hard-fought litigation, Plaintiffs have resolved the Action with all 13 Defendants and secured settlements totaling \$148,152,000. Most recently, after having certified the litigation classes and being on the verge of trial, Plaintiffs settled with All Nippon Airways Co., Ltd. (“ANA”) for \$58 million (“Settlement Fund”) on February 8, 2019,¹ which the Court preliminary approved on May 29, 2019.² This final settlement is in addition to the \$90,152,000 in settlements that Plaintiffs previously secured with the other Defendants and of which the Court has granted final approval.³ Plaintiffs respectfully request (1) an award of \$18,647,081.15 in attorneys’ fees, or 33 percent of the net settlement fund of \$56,506,306.52 (“Net Settlement Fund”),⁴ and (2) reimbursement of litigation expenses of \$157,898.48, which were reasonably and necessarily incurred for the prosecution of this Action.

Co-Lead Class Counsel and other participating firms (together, “Class Counsel”) have litigated this Action on a wholly contingent basis and now request fees and expenses that are eminently fair and reasonable considering the extraordinary time, resources, and effort invested, along with the substantial risks presented. Considering the foregoing, Plaintiffs’ request for \$18,647,081.15 is fair and reasonable, amounting to 74.25 percent of Plaintiffs’ unreimbursed lodestar of \$25,114,450.49. Joint Decl., ¶ 92. The Court has previously granted a total of

¹ ECF No. 1297-2 at Ex. A.

² ECF No. 1306.

³ On May 26, 2015, the Court granted final approval of settlements with Societe Air France, Cathay Pacific Airways Ltd., Japan Airlines Co., Ltd., Malaysia Airline System Berhad, Qantas Airways Ltd., Singapore Airlines Ltd., Thai Airways International Public Co., Ltd., and Vietnam Airlines Corp. (ECF No. 1009). The Court dismissed these airlines with prejudice on June 15, 2015 (ECF Nos. 1014-1021, 1023). On October 11, 2018, the Court granted final approval of settlements with Philippine Airlines, Inc., Air New Zealand Ltd., China Airlines, Ltd., and EVA Airways Corp. (ECF No. 1259-1). The Court dismissed these airlines with prejudice on the same date (ECF Nos. 1256-1258, 1260).

⁴ The Net Settlement Fund is the Settlement Fund less the notice and claims administration expenses, unreimbursed litigation fund expenses, and unreimbursed firm expenses, plus the vendor settlement. *See* Joint Decl. in Support of Plaintiffs’ Mot. for an Award of Att’ys’ Fees and Reimbursement of Expenses at ¶¶ 83-84 (“Joint Decl.”).

\$20,038,071.51 in attorneys' fees in connection with two prior settlement rounds, or a blended rate of 25 percent of the net settlement funds totaling \$80,152,286.06.⁵ If the Court were to grant Plaintiffs' request on this third and final settlement round, the total fees awarded in the Action would equal \$38,685,152.66, or 28.31 percent of total net settlement funds of \$136,658,592.58 and a negative multiplier of 0.86 for the Action. Joint Decl., ¶ 93. The award sought here is reasonable and warranted given the excellent results obtained, the complex nature of this Action, the array of defenses Defendants raised, the substantial fact and expert discovery, the significant investment of time and resources, and the extensive trial preparation leading up to the ANA settlement. *See, infra*, at § III.A; Pearl Decl., ¶¶ 18-33.

Likewise, Plaintiffs' request for reimbursement of litigation expenses of \$157,898.48 is fair and reasonable. Joint Decl., ¶ 98. Plaintiffs have incurred out-of-pocket litigation fund expenses of \$6,341,702.95, of which the Court has reimbursed \$4,984,604.31.⁶ Joint Decl., ¶ 94. Cotchett, Pitre & McCarthy, LLP incurred unreimbursed out-of-pocket litigation expenses of \$7,537.12, and Hausfeld LLP incurred unreimbursed out-of-pocket expenses of \$43,262.72. Joint Decl., ¶ 9, Ex. 7-8. The unreimbursed litigation fund expenses of \$1,357,098.64 and unreimbursed firm expenses of \$50,799.84 total \$1,407,898.48. *Id.*, ¶ 96.

As Plaintiffs advised in their motion for preliminary approval of the ANA settlement,⁷ Plaintiffs also reached a settlement with one of their litigation vendors concerning the services it

⁵ \$20,038,071.51 is the sum of the \$9 million, or 28.86%, in fees that the Court granted from the first round of settlements, resulting from a calculated net settlement fund of \$31,181,800.27 (ECF No. 1009) and the \$11,038,071.51, or 22.54%, in attorneys' fees that the Court granted from the second round of settlements, resulting from a calculated net settlement fund of \$48,970,485.79 (ECF No. 1252).

⁶ \$4,984,604.31 is the sum of (1) the \$1,877,660.12 in litigation fund expenses that the Court awarded in connection with the first settlement round (ECF No. 1009), (2) the \$3 million in future litigation fund expenses that the Court awarded in connection with the first settlement round (*id.*), and (3) the \$106,944.19 in litigation fund expenses the Court awarded in connection with the second settlement round (ECF No. 1252).

\$4,984,604.31 excludes the \$930,039.61 in individual firm expenses that the Court awarded in connection with the first settlement round (ECF No. 1009) and the \$38,426.02 in individual firm expenses that the Court awarded in connection with the second settlement round (ECF No. 1252) because these expenses were incurred by the individual firms and not the litigation fund.

⁷ ECF No. 1297 at 15.

provided. The litigation vendor paid Plaintiffs' \$1.25 million, which resides untouched in Plaintiffs' account. *Id.*, ¶ 97. Although Plaintiffs have a total of \$1,407,898.48 in unreimbursed expenses, Plaintiffs propose defraying that amount by the \$1.25 million received from the litigation vendor and seeking to take only \$157,898.48 from the Settlement Fund in expenses.

As detailed in the attached Joint Declaration and the Pearl Declaration⁸ from a recognized authority in attorney fee awards, Plaintiffs' request is reasonable and reflects the challenging nature of this extraordinarily complex international cartel litigation.

II. STATEMENT OF THE RELEVANT FACTS

Although the Court is fully aware of the work performed by Class Counsel in this Action, a full recitation of the work performed throughout this litigation may be found in the Joint Declaration. This Action has been difficult and expensive, with an outcome that was often uncertain. After nearly 12 years, the Action has finally reached its end—but not without a formidable fight waged between Plaintiffs and 13 major international airlines.

Plaintiffs have faced a succession of challenges and undertaken substantial risks. Plaintiffs effectively defended their consolidated complaint against two rounds of motions to dismiss and appellate practice relating to the Court's decisions thereon; engaged in significant foreign discovery and depositions; successfully opposed two rounds of summary judgment motions, including certain Defendants' interlocutory appeal of the Court's filed-rate doctrine decision that the Ninth Circuit ultimately affirmed; and obtained certification of the Japan and “*satogaeri*” classes after rigorous expert analysis and discovery. Joint Decl., ¶¶ 5-63. All the while, Plaintiffs negotiated settlements with each of the 13 Defendants and obtained cooperation that assisted them in prosecuting the Action against any remaining Defendants. *Id.*, ¶¶ 64-82. Plaintiffs were ready to try this Action in March before reaching a final settlement with ANA with the assistance of

⁸ Mr. Pearl is the Principal of the Law Offices of Richard M. Pearl in Berkeley, California. His practice has focused on cases involving reasonable attorneys' fees, either court-awarded or in attorney-client disputes, for the past 25 years. He authored *California Attorney Fee Awards* (3d ed.). As an expert witness on attorneys' fees, his testimony has been accepted by numerous courts and arbitrators. *See, generally*, Pearl Decl.

1 nationally renowned mediator, Kenneth Feinberg, that added \$58 million to the already
2 substantial recovery obtained.

3 **III. ARGUMENT**

4 Class Counsel requests an award of \$18,647,081.15 million in attorney's fees equal to 33
5 percent of Net Settlement Fund. Applying a lodestar cross-check, this represents 74.25 percent of
6 Class Counsel's unreimbursed lodestar, which will increase through final approval and potential
7 appeals. Plaintiffs also request reimbursement of litigation expenses of \$157,898.48.⁹

8 **A. Class Counsel's Attorneys' Fees Request Is Fair and Reasonable**

9 Class Counsel have created a benefit for the settlement classes—a \$58 million final
10 settlement—which creates a common fund totaling \$148,152,000. District courts may award
11 reasonable fees and expenses from a class action settlement under Rules 54(d)(2) and 23(h). The
12 Supreme Court has explained “a litigant or a lawyer who recovers a common fund for the benefit
13 of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund
14 as a whole.”¹⁰ This doctrine recognizes “those who benefit from the creation of the fund should
15 share the wealth with the lawyers whose skill and effort helped create it.”¹¹ Here, a reasonable
16 fee award compensates Class Counsel for vigorously litigating this Action on behalf of millions
17 of consumers across the country victimized by Defendants' illegal conduct. The Supreme Court
18 has described such work as critical to the effective enforcement of the antitrust laws.¹²

19 Courts in the Ninth Circuit award fees in common fund cases under either the “percentage-
20 of-recovery” method or the “lodestar” method.¹³ *See also* Pearl Decl., ¶ 13. The clear trend in
21

22
23 ⁹ These unreimbursed expenses of \$157,898.48 are on top of the expenses and future expenses
previously granted by the Court and the \$1.25 million settlement with the litigation vendor.

24 ¹⁰ *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Staton v. Boeing Co.*, 327 F.3d 938,
967 (9th Cir. 2003) (same).

25 ¹¹ *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994)
26 (“WPPSS”).

27 ¹² *Pillsbury Co. v. Conboy*, 459 U.S. 248, 262-63 (1983); *Reiter v. Sonotone Corp.*, 442 U.S.
330, 331 (1979); *Hawaii v. Stand. Oil Co.*, 405 U.S. 251, 266 (1972).

28 ¹³ *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir. 2015) (“*Online DVD*”); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (“*Vizcaino II*”); *WPPSS*,
19 F.3d at 1296.

class actions is to award attorneys' fees based on the percentage of the fund method because it "directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation[.]"¹⁴ See also Pearl Decl., ¶ 13. Indeed, most courts in this Circuit prefer the percentage-of-recovery method, with all of the recent, major antitrust class actions in this District applying it.¹⁵ And this Court followed the percentage-of-the-recovery method in awarding fees for the prior two settlement rounds.¹⁶ Regardless of which method is chosen, the Ninth Circuit encourages "a cross-check using the other method."¹⁷ Both methods support Class Counsel's fee request. Pearl Decl., ¶¶ 11-42.

While 25 percent of the gross common fund constitutes the "benchmark" in the Ninth Circuit, several cases and studies have found that 25 percent only represents the "starting point" for the analysis.¹⁸ As the case law and several studies demonstrate, district courts across the country often award attorneys' fees of around 30 percent to 33 percent of the common fund, typically calculated against the gross settlement fund.¹⁹ See also Pearl Decl., ¶¶ 13, 16, 23-25.

¹⁴ *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) ("*Wal-Mart*").

¹⁵ See, e.g., *In re TFT-LCD Antitrust Litig.*, No. M 07-1827 SI, 2011 WL 7575003, at *1 (N.D. Cal. Dec. 27, 2011); *In re TFT-LCD Antitrust Litig.*, No. M 07-1827 SI, 2013 WL 149692, at *1-2 (N.D. Cal. Jan. 14, 2013) ("*Flat Panel P*"); *In re TFT-LCD Antitrust Litig.*, No. M 07-1827 SI, 2013 WL 1365900, at *7-8 (N.D. Cal. Apr. 3, 2013) ("*Flat Panel IP*"); *In re Static Random Access Memory (SRAM) Antitrust Litig.*, No. 07-md-1819 CW (N.D. Cal. June 30, 2011), ECF No. 1370; *Meijer v. Abbott Labs.*, C 07-05985 CW (N.D. Cal. Aug. 11, 2011), ECF No. 514 ("*Meijer*").

¹⁶ ECF Nos. 1009, 1252.

¹⁷ *Online DVD*, 779 F.3d at 949.

¹⁸ *Id.* at 949, 955; *Vizcaino II*, 290 F.3d at 1048; cf. *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1378 (N.D. Cal. 1989) ("[I]n most recent cases the benchmark is closer to 30%.")

¹⁹ This is so even in so-called "mega fund" cases where the common fund exceeds \$100 million, an approach not adopted in the Ninth Circuit. See, e.g., *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1210 (S.D. Fla. 2006) (awarding 31.33% fee on \$1.075 billion settlement fund); accord *In re Urethane Antitrust Litig.*, 2016 WL 4060156, at *6, *8 (D. Kan. July 29, 2016) (awarding 33.33% fee on \$835 million settlement; "Counsel's expert has identified 34 megafund cases with settlements of at least \$100 million in which the court awarded fees of 30 percent or higher."); *In re Se. Milk Antitrust Litig.*, No. 2:07-CV 208, 2013 U.S. Dist. LEXIS 70167, at *34 (E.D. Tenn. May 17, 2013) (awarding one-third of \$158 million settlement fund) ("*Se. Milk*"); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (awarding 33.3% fee on \$510 million settlement fund); *In re Vitamins Antitrust Litig.*, 2001 WL 34312839, at *10 (D.D.C. July 16, 2001) (awarding 34.6% fee on \$360 million settlement fund); *Vizcaino II*, 290 F.3d at 1047-48 (rejecting the "increase-decrease rule" for a "mega fund" case

Indeed, courts have awarded similar percentages of attorneys' fees in comparable, large antitrust class actions in this District—again, with the majority of these percentages having been applied to the *gross* settlement fund instead of the net settlement fund that is this Court's practice.²⁰ *See also* Pearl Decl., ¶ 16. In a study on the effectiveness of private antitrust enforcement that reviewed 40 recent successful private antitrust cases, the authors found seven of 16 cases involved fee awards of 33 percent, with 11 awards of at least 30 percent.²¹ Fee awards of 33 percent or more often involve cases presenting substantial risk, as here.²² *See also* Pearl Decl., ¶ 21. Unlike this case, fee awards of less than 33 percent often involve substantial multipliers, whereas granting Class Counsel's total fee request in this Action would nevertheless result in a negative multiplier of 0.86.²³ *See also* Joint Decl., ¶ 93; Pearl Decl., ¶ 33.

1. The Fee Request Is Reasonable Under The Percentage-of-Recovery Method

While a 25 percent benchmark can to be used as the "starting point" for analysis,²⁴ "[t]hat percentage amount can then be adjusted upward or downward depending on the circumstances of

and instead finding that "fund size is one relevant circumstance to which courts must refer..."; *In re TFT-LCD Antitrust Litig.*, No. 07-md-01827 SI, 2013 U.S. Dist. LEXIS 49885, at *72-74 & n.11 (N.D. Cal. Apr. 1, 2013) (expressly rejecting the suggestion that fees should be reduced based on the "mega fund" concept).

²⁰ *See, e.g.*, Order Granting Award of Attorneys' Fees, Reimbursement of Expenses & Incentive Payments, *SRAM*, No. 07-md-1819-CW (N.D. Cal. Oct. 14, 2011), ECF No. 1407 (33% of IPP settlement); *In re Lidoderm Antitrust Litig.*, No. 14-md-02521, 2018 WL 4620695, at *1 (N.D. Cal. Sept. 20, 2018) (33% of EPP settlement); Order Granting Final Approval of Settlement at 4, *Meijer*, No. C-07-5985 (N.D. Cal. Aug. 11, 2011), ECF No. 514 (33.3% of settlement); *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-md-02420-YGR, 2018 U.S. Dist. LEXIS 226312, at *33 (N.D. Cal. May 16, 2018) (granting 30% of DPP settlement).

²¹ Robert H. Lande & Joshua P. Davis, *Benefits from Private Antitrust Enforcement: An Analysis of Forty Cases*, 42 U.S.F. L. REV. 879, 911 tbl.7A (2008).

²² *See, e.g.*, *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (award of 33% justified due to complexity and risk).

²³ *See, e.g.*, *In re Dynamic Random Access Memory Antitrust Litig.*, No. M-02-1486-PJH, 2007 WL 2416513 (N.D. Cal. Aug. 16, 2007) (multiplier of 2.3); *In re Credit Default Swaps Antitrust Litig.*, No. 13 Md 2476, 2016 U.S. Dist. LEXIS 54587, at *60 (S.D.N.Y. Apr. 25, 2016) (multiplier of 6.36).

²⁴ *Online DVD*, 779 F.3d at 949, 955; *Vizcaino II*, 290 F.3d at 1048; *cf. In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1378 (N.D. Cal. 1989) ("[T]his court finds that in most recent cases the benchmark is closer to 30%.")

the case.”²⁵ Pearl Decl., ¶ 14. The Ninth Circuit directs district courts to “consider[] all of the circumstances” and “reach[] a reasonable percentage.”²⁶ The percentage must be appropriate based on the facts.²⁷ “[I]n most common fund cases, the award *exceeds* the benchmark.”²⁸

Courts may consider these factors in making fee awards: (1) whether counsel achieved exceptional results for the class; (2) whether the case was risky for class counsel; (3) whether counsel generated benefits beyond the cash settlement fund;²⁹ (4) the market rate for the particular field of law; (5) the litigation burdens class counsel experienced; and (6) whether the case was handled on a contingency basis.³⁰ *See also* Pearl Decl., ¶ 17. Courts may also consider the volume of work performed, counsel’s skill and experience, the complexity of the issues faced, and the class’s reaction.³¹ Each of these factors supports the fee request. Pearl Decl., ¶¶ 19-33.

a. Counsel Achieved Exceptional Results for the Classes

A total settlement fund of \$148,152,000 constitutes an exceptional result for the settlement classes given the immense challenges and risks posed. The final settlement of \$58 million with ANA is, by itself, exceptional, nearly tripling any other settlement in the Action. Courts emphasize that the recovery size is an important factor to be considered in determining an appropriate fee award.³² The quality of work on the legal issues, developing the extensive factual

²⁵ *de Mira v. Heartland Emp’t Serv., LLC*, 2014 WL 1026282, at *1 (N.D. Cal. Mar. 13, 2014).

²⁶ *Vizcaino II*, 290 F.3d at 1048.

²⁷ *Id.*; *see also* *Torrison v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993).

²⁷ *de Mira*, 2014 WL 1026282, at *1 (quoting *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008) (emphasis added) (“*Omnivision*”)).

²⁸ *Online DVD*, 779 F.3d at 949 (quoting *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008) (“*Omnivision*”)).

²⁹ Plaintiffs have not set forth an extended discussion of this factor because the settlement with ANA ends this Action. Class Counsel generated non-monetary benefits with all other settlements, however, in that they included cooperation provisions. Joint Decl., ¶¶ 64-82. These cooperation provisions were critical to reaching future settlements and contributed to the large recovery Class Counsel were able to obtain from later-settling Defendants, such as ANA. *Id.*

³⁰ *Online DVD*, 779 F.3d at 954-55.

³¹ *See, e.g., In re Heritage Bond Litig.*, 02-ML-1475 DT, 2005 WL 1594403, at *18-23 (C.D. Cal. June 10, 2005) (“*Heritage Bond*”).

³² *See Hensley v. Eckerhart*, 461 U.S. 424, 431 (1983); *Vizcaino v. Microsoft Corp.*, 142 F. Supp. 2d 1299, 1303 (W.D. Wash. 2001), *aff’d*, 290 F.3d 1043 (9th Cir. 2002) (“*Vizcaino I*”); *In re Omnivision*, 559 F. Supp. 2d at 1046.

record, defending against Defendants’ affirmative defenses, and successfully navigating the complex issues raised by the substantial expert discovery allowed Plaintiffs to successfully prosecute this Action and to maximize the recovery obtained by the classes. All the work performed in the Action led to the terrific results achieved. Class Counsel persevered for nearly 12 years, resolving claims against ANA for \$58 million shortly before trial. As a result, Plaintiffs can distribute the net settlement funds to class members years earlier than they otherwise would have had the Action against ANA continued to trial and through likely appeals. Pearl Decl., ¶ 33.

b. Counsel Faced Enormous Litigation Risks

This Action presented enormous risks to Class Counsel, with potentially dispositive issues and defenses lurking everywhere, including defenses such as the filed-rate doctrine, the act of state doctrine, the state action doctrine, implied preclusion, federal preemption, *Illinois Brick*, and defenses related to class certification—any of which, if successful, would have effectively resulted in a dispositive ruling. *See, e.g.*, Joint Decl., ¶¶ 5, 10. Risk is an important factor in determining a fair fee award.³³ Courts in this Circuit have recognized substantial risk is one reason to increase a fee award above the 25 percent benchmark.³⁴ Courts also recognize the “antitrust class action is arguably the most complex action to prosecute.”³⁵ Even if plaintiffs meet their liability burden, there is the very real risk that plaintiffs will “recover[] no damages, or only negligible damages, at trial, or on appeal.”³⁶ The fact that this recovery was obtained despite these

³³ *Online DVD*, 779 F.3d at 955; *In re Superior Beverage/Glass Container Consol. Pretrial*, 133 F.R.D. 119, 127 (N.D. Ill. 1990) (“*Superior Beverage*”); *see* Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 J. EMPIRICAL LEGAL STUD. 27, 77 (2004) (“*Empirical Study*”) (noting that “complexity is correlated with higher fees” and that “fees as a percentage of recovery tend to be higher in high-risk cases”).

³⁴ *Vizcaino I*, 142 F. Supp. 2d at 1303–04.

³⁵ *In re Linerboard Antitrust Litig.*, No. Civ. A. 98-5055, 2004 WL 1221350, at *10 (E.D. Pa. June 2, 2004) (“*Linerboard*”) (quoting *In re Motorsports Merch. Antitrust Litig.*, 112 F. Supp. 2d 1329, 1337 (N.D. Ga. 2000)); *see also In re Auto. Refinishing Paint Antitrust Litig.*, 617 F. Supp. 2d 336, 341 (E.D. Pa. 2007) (the “antitrust class action is arguably the most complex action to prosecute[] [t]he legal and factual issues involved are always numerous and uncertain in outcome.”); *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 475 (S.D.N.Y. 1998) (“Antitrust litigation in general, and class action litigation in particular, is unpredictable.”).

³⁶ *Wal-Mart*, 396 F.3d at 118 (“Indeed, the history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only

enormous risks supports the reasonableness of the fee request. The risk that the law may change unfavorably was omnipresent. Several factors made this Action especially risky.

First, Plaintiffs defeated multiple motions to dismiss and summary judgment motions, including certain Defendants' attempts to appeal this Court's rulings on some motions. Joint Decl., ¶¶ 5, 8-17, 44-55. Plaintiffs also certified two litigation classes after extensive and protracted expert analysis. *Id.*, ¶¶ 56-61. At every turn, Defendants attempted to narrow the scope of or end the Action.

Second, this is an intrinsically difficult case due to the length and scope of the conspiracy and the complexities associated with proving antitrust impact and overcharges. Given the allegations, Plaintiffs had to engage in foreign discovery and depositions. *Id.*, ¶¶ 18-43. The resulting document productions required Plaintiffs to review nearly a million largely foreign language documents. *Id.*, ¶¶ 5, 32. Further, defense counsel hailed from some of the most sophisticated law firms in the country. In completing the foregoing and more, Plaintiffs also brought to bear their substantial experience from other international cartel cases, and the classes benefited enormously as a result. *Id.*, ¶ 91.

Third, for all parts of the case except the *Satogaeri* fares, Plaintiffs did not have the benefit of a concurrent or wider criminal investigation, the outcome of which could have been more closely aligned with the conspiracy pleaded in the FCAC.³⁷ Here only ANA pleaded guilty to price-fixing and only as to unpublished passenger fares on tickets purchased from April 1, 2000 until April 1, 2004.³⁸ In light of the complex issues and significant risks, the large common fund achieved demonstrates Class Counsel's high level of skill and of work performed.

negligible damages, at trial, or on appeal.'" (quoting *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 476 (S.D.N.Y. 1998)); see also *Superior Beverage*, 133 F.R.D. at 127 ("The 'best' case can be lost and the 'worst' case can be won, and juries may find liability but no damages. None of these risks should be underestimated.").

³⁷ See *Flat Panel II*, 2013 WL 1365900, at *7 (recognizing class counsel's risk is minimized when civil litigation has the benefit of parallel criminal price-fixing charges and guilty pleas).

³⁸ Plea Agreement at ¶ 2, *United States v. All Nippon Airways Co., Ltd.*, No. 1:10-cr-00295-JDB (D.D.C. Dec. 6, 2010), ECF No. 8.

c. Fee Awards for Antitrust Class Action Lawyers with Similar Experience Support the Fee Request

Fee awards for antitrust class action lawyers with Class Counsel's experience also supports the 33 percent fee request. As Plaintiffs explain in Section III.A, *supra*, courts in antitrust class actions have routinely awarded fees of around 33 percent of the common fund. A 33 percent fee award is also on par with the 33 percent market rate for contingent representation as Plaintiffs note in Section III.A.1.e, *infra*.³⁹ Moreover, Class Counsel's fee request is in line with the non-contingent market rates charged in this District by attorneys of reasonably comparable experience, skill, and reputation for reasonably comparable services. Pearl Decl., ¶ 36.

d. The Substantial Burdens of This Litigation Support the Fee Request

The Ninth Circuit instructs district courts to consider the burdens counsel experienced while litigating the case, such as its cost, duration, and the opportunity cost associated with foregoing other work.⁴⁰ These factors strongly support the fee request. This Action has been pending for almost 12 years. Class Counsel has advanced substantial sums out-of-pocket with only partial reimbursement to date. Class Counsel, particularly Lead Counsel, also has devoted substantial time to this Action—109,036.16 hours for a lodestar of \$45,152,522.00—and substantially foregone other work while litigating this Action. Joint Decl. ¶¶ 3, 89.⁴¹ Plaintiffs'

³⁹ *Vizcaino II*, 290 F.3d at 1049 (explaining that fees requested were at or below "the standard contingency fee for similar cases," supporting the reasonableness of the request); *see, e.g.*, Lester Brickman, *ABA Regulation of Contingency Fees: Money Talks, Ethics Walks*, 65 Fordham L. Rev. 247, 248 (1996) (noting that "standard contingency fees" are "usually thirty three percent to forty percent of gross recoveries" (emphasis omitted)); F. Patrick Hubbard, *Substantive Due Process Limits on Punitive Damages Awards: "Morals Without Technique"?*, 60 FLA. L. REV. 349, 383 (2008) (discussing "'the usual 33-40 percent contingent fee'" (quoting *Mathias v. Accor Econ. Lodging, Inc.*, 347 F.3d 672, 677 (7th Cir. 2003))); Herbert M. Kritzer, *The Wages of Risk: The Returns of Contingency Fee Legal Practice*, 47 DEPAUL L. REV. 267, 286 (1998) (reporting the results of a survey of Wisconsin lawyers, which found that "[o]f the cases with a [fee calculated as a] fixed percentage [of the recovery], a contingency fee of 33% was by far the most common, accounting for 92% of those cases").

⁴⁰ *Online DVD*, 779 F.3d at 954-55.

⁴¹ *See also Torrissi*, 8 F.3d at 1376 ("This [25%] benchmark percentage should be adjusted, or replaced by a lodestar calculation, when special circumstances indicate that the percentage recovery would be either too small or too large in light of the hours devoted to the case or other relevant factors." (internal quotation marks omitted)).

litigation burdens were substantial. These efforts included but were not limited to:

- Preparing two comprehensive consolidated amended complaints, each over 100 pages in length, detailing Defendants' alleged antitrust law violations (Joint Decl., ¶¶ 5, 8, 12);
- Conducting exhaustive legal research and brief writing Defendants' motions to dismiss, which raised myriad legal issues (*id.*, ¶¶ 5, 8-17).
- Propounding extensive sets of offensive discovery and engaging in the laborious meet-and-confer process to identify document custodians and to determine the search parameters for Defendants' productions (*id.*, ¶¶ 5, 18-43);
- Conducting exhaustive legal research, relevant expert and fact discovery, and brief writing regarding Defendants' potentially dispositive summary judgment motion regarding the filed-rate doctrine and briefing and argue the resulting appeals on this issue before the Ninth Circuit, resulting in an affirmance of this Court's opinion (*id.*, ¶ 5, 44-54).
- Again, conducting exhaustive legal research, relevant expert and fact discovery, and brief writing regarding novel issues raised by ANA's summary judgment motion raising *Illinois-Brick* and the *Noerr-Penington* doctrine, as potentially dispositive defenses. Class Counsel and the classes prevailed in full on this motion (*id.*, ¶ 55).
- Retaining expert economists and consultants to analyze and review Defendant and non-party data to assist counsel in their investigation and analysis and to prepare expert reports for class certification (*id.*, ¶¶ 56-61). Conducting exhaustive research of the record to support Class Counsel's successful motion for class certification (*id.*);
- Maintaining close communication with class representatives and responding to multiple sets of discovery requests propounded by Defendants (*id.*, ¶¶ 5, 38, 43) and
- Securing settlements and cooperation with the previously settling Defendants (*id.*, ¶ 82).

e. Counsel Handled This Action on A Contingency Basis

Attorneys who take on a contingency case should be compensated for their risk.⁴² In the private marketplace, the standard contingency-fee percentage is approximately 33 percent of the recovery.⁴³ Since 2007, Plaintiffs have undertaken significant financial risks in prosecuting this Action, an inherently complex and risky litigation against 13 Defendants represented by sophisticated defense firms. Plaintiffs devoted an enormous number of hours and millions of dollars of their financial resources. Class Counsel's contingency engagement incentivized counsel to achieve excellent results for the classes as efficiently as possible. A 33 percent fee award reasonably

⁴² See, e.g., *Online DVD*, 779 F.3d at 954-55 & n. 14; *Vizcaino II*, 290 F.3d at 1050; *WPPSS*, 19 F.3d at 1299.

⁴³ See *Empirical Study* at 35 ("[s]ubstantial empirical evidence indicates that a one-third fee is a common benchmark in private contingency fee cases."); *Std. Iron Works v. Arcelormittal*, No. 08-C-5214, 2014 U.S. Dist. LEXIS 162557, *7-8 (N.D. Ill. Oct. 22, 2014) (\$163.9 million settlement; one-third fee found to be the prevailing market rate for similar legal services in similar cases).

compensates Class Counsel for the financial burdens of this long and risky Action.⁴⁴

f. The Effort, Experience, and Skill of Counsel Support the Fee Request

As this Court has recognized repeatedly, Class Counsel have performed at a high level of skill in this Action. The “prosecution and management of a complex national class action requires unique legal skills and abilities.”⁴⁵ Price-fixing cases are notoriously complex and difficult to litigate.⁴⁶ Courts have recognized that the novelty and difficulty of issues in a case are significant factors to be considered in awarding fees.⁴⁷ High skill and quality of work merit an upward adjustment from the benchmark percentage.⁴⁸ The quality of Class Counsel’s effort, experience, and skill is demonstrated in the exceptional results achieved.⁴⁹ Co-Lead Class Counsel are among the nation’s most experienced and skilled practitioners in class action litigation, and each firm has successfully litigated multiple antitrust class actions, including many within this District.

In addition to the tasks set forth in the Joint Declaration, Class Counsel were fully prepared for trial, having, *inter alia*, exchanged trial exhibits, drafted jury instructions, exchanged deposition designations, and performed all other tasks necessary for trial preparation. Joint Decl., ¶¶ 5, 62-63. Not only did Class Counsel effectively manage the Action, but they successfully tackled the many varied legal and factual issues presented. The Court is all too familiar with the case history, having presided over nearly 12 years of litigation represented by over 1220 docket entries.

⁴⁴ See, e.g., *Hopkins v. Stryker Sales Corp.*, 2013 WL 496358, at *3 (N.D. Cal. Feb. 6, 2013) (awarding 30% fee because the “case was conducted on an entirely contingent fee basis against a well-represented Defendant”).

⁴⁵ *Heritage Bond*, 2005 WL 1594403, at *19 (citing *Edmonds v. U.S.*, 658 F. Supp. 1126, 1137 (D.S.C.1987)).

⁴⁶ See, e.g., *Linerboard*, 2004 WL 1221350, at *10.

⁴⁷ See, e.g., *Vizcaino I*, 142 F. Supp. 2d at 1303, 1306.

⁴⁸ See *Mark v. Valley Ins. Co.*, No. CV 01-1575-BR, 2004 WL 2260605, at *2 (D. Or. Oct. 6, 2004).

⁴⁹ See *Heritage Bond*, 2005 WL 1594403, at *19 (citing *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 547–48 (S.D. Fla. 1988)).

The caliber of opposing counsel is another important factor in assessing the quality of Class Counsel's work.⁵⁰ Here, Plaintiffs were opposed by attorneys from some of the best and largest firms in the country with near limitless resources at their disposal.

2. A Lodestar Cross-Check Confirms the Reasonableness of the Fee Request

Finally, a cross-check of the fee request with Class Counsel's lodestar demonstrates that the fee request is reasonable. A cross-check can "confirm that a percentage of recovery amount does not award counsel an exorbitant hourly rate."⁵¹ Class Counsel incurred a lodestar totaling \$45,152,522.00 based on 109,036.16 hours of work between their appointment of leadership on March 28, 2008 and July 31, 2019. Joint Decl., ¶ 89.⁵² The attorney fee request of 33 percent of the Net Settlement Fund, or \$18,647,081.15, represents approximately 74.25 percent of the unreimbursed lodestar of \$25,114,450.49.⁵³ Joint Decl., ¶ 92.

A 33 percent attorney fee award is particularly appropriate here, where the lodestar cross-check results in a negative multiplier.⁵⁴ See also Pearl Decl., ¶¶ 34-41. A negative multiplier "obviates concern about any windfall" in the context of a large recovery or "mega fund" because counsel effectively earned an hourly rate below the market rate.⁵⁵ Other courts have found a

⁵⁰ *Vizcaino I*, 142 F. Supp. 2d at 1303; *In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 634 (D. Colo. 1976); *Arenson v. Board of Trade*, 372 F. Supp. 1349, 1354 (N.D. Ill. 1974).

⁵¹ *Online DVD*, 779 F.3d at 949; *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 945 (9th Cir. 2011) ("*Bluetooth*"); see also *Vizcaino II*, 290 F.3d at 1050 ("the lodestar calculation can be helpful in suggesting a higher percentage when litigation has been protracted").

⁵² See, e.g., *Lobatz v. U.S. West Cellular of California, Inc.*, 222 F.3d 1142, 1149-50 (9th Cir. 2000) (affirming district court's fee award by considering all of the litigation effort and cross-checking the fees requested with a lodestar multiplier); *Se. Milk*, 2013 U.S. Dist. LEXIS 70167, at *26-27.

⁵³ This is the difference between Class Counsel's total lodestar in the Action to date of \$45,152,522.00 and previously awarded fees of \$20,038,071.51.

⁵⁴ A negative multiplier is below the usual range of multipliers surveyed by the Ninth Circuit in *Vizcaino II*, which looked at common fund settlements between \$50 and \$200 million. *Vizcaino II* found 20 of the 24 cases it surveyed had a multiplier between 1.0 and 4.0. *Vizcaino II*, 290 F.3d at 1051 n.6. See also Eisenberg, Miller & Germano, *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. REV. 937, 941 (2017); NEWBERG ON CLASS ACTIONS § 15:89 (5th ed.). This study also found that the mean lodestar multiplier for recoveries above \$75 million was 2.72. *Id.* at 966.

⁵⁵ See, *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-md-02420-YGR, 2018 U.S. Dist. LEXIS 226312, at *33 (N.D. Cal. May 16, 2018).

negative multiplier supports the reasonableness of a fee request.⁵⁶

Class Counsel also took meaningful steps to ensure that all work performed was efficient and limited to reasonable and necessary work. Joint Decl. ¶ 91.⁵⁷ Class Counsel applied their experience litigating other antitrust class actions to this Action, resulting in additional efficiencies. *Id.*, ¶ 91. Detailed time records support the fee request. *Id.*⁵⁸

In sum, if the Court grants Class Counsel's fee request of \$18,647,081.15, the total fees granted in the Action will amount to only 86 percent of the total lodestar and confirms the reasonableness of the request. *Id.*, ¶ 93. Under either a "percentage-of-the-fund" or "lodestar" method, the fee request is warranted given the Action's challenges and risks, the value of the extensive work performed, and the results achieved for the classes' benefit. Pearl Decl., ¶¶ 19-33.

B. The Litigation Expenses Were Reasonable and Necessary and Should be Reimbursed

For almost 12 years, Plaintiffs have advanced substantial expenses required to prosecute this Action. They have done so without any guarantee of reimbursement. Courts reimburse attorneys prosecuting class claims on a contingent basis for "reasonable expenses that would typically be billed to paying clients in non-contingency matters," *i.e.*, costs "incidental and necessary to the effective representation of the Class."⁵⁹ Reimbursable expenses include those for

⁵⁶ *See, e.g., Online DVD*, 779 F.3d at 955 (fact that fee sought is less than the lodestar suggests fairness of award); *Flat Panel I*, 2013 WL 149692, at *1 (N.D. Cal. Apr. 3, 2013) (negative multiplier of 0.86 confirmed amount of attorneys' fees requested was fair and reasonable); *Gong-Chun v. Aetna Inc.*, 2012 WL 2872788, at *23 (E.D. Cal. July 12, 2012) (negative multiplier of .79 suggested that fee award was reasonable); *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 853–54 (N.D. Cal. 2010) (negative multiplier of .59 indicated fee award was "reasonable and a fair valuation of the services rendered to the class by class counsel"); *In re Portal Software, Inc. Sec. Litig.*, 2007 WL 4171201, at *16 (N.D. Cal. Nov. 26, 2007) (negative lodestar multiplier of 0.83 or 0.74 "suggests that the requested percentage based fee is fair and reasonable").

⁵⁷ Class Counsel also audited the time records prior to their submission here and eliminated time entries that were inefficient or duplicative. Class Counsel also did not include in the lodestar fees for any time expended prior to their appointment of leadership. Joint Decl., ¶ 91.

⁵⁸ *See also* ECF Nos. 987, 987-2, 987-5-987-43, 988, 988-2 (firm declarations in support of fee request in connection with Round 1 Settlements); 1228, 1228-2, 1228-5-1228-22, 1229 (firm declarations in support of fee request in connection with Round 2 Settlements).

⁵⁹ *Omnivision*, 559 F. Supp. 2d at 1048; *see also Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759 (9th Cir. 1977) (under the common fund doctrine, plaintiffs' counsel should receive reimbursement of all reasonable out-of-pocket

document production, experts and consultants, depositions, translations, travel, and mail.⁶⁰

Now, at the Action's conclusion, Plaintiffs request reimbursement of out-of-pocket litigation expenses of \$157,898.48 that were reasonably and necessarily incurred and for which they have not been previously reimbursed. Joint Decl., ¶ 98. Plaintiffs provide a breakdown of the expenses in Exhibits 6-8 to the Joint Declaration. Plaintiffs made contributions to the litigation fund to pay for the expense reflected in Exhibit 6, while Exhibits 7 and 8 reflect currently unreimbursed firm expenses of Co-Lead Class Counsel. The unreimbursed litigation fund expenses are \$1,357,098.64 and unreimbursed firm expenses are \$50,799.84, which total \$1,407,898.48. *Id.*, ¶ 96. Following the resolution of a dispute with a litigation vendor over the services it provided, Plaintiffs received a \$1.25 million payment from the vendor. As noted in the preliminary approval motion relating to the ANA settlement,⁶¹ Plaintiffs propose applying that amount to partially offset the requested reimbursement from the Settlement Fund. If the Court is amenable to this approach, Class Counsel requests \$157,898.48 to be reimbursed from the settlement fund instead of the larger number of \$1,407,898.48.

IV. CONCLUSION

For the foregoing reasons, the Court should award \$18,647,081.15 in attorneys' fees, or 33 percent of the Net Settlement Fund, and \$157,898.48 in litigation expenses.

Dated: August 9, 2019

Respectfully submitted,

/s/ Adam J. Zapala

/s/ Christopher L. Lebsock

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expenses and costs in prosecution of the claims and in obtaining a settlement); *In re Capacitors Antitrust Litig.*, No. 3:14-cv-03264-JD, 2017 U.S. Dist. LEXIS 99616, at *34 (N.D. Cal. June 27, 2017); 1 Alba Conte, *Attorney Fee Awards* § 2.19 (3d ed. 2004).

⁶⁰ See *In re Media Vision Tech. Secs. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1995) (Court fees, experts/consultants, service of process, court reporters, transcripts, deposition costs, computer research, photocopies, postage, telephone/fax); *Thornberry v. Delta Air Lines*, 676 F.2d 1240, 1244 (9th Cir. 1982), *judgment vacated and remanded on other grounds*, 461 U.S. 952 (1983) (travel, meals, and lodging).

⁶¹ ECF No. 1297 at 15.

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

**IN RE TRANSPACIFIC PASSENGER
AIR TRANSPORTATION
ANTITRUST LITIGATION**

Civil Case No. 3:07-cv-05634-CRB

MDL No. 1913

**This Document Relates To:

ALL ACTIONS**

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR AWARD OF
ATTORNEYS' FEES AND
REIMBURSEMENT OF EXPENSES**

Hearing Date: October 18, 2019
Judge: Hon. Charles R. Breyer
Time: 10:00 a.m.
Courtroom: 6, 17th Floor

1 The Court, having reviewed Plaintiffs' Notice of Motion and Motion for Award of
2 Attorneys' Fees and Reimbursement of Expenses, Memorandum in Support, the Joint Declaration
3 and exhibits attached thereto, the Declaration of Richard M. Pearl and exhibit attached thereto
4 (collectively, "Motion"), argument by counsel at the hearing before this Court, and all papers and
5 records on file in this matter, hereby finds that:

6 1. The Motion requests an award of attorneys' fees of \$18,647,081.15 and
7 reimbursement of litigation expenses of \$157,898.48.

8 2. Plaintiffs have notified class members of the fee and expense request, and class
9 members have had an opportunity to advise the Court of any concerns they have with said request.

10 3. The Court finds Plaintiffs' fee request is fair and reasonable under the percentage-
11 of-the-recovery method after nearly 12 years of hard-fought litigation resulting in settlements
12 with all 13 named Defendants totaling \$148,152,000. The fee awards in comparably large antitrust
13 class actions in this District also support the fee award here.

14 4. The Court also finds the fee request is fair and reasonable because: (1) Class
15 Counsel achieved exceptional results for the classes; (2) Class Counsel faced enormous risks in
16 litigation this Action; (3) the market rate for antitrust litigators with Class Counsel's experience
17 supports the fee request; (4) Class Counsel's litigation burdens support the fee request; (5) Class
18 Counsel handled this Action on a contingency basis; and (6) the effort, experience, and skill of
19 counsel support the fee request. These factors justify an upward departure from the benchmark
20 percentage of 25% in this District.

21 5. The Court has confirmed the reasonableness of the fee request by conducting a
22 lodestar cross-check. The Court finds that Class Counsel's unreimbursed lodestar was
23 \$25,114,450.49 based on historic hourly rates from March 28, 2008 through July 31, 2019. Class
24 Counsel's fee request of \$18,647,081.15 represents 74.25% of their unreimbursed lodestar.
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1 6. Class Counsel's total fee award of \$38,685,152.66 based on a total lodestar of
2 \$45,152,522.00 represents a negative multiplier of 0.86. This fact further supports the
3 reasonableness of Class Counsel's fee request.

4 7. Class Counsel incurred a total of \$6,341,702.95 in litigation fund expenses in
5 prosecuting this Action. The Court finds that these litigation fund expenses were reasonably and
6 necessarily incurred given the complex nature and nationwide scope of the Action as well as the
7 extensive discovery and depositions required in this Action. The Court has granted litigation fund
8 expenses of \$4,984,604.31. Plaintiffs' unreimbursed litigation expenses therefore total
9 \$1,357,098.64.

10 8. Cotchett, Pitre & McCarthy, LLP incurred out-of-pocket litigation expenses of
11 \$7,537.12, and Hausfeld LLP incurred out-of-pocket expenses of \$43,262.72. These expenses
12 were reasonably and necessarily incurred. Plaintiffs' unreimbursed firm expenses therefore total
13 \$50,799.84.

14 9. Class Counsel's unreimbursed litigation fund expenses of \$1,357,098.64 and
15 unreimbursed firm expenses of \$50,799.84 total \$1,407,898.48.

16 10. As Class Counsel advised in their motion for preliminary approval of the ANA
17 settlement,¹ they also reached a settlement of \$1.25 million with one of their litigation vendors
18 concerning the services it provided. The Court instructs Class Counsel to defray the unreimbursed
19 expenses of total \$1,407,898.48 by the \$1.25 million received from the litigation vendor. The
20 Court grants the remaining, unreimbursed expenses of \$157,898.48.

21 11. In sum, on consideration of the Motion and accompanying Declarations, and based
22 upon all matters of record including the pleadings and papers filed in this Action, the Court hereby
23 finds that Plaintiffs' attorneys' fees request is reasonable and appropriate, and Plaintiffs' incurred
24 expenses were reasonable and necessary in the prosecution of this complex, risky, and lengthy
25 Action.
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¹ ECF No. 1297 at 15.

Accordingly, it is hereby ORDERED and DECREED that:

1. Class Counsel are awarded attorneys' fees of \$18,647,081.15;

2. Class Counsel are awarded reimbursement of their litigation expenses in the amount of \$157,898.48, which has not been reimbursed by the Court nor offset by the litigation vendor settlement;

3. The awarded fees and expenses shall be paid from the settlement fund of \$58 million; and

4. The fees and expenses shall be allocated among Class Counsel by Co-Lead Class Counsel in a manner that, in Co-Lead Class Counsel's good-faith judgment, reflects each firm's contribution to the institution, prosecution, and resolution of the Action.

5. The Court finds that there is no just reason for delay and enters this order pursuant to Federal Rule of Civil Procedure 54(b).

IT IS SO ORDERED.

Dated: _____

HON. CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

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Co-Lead Class Counsel for Plaintiffs

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

**IN RE TRANSPACIFIC PASSENGER
AIR TRANSPORTATION
ANTITRUST LITIGATION**

Case No. 3:07-cv-05634-CRB

MDL No. 1913

**This Document Relates To:

ALL ACTIONS**

**JOINT DECLARATION IN SUPPORT OF
PLAINTIFFS' MOTION FOR AWARD OF
ATTORNEYS' FEES AND
REIMBURSEMENT OF EXPENSES**

Hearing Date: October 18, 2019
Judge: Hon. Charles R. Breyer
Time: 10:00 a.m.
Courtroom: 6, 17th Floor

1 We, Adam J. Zapala and Christopher L. Lebsock, jointly declare as follows:

2 1. Adam J. Zapala is a partner at the law firm of Cotchett, Pitre & McCarthy, LLP
3 (“CPM”). Christopher L. Lebsock is a partner at the law firm of Hausfeld LLP (“Hausfeld”). They
4 make this Declaration based on their personal knowledge, and if called as a witness, each of them
5 could and would competently testify to the matters stated herein. They submit this Declaration
6 pursuant to 28 U.S.C. § 1746 in support of Plaintiffs’ Motion for Award of Attorneys’ Fees and
7 Reimbursement of Expenses filed concurrently herewith.

8 2. This Court appointed CPM and Hausfeld (through its predecessor firm) to serve
9 as Co-Lead Class Counsel in this Action on March 28, 2008.¹ They have been involved in every
10 aspect of this Action since its inception, overseeing all work performed on behalf of the classes.
11 The background and experience of Co-Lead Class Counsel and their attorneys and paralegals are
12 summarized in the *curricula vitae* attached hereto as **Exhibits 1-2**.

13 3. Co-Lead Class Counsel and other participating firms (together, “Class Counsel”)
14 have prosecuted this Action for almost 12 years solely on a contingent fee basis and have been at
15 risk that they would not receive any compensation for prosecuting the claims against Defendants.
16 While Class Counsel have devoted their time and resources to this matter, they have foregone
17 other legal work for which they would have been compensated.

18 4. The purpose of this Declaration is to summarize: (a) the work performed by Class
19 Counsel during this arduous and protracted litigation, (b) the time spent by Class Counsel in
20 prosecuting this Action, (d) the expenses incurred by Class Counsel in prosecuting this Action
21 that remain unreimbursed, and (e) the steps Class Counsel employed to ensure the efficient
22 management of this Action.

23 5. Since their leadership appointment, Class Counsel have devoted an extraordinary
24 amount of time to this Action. Their activities have included, *inter alia*:

- 25 • Class Counsel conducted an initial investigation to develop the theories of liability and
26 the facts that formed the basis of the allegations against Defendants. This research

27 ¹ ECF Nos. 130, 175.

included a review of publicly available information regarding the Transpacific airline industry and consultation with industry experts and economists;

- Class Counsel drafted three comprehensive consolidated complaints detailing Defendants’ alleged violations of the antitrust laws. The complaints were over 100-pages, and included detailed factual allegations concerning the alleged conspiracies, along with economic and structural analyses of the international airline market;²
- Class Counsel conducted exhaustive legal research regarding the classes’ claims and defenses thereto;
- Class Counsel defended and, on the whole, prevailed, after two extensive rounds of hard-fought motions to dismiss totaling 18 motions covering such complex regulatory areas as the filed-rate doctrine, the act of state doctrine, the state action doctrine, implied preclusion, federal preemption, and the sufficiency of the conspiracy allegations under the Supreme Court’s decisions in *Twombly* and *Iqbal*, amongst other attacks on the pleadings.³ Class Counsel also defended and defeated attempts by some Defendants to appeal this Court’s rulings to the Ninth Circuit on the aforementioned motions;
- Class Counsel propounded several sets of discovery that—after extensive meet-and-confers and negotiations with Defendants, including significant motion practice before this Court and Magistrate Judge Donna M. Ryu—resulted in the identification of over 374 document custodians and the production of almost seven million pages of documents in addition to voluminous electronic transactional data. Class Counsel reviewed, searched and extensively coded and analyzed these documents, the majority of which were in foreign languages and required translation;
- Class Counsel engaged in extensive third-party discovery, including obtaining access to and reviewing the Airline Tariff Publishing Company’s (“ATPCO”) database for information concerning fares, itineraries and other data pertinent to this litigation;
- Class Counsel organized and attended several proffer sessions with settling Defendants to obtain cooperation and learn additional liability, class certification, and damages information;
- Class Counsel propounded several sets of Requests for Production of Documents, Interrogatories, and Requests for Admission and issued Rule 30(b)(6) deposition notices;
- Class Counsel answered several sets of discovery propounded by Defendants, including Requests for Production of Documents, Interrogatories, and Requests for Admission, as well as responded to extensive fact contention interrogatories concerning liability;
- Class Counsel contended with near-constant discovery disputes and motions to compel. Indeed, Class Counsel filed a series of motions to compel before Magistrate Judge Ryu;
- Class Counsel prepared for and took the depositions of 62 fact and 30(b)(6) Defendant witnesses and three non-party witnesses. Class Counsel further prepared for and defended the depositions of 15 class representatives.

² ECF Nos. 200, 493.

³ ECF No. 467.

- 1 • Class Counsel engaged in extensive expert depositions, where they prepared for and defended the depositions of three expert witnesses in relation to Defendants' summary judgment motions regarding the filed-rate doctrine;
- 2 • Class Counsel engaged and consulted extensively with experts and economists on issues pertaining to electronic discovery, liability, summary judgment, class certification, and damages throughout the course of the Action;
- 3 • Class Counsel prepared extensive briefing for, and largely prevailed on, Defendants' summary judgment motions based on the filed-rate doctrine. Class Counsel also engaged in substantial appellate briefing to protect this Court's decision on appeal to the Ninth Circuit, which ultimately affirmed this Court's decision. Thereafter, Class Counsel defended against Defendants' petition for *certiorari*, which the Supreme Court denied;
- 4 • Class Counsel prepared briefs for final approval of the Round 1 Settlements (defined *infra*), defended the Court's May 26, 2015 final approval order concerning those settlements before the Ninth Circuit, which ultimately affirmed the final approval order, and successfully defeated an objector's petition for *certiorari* to the Supreme Court;
- 5 • Class Counsel prepared briefs for final approval of the Round 2 Settlements (defined *infra*) and successfully defeated one, *pro per* individual's objection to the settlements;
- 6 • Class Counsel consulted extensively with, and retained, experts related to All Nippon Airways, Co. Ltd.'s ("ANA") second motion for summary judgment based on *Illinois-Brick* and the *Noerr-Pennington* doctrine. In connection with this motion, Class Counsel prepared extensive briefs defending against the arguments, and prevailing in full;
- 7 • Class Counsel prepared for class certification proceedings by, *inter alia*, consulting extensively with experts; preparing expert reports related thereto; defending and taking expert depositions, and briefing class certification.
- 8 • Class Counsel engaged in protracted settlement discussions and/or mediations with all 13 Defendants;⁴
- 9 • Class Counsel documented the settlements with Defendants, briefed motions for preliminary approval and final approval, and engaged experts noted in the field of class action notice to develop multiple rounds of a robust settlement class notice program and a single robust litigation class notice program; and
- 10 • Class Counsel prepared for a two-week trial against ANA, which included all aspects of trial preparation, including but not limited to, deposition designations, witness preparation, exhibit lists, trial witness lists, motions *in limine* and oppositions thereto, proposed jury instructions, special verdict forms and *voir dire*, a pretrial brief, and *Daubert* motions.

⁴ See Plaintiffs' various declarations in support of preliminary approval motions (ECF Nos. 921-922 (Japan Airlines, Air France, Vietnam Airlines, Thai Airways, Malaysia Air, and Cathay Pacific), 942-1 (Qantas Airways and Singapore Airlines), 1112-1 (Philippine Airlines, Air New Zealand, and China Airlines), 1129-1 (EVA Air), 1297-2 (ANA)).

6. Class Counsel's activities occurred against the backdrop of the litigation events described below.

APPOINTMENT OF LEADERSHIP

7. On March 28, 2008, this Court appointed the law firms of Cotchett, Pitre & McCarthy, LLP and Hausfeld LLP as Co-Lead Class Counsel on behalf of the putative classes pursuant to Federal Rule of Civil Procedure 23(g).⁵

COMPLAINTS AND MOTIONS TO DISMISS

8. On August 6, 2009, Plaintiffs filed a 111-page, factually-detailed Consolidated Class Action Complaint ("CCAC").⁶ The CCAC initially named 18 Defendants and outlined allegations concerning price-fixing conspiracies between the competing airlines on base fares, fuel surcharges, and a certain subset of discount fares offered by Japan Airlines and ANA.⁷

9. In response to the CCAC, Defendants filed 14 motions to dismiss, asserting several different attacks on the complaint.⁸

10. Defendants, either collectively or individually (and, in some instances, both), argued: (1) that Plaintiffs had failed to allege a plausible conspiracy under *Twombly* and *Iqbal*; (2) that the filed-rate doctrine barred Plaintiffs' claims; (3) that the claims were preempted through the doctrine of implied preclusion; (4) that foreign treaties or "Air Services Agreements" among the various national governments provided the exclusive remedy and precluded Plaintiffs' claims; (5) that the Foreign Trade Antitrust Improvement Act ("FTAIA") completely barred the claims; (6) that the complaint failed to adequately allege fraudulent concealment for purposes of tolling the statute of limitations; (7) that the CCAC did not relate back to the filing of the original complaints; (8) that the federal aviation statutory scheme preempted Plaintiffs' claims; (9) that

⁵ ECF Nos. 130, 175.

⁶ ECF No. 200

⁷ *Id.*

⁸ *See, e.g.*, ECF Nos. 243 (Continental), 287 (PAL and Vietnam), 288 (PAL), 290 (Joint Mot.), 293 (Joint Mot. of the European Carriers), 294 (Vietnam), 295 (ANA), 299 (Vietnam) 300 (EVA), 303 (Cathay), 304 (ANA, China, and Thai), 310 (Malaysian), 311 (Malaysian and ANZ), and 312 (Thai).

1 the state action doctrine barred the claims; and (10) that the act of state doctrine barred the claims,
2 amongst other more nuanced arguments.⁹

3 11. On May 9, 2011, this Court issued a detailed, 47-page order, which largely
4 sustained Plaintiffs' allegations and rejected Defendants' motions.¹⁰ As to all Defendants, this
5 Court found that Plaintiffs had alleged a detailed, specific, and plausible conspiracy regarding
6 price-fixing on base fares and fuel surcharges. This Court also found that Defendants could not
7 invoke the filed-rate doctrine to preclude Plaintiffs' claims at the motion to dismiss phase, holding
8 that "[s]everal factual matters that would guide this Court in assessing Defendants' arguments are
9 currently undeveloped."¹¹ The Court sustained Defendants' FTAIA arguments insofar as
10 Plaintiffs' allegations pertained to fares that originated overseas but found that flight segments
11 originating in the U.S. for travel to Asia/Oceania were not barred.¹² Regarding the state action
12 doctrine, the Court denied Defendants' claims, finding that the doctrine applied to actions
13 authorized and supervised by the states, not to actions between foreign governments.¹³ The Court
14 similarly rejected Defendants' implied preclusion argument.¹⁴ The Court also rejected Thai
15 Airways and Vietnam Airlines' argument that the act of state doctrine barred Plaintiffs' claims—
16 even soliciting the views of the U.S. Department of State.¹⁵ The Court also rejected arguments by
17 several Defendants that the "Air Services Agreements" between foreign governments or between
18 foreign governments and the U.S. provided the exclusive remedy and, therefore, barred the
19 claims. In so ruling, the Court found no evidence that those agreements intended to bar private
20 litigants, as opposed to setting forth the rights and obligations of the various governments.¹⁶ The
21 Court similarly rejected Philippine Airlines' argument that the *Noerr-Pennington* doctrine barred

22 ⁹ *Id.*

23 ¹⁰ ECF No. 467.

24 ¹¹ *Id.* at 467.

25 ¹² *Id.* at 5-13.

26 ¹³ *Id.* at 24-25.

27 ¹⁴ *Id.* at 25-26.

¹⁵ *Id.* at 27-29.

¹⁶ *Id.* at 36-38, 39, 43-44, 44-45, 46-47.

the claims.¹⁷ Finally, the Court sustained Defendants' arguments that Plaintiffs had not alleged "fraudulent concealment" sufficiently to toll the statute of limitations, but granted leave to amend to comply with its ruling.¹⁸

12. On July 14, 2011, Plaintiffs' filed their First Amended Consolidated Class Action Complaint ("FCAC").¹⁹ The FCAC expanded to 149-pages and added significant detail regarding Defendants' concealment of the price-fixing scheme.²⁰ Another round of motions to dismiss ensued.²¹ The majority of the pleadings challenges focused on the supposed inadequacy of Plaintiffs' fraudulent concealment allegations.

13. On September 30, 2011, by minute order, this Court rejected Defendants' fraudulent concealment arguments and found that Plaintiffs had sufficiently tolled the statute of limitations.²²

14. Plaintiffs were also forced to defend against several Defendants' attempts to appeal this Court's orders on the motions to dismiss. ANA and China Airlines requested permission for interlocutory appeal pursuant to 28 U.S.C. § 1292(b).²³ The European carriers²⁴ similarly requested permission to appeal under this Section.²⁵ After opposition from Plaintiffs, this Court denied the requests.²⁶ Thai Airways and Vietnam Airlines also filed notices of appeal in response to this Court's orders on the motions to dismiss.²⁷ Plaintiffs' filed motions to dismiss these appeals in the Ninth Circuit, arguing that they were procedurally improper because the

¹⁷ *Id.* at 45.

¹⁸ *Id.* at 29-33.

¹⁹ ECF No. 493.

²⁰ *Id.*

²¹ ECF Nos. 516, 518, 519, 520.

²² ECF No. 553.

²³ ECF No. 473.

²⁴ Air France, KLM Royal Dutch Airlines, and Scandinavian Airlines.

²⁵ ECF No. 496.

²⁶ ECF Nos. 488, 510.

²⁷ ECF Nos. 479, 484.

orders were not final, appealable orders. On August 22, 2011, the Ninth Circuit agreed and dismissed the appeals.²⁸

15. Plaintiffs have also borne the risks caused by inevitable delays. Discovery was effectively stayed in the Action pending resolution of Defendants' motions to dismiss. Defendants filed their first round of motions to dismiss in the fall of 2009. The motions were fully briefed by February 19, 2010.²⁹

16. On March 3, 2010, as a result of Japan Airlines' bankruptcy filing in Japan, this Court held the motions to dismiss in abeyance to permit a determination on the scope of the stay from the bankruptcy court.³⁰ After oral argument on the issue, the bankruptcy court determined that Japan Airlines' bankruptcy filing did not stay the Action against the rest of the Defendants.

17. On November 1-2, 2010—nearly a year after the motions were filed—oral argument was held on the motions to dismiss.³¹ On November 22, 2010, the Action was again stayed as the Court solicited the views of the U.S. State Department based on Defendants' arguments concerning the act of state doctrine.³² On May 9, 2011, this Court entered its 47-page order granting in part and denying in part the motions to dismiss. In September of 2011, after the submission of the FCAC and another round of motions to dismiss, this Court found that Plaintiffs had adequately alleged fraudulent concealment and discovery in the Action could begin in earnest.³³

DISCOVERY

18. As reflected in the Court's docket, Plaintiffs were forced to fight for every ounce of discovery that has been produced or that has occurred in this Action.

²⁸ ECF Nos. 524-25.

²⁹ ECF No. 367.

³⁰ ECF No. 372.

³¹ ECF Nos. 440-442.

³² ECF No. 445, 455.

³³ ECF No. 556.

A. Written Discovery

19. On January 26, 2010, Plaintiffs served their First Request for Production of Documents (“RFPs”). This set of RFPs included 61 requests and asked for a comprehensive set of financial, organizational, conspiracy-related and transactional documents. On January 26, 2010, Plaintiffs also propounded their First Set of Interrogatories, requesting that Defendants identify document custodians, employees that attended trade association events, inter-competitor communications, preservation efforts, and facts related to their affirmative defenses.

20. On February 17, 2010, Plaintiffs served a comprehensive Rule 30(b)(6) notice, encompassing 17 topics relevant to this Action. Instead of having deponents sit for depositions on each of these topics, Defendants provided narrative responses to the topics.

21. On July 8, 2011, Plaintiffs propounded another set of RFPs, focusing more narrowly on specific conspiracy-related documents known to be in the files of some of the Defendants. On the same day, Plaintiffs also served their Second Set of Interrogatories, requesting additional inter-competitor communications concerning the allegations in the FCAC.

22. On June 3, 2013, Plaintiffs propounded a Third Set of RFPs, requesting Defendants’ cost data. On the same day, Plaintiffs served a Third Set of Interrogatories also designed to obtain important information concerning Defendants’ cost inputs.

23. In the fall of 2013, Plaintiffs propounded a Fourth, Fifth, and Sixth Set of RFPs designed to elicit information relevant to Defendants’ arguments concerning the filed-rate doctrine. During this period, Plaintiffs propounded a Fourth Set of Interrogatories also probing Defendants’ filed-rate arguments.

24. As part of the discovery process, Class Counsel organized and attended several proffer sessions where Settling Defendants provided Plaintiffs with information concerning the alleged conspiracy and made their employees available for interviews and depositions.

B. The Meet-and-Confer Process and Motion Practice Before the Court

25. Subsequent to the service of the aforementioned discovery and multiple rounds of objections from Defendants, the parties held extensive meet-and-confer negotiations over the scope of the requests, document custodians, a search term protocol, an ESI protocol, a discovery limitations/plan protocol, interim deadlines for the production of documents, and a deposition protocol. In many cases, these negotiations required the intervention of Magistrate Judge Ryu through motions to compel.

26. On June 14, 2010, Plaintiffs filed a motion to compel the production of information residing with non-party, ATPCO.³⁴ Obtaining information from the ATPCO database was critical to Plaintiffs' prosecution of the Action. The motion resulted in an extensive stipulation between all parties concerning the production of information residing on the ATPCO database.³⁵

27. On September 16, 2011, Plaintiffs filed a motion to compel ANA and China Airlines to provide further documents and discovery responsive to conspiracy-related information and transactional data.³⁶ After proceedings before Judge Ryu, the parties reached an agreement for searching and producing relevant documents.³⁷ Plaintiffs similarly filed a motion to compel Defendants to produce documents related to *In re Air Cargo Shipping Services Antitrust Litigation* ("Air Cargo").³⁸ Thereafter, a series of letter briefs and updates were provided to the Court, resulting in a protocol to provide Plaintiffs with access to Defendants' *Air Cargo* productions.³⁹

28. Several Defendants also asserted that "foreign-blocking statutes" prohibited them from providing otherwise responsive discovery. Plaintiffs were thus similarly required to file motions to compel. For example, on August 28, 2012, Plaintiffs and Philippine Airlines submitted

³⁴ ECF No. 392.

³⁵ ECF No. 396.

³⁶ ECF No. 546.

³⁷ ECF No. 582.

³⁸ ECF No. 601.

³⁹ ECF No. 630, 631.

1 a joint letter brief to the Court regarding an alleged Philippine blocking statute.⁴⁰ On September
2 14, 2012, Magistrate Judge Ryu issued an order largely sustaining Plaintiffs' motion.⁴¹

3 29. Because of the difficulty in obtaining a substantive production from the
4 Defendants, Plaintiffs filed discovery letters with Magistrate Judge Ryu for the purpose of
5 establishing interim discovery and production deadlines.⁴² Judge Ryu ordered the parties to
6 provide subsequent notices, updating the court on the status of the negotiations. This process
7 resulted in a stipulated order, requiring Defendants to make substantial productions by dates
8 certain.⁴³ This process also resulted in a stipulated order concerning deposition limits.⁴⁴ Over the
9 objections of ANA, the Court entered an order concerning deposition limits applied to ANA. On
10 February 21, 2013, Plaintiffs submitted a discovery status report to Magistrate Judge Ryu,
11 reporting on the progress they had made with the various Defendants concerning search terms,
12 custodians, transactional data, and other discovery matters.⁴⁵

13 30. On March 21, 2014, Plaintiffs and ANA filed another joint letter brief concerning
14 the deposition of its CEO, Osamu Shinobe.⁴⁶ ANA refused to produce Mr. Shinobe for deposition.
15 Plaintiffs moved to compel, arguing that Mr. Shinobe's testimony was potentially relevant to the
16 fuel surcharge price-fixing conspiracy. Magistrate Judge Ryu agreed, and compelled ANA to
17 produce Mr. Shinobe in Japan.⁴⁷ During the same proceeding, Magistrate Judge Ryu denied
18 Defendants' request that Plaintiffs produce their experts' searches in the ATPCO database.⁴⁸

19 31. In connection with Defendants' summary judgment motions regarding the filed-
20 rate doctrine, Plaintiffs were also forced to file motions to compel further discovery responses
21 demonstrating the level of supervision, or lack thereof, of the U.S. Department of Transportation

22 ⁴⁰ ECF No. 642, 658.

23 ⁴¹ ECF Nos. 655, 660.

24 ⁴² ECF No. 668.

25 ⁴³ ECF No. 683.

26 ⁴⁴ ECF No. 691.

27 ⁴⁵ ECF No. 693.

⁴⁶ ECF No. 881.

⁴⁷ ECF No. 867.

⁴⁸ ECF No. 864.

over Defendants' fares and fuel surcharges.⁴⁹ Magistrate Judge Ryu granted the motions.⁵⁰ Defendants' answers to that discovery were cited by this Court in denying Defendants' summary judgment motions based on the filed-rate doctrine.⁵¹

C. Defendants' Document Productions and Plaintiffs' Review Efforts

32. Despite the vigorous opposition of defense counsel, Plaintiffs obtained 1.7 million documents, totaling almost seven million pages, and reviewed almost a million of them. Defendants produced documents from over 374 document custodians.

33. This documentary evidence was thoroughly reviewed, analyzed, coded, and organized by a team of lawyers through an electronic review platform. This process identified the important evidence in this Action. The process was made more complex because many of the documents were provided in foreign languages. These documents required review by attorneys fluent in those foreign languages, who then had to determine which documents were sufficiently relevant to the litigation to require full English translations and, in certain cases, certified translations for use in depositions. Though expensive and time consuming, the online database and process developed by Class Counsel permitted Class Counsel to efficiently prioritize documents and custodians.

34. To contain costs and maintain resources for the benefit of the classes, Class Counsel made the decision that no document reviewer could bill at a rate over \$300 per hour for initial document review. Foreign language document reviewers were given a cap of \$375 per hour.

35. Class Counsel participated in the document review process. Each reviewer was provided with a detailed memorandum regarding the various theories in the Action, the existing facts and evidence supporting that theory, and materials required to assist them in the document

⁴⁹ ECF Nos. 819, 820.

⁵⁰ ECF No. 862.

⁵¹ *In re Transpacific Passenger Air Transp. Antitrust Litig.*, No. 07-cv-05634-CRB, 2014 U.S. Dist. LEXIS 134104, at *n. 4, *53, *59-60, *n. 34 (N.D. Cal., Sept. 23, 2014) ("*Transpacific*").

1 review. The attorneys were then trained on the software and how to manage the documents that
2 were reviewed and coded (*i.e.*, the workflow process).

3 36. During the initial discovery phase and particularly in the deposition phase, the
4 document review required the daily commitment of at least one attorney or paralegal from Class
5 Counsel. Because the document review platform was being managed at CPM, the process also
6 involved significant communications with CPM's IT specialists to manage, load, and assist in the
7 rolling document productions. Although the ESI protocols were negotiated and agreed to by all
8 parties, Class Counsel experienced numerous issues related to the loading of data onto the
9 database. While these issues were technical in nature, they required meet-and-confers with the
10 Defendants and significant time spent with Plaintiffs' own consulting ESI experts.

11 37. Plaintiffs also propounded requests designed to elicit Defendants' transactional
12 data. Plaintiffs were required to participate in countless and protracted meet-and-confer s with
13 Defendants to understand the data and provide it in a useful format for Plaintiffs' experts. Follow-
14 up meet-and-confers were needed when Plaintiffs' experts had additional questions.

15 38. In addition to the offensive discovery outlined above, Plaintiffs were required to
16 respond to discovery and to produce relevant documents to Defendants. Plaintiffs made their first
17 production of documents on August 24, 2011 and made subsequent productions on December 9,
18 2011, January 10, 2012, March 4, 2013, and March 15, 2013. Class Counsel spent significant time
19 responding to Defendants' discovery requests and assisting class representatives in the search and
20 production of relevant document. Plaintiffs also spent substantial time responding to Defendants'
21 contention interrogatories.

22 **D. Depositions**

23 39. Class Counsel spent significant time preparing for and taking the depositions of
24 Defendants' employees and former employees. Class Counsel's own attorneys, including the
25 undersigned, were involved extensively in depositions of Defendants' witnesses. Conspiracy
26 cases are document heavy and often require many depositions.

1 40. All told, during fact discovery,⁵² Plaintiffs took 62 depositions of Defendants’
2 employees or former employees in either their Rule 30(b)(1) or 30(b)(6) capacity. Of these 62
3 depositions, 36 required an interpreter, thus substantially prolonging the length of the deposition.
4 Plaintiffs also took three non-party depositions, for a total of 65 depositions.

5 41. In many cases, Defendants refused to bring their deponents to the U.S. for
6 deposition, thus requiring several trips to foreign countries, such as Australia, Japan, Hong Kong,
7 Taiwan, and Singapore. Adding to the complexity, deponents in Japan are precluded from
8 appearing voluntarily. Class Counsel, therefore, were required to file motions with the Court,
9 obtain deposition rooms at the U.S. Consulate or Embassy, and procure a deposition visa after a
10 diplomatic exchange between the U.S. and Japan.⁵³ Additionally, some former employees refused
11 to appear voluntarily, thus requiring Plaintiffs to utilize the time-consuming and inefficient Hague
12 Process to compel their attendance at important depositions.⁵⁴

13 42. In connection with Defendants’ summary judgment motions regarding the filed-
14 rate doctrine, Plaintiffs propounded additional discovery, took the depositions of the Defendants’
15 fact declarants, and took a third-party deposition of Joanna Bryant, ATPCO’s declarant in support
16 of Defendants’ motions.

17 43. The above numbers only apply to the taking of depositions. But Plaintiffs were
18 also required to defend numerous depositions. Defendants deposed all class representatives
19 except for one—requiring Plaintiffs to defend a total of 15 such depositions. Similarly, in
20 connection with Plaintiffs’ opposition to Defendants’ summary judgment motions regarding the
21 filed-rate doctrine, Class Counsel had to prepare for and defend three expert depositions.

25 ⁵² Class Counsel engaged in additional depositions related to expert issues in connection with
26 subsequent summary judgment proceeds, and class certification.

27 ⁵³ ECF Nos. 737, 889.

⁵⁴ ECF Nos. 796, 803-805, 891.

**SUMMARY JUDGMENT REGARDING THE FILED-RATE DOCTRINE
AND APPEALS**

44. Between September 10, 2013 and December 17, 2013, ANA, Air New Zealand, Cathay, China, EVA Air, Philippine Airlines, Qantas Airways, Singapore Airlines, and Thai Airways all filed summary judgment motions regarding the filed-rate doctrine. In addition to filing individual motions, all Defendants—with the exception of ANA—also joined in a joint summary judgment motion. Each submission was supported by one and sometimes two fact declarants.⁵⁵ The joint summary judgment motion was supported by the declaration of Joanna Bryant—a declarant from ATPCO.

45. As noted above, in anticipation of these motions, Plaintiffs engaged in extensive discovery, some of which required motion practice before Magistrate Judge Ryu. This motion practice was resolved in Plaintiffs' favor. Class Counsel propounded two sets of requests for production, two sets of interrogatories, and one set of requests for admission to fully understand the role, if any, the U.S. Department of Transportation played in allegedly supervising Defendants' fares and to obtain crucial admissions from Defendants. Class Counsel also engaged in the *Touhy* process to determine whether Defendant had in fact solicited the views of the Department of Transportation, as requested by this Court.

46. In opposing the motions, Plaintiffs exhaustively researched the filed-rate doctrine and federal preemption case law, as well as the statutory and regulatory underpinnings of U.S. aviation law and policy.

47. In support of its opposition, Class Counsel also consulted with and retained three experts to provide expert testimony through the submission of extensive declarations.⁵⁶ As previously noted, Class Counsel also prepared for and defended the depositions of these three experts.

⁵⁵ ECF Nos. 724, 725, 728, 731, 753, 763, 792.

⁵⁶ ECF Nos. 872, 873, 874.

1 48. In response to Defendants' motions, Class Counsel submitted one omnibus
2 Opposition totaling 60-pages.⁵⁷

3 49. During the pendency of Defendant's motion for summary judgment, Plaintiffs
4 reached settlements with Cathay Pacific, Qantas Airways, Singapore Airlines, and Thai Airways.
5 As a result, these Defendants withdrew their summary judgment motions.⁵⁸

6 50. On September 23, 2014, the Court granted in part and denied in part Defendants'
7 motions, keeping the vast majority of the claims in the Action against Defendants.⁵⁹ All of the
8 remaining Defendants filed petitions for interlocutory review in the Ninth Circuit.

9 51. Plaintiffs vigorously fought the appeal. Class Counsel spent extensive time
10 researching and writing the relevant appellate briefs. Class Counsel also spent extensive time
11 strategizing and preparing for oral argument before the Ninth Circuit, including participation in a
12 moot court session. Class Counsel presented oral argument before the Ninth Circuit on January
13 13, 2017. On April 14, 2017, the Ninth Circuit affirmed this Court's summary judgment order
14 and denied defendants' appeal.⁶⁰ Defendants' request for rehearing and rehearing *en banc* were
15 denied.

16 52. As noted in more detail *infra*, while the appeal was pending Plaintiffs were
17 successful in negotiating a settlement with China Airlines for a total of \$19.75 million.

18 53. Defendants ANA and EVA Air filed a Petition for Writ of *Certiorari* to the U.S.
19 Supreme Court on October 18, 2017. Class Counsel spent significant time drafting and responding
20 to Defendants' Petition for Writ of *Certiorari*. Plaintiffs opposed this motion on February 9, 2018.
21 The U.S. Supreme Court denied ANA and EVA Air's Petition on March 19, 2018.

22 54. During this time period, Plaintiffs also settled with EVA for a total of \$21.25
23 million.

25 ⁵⁷ ECF No. 869.

26 ⁵⁸ ECF Nos. 839, 920, 932, and 933.

27 ⁵⁹ *Transpacific*, 2014 U.S. Dist. LEXIS 134104.

⁶⁰ *Wortman v. All Nippon Airways*, 854 F.3d 606 (9th Cir. 2017).

SUMMARY JUDGMENT REGARDING *ILLINOIS BRICK* AND *NOERR-PENNINGTON* DOCTRINES

55. Despite their losses on the filed-rate doctrine, ANA, continued to vigorously litigate their defenses against Plaintiffs' claims. On May 7, 2018, ANA filed yet another summary judgment motion,⁶¹ arguing that Plaintiffs in the *Satogaeri* Class were indirect purchasers not entitled to recover under the Sherman Act. ANA also argued that Plaintiffs' fuel surcharge claims were barred by the *Noerr-Pennington* doctrine. Class Counsel once again retained experts and intensely fought this motion and prevailed on June 29, 2018 when the Court denied summary judgment.⁶²

CLASS CERTIFICATION AND EXPERT WORK

56. On January 26, 2018, Plaintiffs moved for class certification of two classes focusing on purported damages caused by price-fixing activities in two specific areas: (1) fuel surcharges and (2) special types of discounted tickets known as *Satogaeri* fares,⁶³ which ANA aggressively opposed.⁶⁴ To support its motion, and to rebut ANA's opposition, Plaintiffs engaged in extensive expert work to provide detailed reports containing econometric analyses on class-wide impact and damages for each proposed class. Plaintiffs also presented extensive evidence of ANA's participation in collusive behavior.⁶⁵

57. Class Counsel researched, prepared, and filed Plaintiffs' class certification motion.⁶⁶ The challenges raised by Defendants not only required significant legal analysis, including on novel issues but in many cases demanded fact-intensive responses. Class Counsel spent hours reviewing and choosing key liability evidence, market information, fuel costs, evidence related to travel agents, and various fare information. Class Counsel successfully

⁶¹ ECF No. 1158.

⁶² ECF No. 1194.

⁶³ ECF No. 1119.

⁶⁴ ECF Nos. 1157, 1220.

⁶⁵ ECF No. 1224.

⁶⁶ ECF No. 1119.

1 marshalled the supporting evidence from the vast number of documents produced, deposition
2 testimony, and expert reports.

3 58. The challenges raised by ANA required a major responsive effort by Class
4 Counsel and often their experts. Class Counsel worked extensively with their economists,
5 including several meetings and teleconferences, to conduct analysis of the air travel industry, fuel
6 surcharges and fares. As previously stated, Class Counsel also worked very closely with the
7 experts on discovery and in preparation for their depositions. Class Counsel also prepared for and
8 defended Russell W. Mangum III, Ph.D. at his deposition in Orange County, California. Finally,
9 Class Counsel took the depositions of ANA's experts.

10 59. On August 3, 2018, Class Counsel presented oral argument on the class
11 certification motion. At the hearing, the Court granted the Plaintiffs' class certification motion.
12 The Court found that their proposed classes met the ascertainability requirement, Rule 23(a)'s
13 four requirements (numerosity, commonality, and typicality, and adequacy), and Rule 23(b)(3)'s
14 two requirements (predominance and superiority).⁶⁷ Defendants subsequently requested
15 permission to appeal the Court's certification of the two classes pursuant to Federal Rule of Civil
16 Procedure 23(f). Class Counsel successfully defeated that effort when the Ninth Circuit declined
17 to hear the appeal.⁶⁸

18 60. After the filing of class certification, ANA filed a motion to strike to exclude the
19 merits expert report and testimony of Plaintiffs' expert Dr. Mangum.⁶⁹ Plaintiffs' also filed a
20 motion to strike ANA's expert testimony.⁷⁰

21 61. Plaintiffs and ANA also had disputes regarding the litigation class notice, with
22 ANA arguing that certain language should not appear in the notice.⁷¹ The Court invited ANA to
23 file a motion, which effectively amounted to a motion in *limine* to exclude evidence of its guilty

24 ⁶⁷ ECF No. 1224.

25 ⁶⁸ ECF No. 1278.

26 ⁶⁹ ECF No. 1206.

27 ⁷⁰ ECF No. 1207.

⁷¹ ECF Nos. 1232, 1232-1.

1 plea on discounted fares for a portion of the case.⁷² Plaintiffs vigorously opposed that Motion,
2 and the Court denied it in full, permitting Plaintiffs to include language in the class notice
3 concerning ANA's guilty plea on discounted fares.⁷³

4 PRETRIAL AND TRIAL PREPARATION

5 62. On September 7, 2018, the Court ordered a trial date to be set for March 4, 2019.
6 In preparation for trial, Class Counsel began preparing, reviewing and indexing trial exhibits,
7 organizing certified translations pertaining to exhibits, reviewing and designating deposition
8 testimony/video and reviewing and designating discovery responses. Class Counsel also prepared
9 trial strategy memoranda and materials for use throughout the duration of pretrial and trial.

10 63. At the time of settlement with ANA—with approximately a month before trial—
11 the parties had exchanged expert reports, trial exhibits, witness lists, and deposition designations
12 with ANA. The parties also filed various motions *in limine*. Further, Plaintiffs drafted proposed
13 jury instructions, special verdict forms and *voir dire*, a pretrial brief, and *Daubert* motions, and
14 performed all other tasks necessary for trial preparation.

15 SETTLEMENTS AND MEDIATION

16 64. Commencing in late 2008, Class Counsel and Japan Airlines began settlement
17 discussions. These discussions continued and the parties were close to reaching a tentative
18 agreement when Japan Airlines filed for bankruptcy protection under the laws of Japan and sought
19 and was granted a stay of this litigation against it. In mid-2010, while bankruptcy proceedings
20 were still pending, Japan Airlines and Plaintiffs executed a settlement agreement that reflected
21 the financial condition of Japan Airlines. In addition to providing substantial cooperation to the
22 Class, the Japan Airlines settlement agreement provided a payment of \$10 million. Additional
23 motion practice was held before the bankruptcy court.⁷⁴

25 ⁷² ECF No. 1251.

26 ⁷³ ECF No. 1266.

27 ⁷⁴ ECF No. 326, 373, 379, 380.

1 65. In or around mid-2012, Class Counsel began settlement negotiations with Air
2 France. These negotiations resulted in a November 15, 2012 settlement agreement that provided
3 for cooperation and a payment of \$876,000.

4 66. In or around mid-2012, Class Counsel began settlement discussions with Malaysia
5 Airlines. These settlement talks resulted in the execution of a settlement agreement on June 11,
6 2013, providing for cooperation and a payment of \$950,000.

7 67. In or around mid-2013, Class Counsel began settlement discussions with Vietnam
8 Airlines. These settlement discussions resulted in the execution of a settlement agreement on July
9 1, 2013, providing for cooperation and a payment of \$735,000.

10 68. In or around mid-2013, Class Counsel engaged in settlement discussions with Thai
11 Airways. These negotiations resulted in a settlement agreement on December 23, 2013, providing
12 for cooperation and a payment of \$9.7 million.

13 69. In or around mid-2014, while the summary judgment motions were pending, Class
14 Counsel and Cathay Pacific participated in a mediation before the Honorable Judge James
15 Robertson, Ret., U.S. District Court for the District of Columbia. The mediation resulted in the
16 execution of a settlement agreement on July 22, 2014, providing for cooperation and a payment
17 of \$7,500,000.

18 70. Similarly, in the summer of 2014, Class Counsel and Qantas engaged in settlement
19 discussions that culminated in the execution of a settlement agreement on August 8, 2014,
20 providing for cooperation and a payment of \$550,000, plus an additional \$100,000 for class notice
21 costs.

22 71. Class Counsel and Singapore Airlines discussed the possibility of settlement since
23 early 2014. Those discussions culminated in the execution of a settlement agreement on August
24 13, 2014, providing for cooperation and a payment of \$9,200,000.

25 72. Each of the foregoing settlements was premised on the following considerations:
26 (1) the financial health of the airline, (2) the evidentiary record as of the date of the settlement
27

1 agreement, (3) each settling Defendant's agreement to provide cooperation to the Class, (4) the
 2 volume of air traffic for U.S. originating travel (except in the case with Japan Airlines where
 3 Japan Airlines's overall commerce to and from the U.S. was analyzed), and (5) the Settling
 4 Defendants' legal defenses. The settlements reached with these Defendants create first round
 5 settlement funds of \$39,502,000.

6 73. In response to this Court's order granting final approval of the first round of
 7 settlements,⁷⁵ a single objector, Amy Yang, objected to these settlements and class certification
 8 on April 17, 2015.⁷⁶ Plaintiffs fought this objection in their motion for final approval.⁷⁷ Plaintiffs
 9 prevailed on the motion for final approval.⁷⁸ Ms. Yang appealed this ruling to the Ninth Circuit.⁷⁹
 10 Plaintiffs responded to this appeal on January 4, 2016.⁸⁰ The Ninth Circuit denied Ms. Yang's
 11 appeal and upheld the decision of this Court on June 26, 2017.⁸¹ Ms. Yang filed a petition for
 12 rehearing with the Ninth Circuit, which was again rejected on August 2, 2017. Plaintiffs engaged
 13 in extensive appellate advocacy protecting this Court's decision to grant final approval of the first
 14 round of settlements.

15 74. This Court granted final approval of settlements with Japan Airlines, Air France,
 16 Cathay Pacific, Malaysia Airlines, Qantas Airways, Singapore Airlines, Thai Airways, and
 17 Vietnam Airlines on May 26, 2015.⁸²

18 75. Class Counsel worked closely with the notice provider throughout the claims
 19 process. Class Counsel also assisted several class members with submissions of their claims.

20 76. Before each subsequent settlement was reached with Philippine Airlines, Air New
 21 Zealand, China Airlines, and EVA Air, Class Counsel spent significant time investigating the

22 ⁷⁵ ECF No. 1009.

23 ⁷⁶ ECF No. 993.

24 ⁷⁷ ECF No. 999.

25 ⁷⁸ ECF No. 1009.

26 ⁷⁹ Case No. 15-16280, ECF No. 8.

27 ⁸⁰ ECF No. 21.

⁸¹ *Wortman v. Yang (In re Transpacific Passenger Air Transp. Antitrust Litig.)*, 701 F. App'x
 554 (9th Cir. 2017).

⁸² ECF No. 1009.

1 claims against each of these airlines, including through extensive discovery and proffer sessions
2 from settled Defendants. Given the procedural status of the Action, including the completion of
3 fact discovery long ago, Class Counsel had significant knowledge of the evidence regarding each
4 settling Defendants' alleged conspiratorial conduct and the strengths and weaknesses of
5 Plaintiffs' claims and each Defendants' asserted defenses. Class Counsel used discovery materials
6 as well as information obtained from settled Defendants to evaluate each non-settled Defendant's
7 position and negotiate a fair settlement.

8 77. While Defendants' summary judgment motion on filed-rate was on appeal, and
9 prior to oral argument before the Ninth Circuit, Plaintiffs reached a settlement with Philippine
10 Airlines on January 3, 2017, providing for cooperation and a payment of \$9,000,000. Plaintiffs
11 subsequently also reached a settlement with Air New Zealand on January 9, 2017, providing for
12 cooperation and payment of \$650,000.

13 78. After Plaintiffs' oral argument before the Ninth Circuit, but prior to any decision
14 by the panel, China Airlines and Plaintiffs agreed to mediation before the Honorable Vaughn R.
15 Walker. Class Counsel drafted a mediation statement, extensively reviewed documents and
16 transactional data in preparation for the mediation, and actively participated in the mediation
17 session with China Airlines that occurred over the course of two days. The mediation resulted in
18 the execution of a settlement agreement on December 11, 2017, providing for cooperation and a
19 total payment of \$19,750,000.

20 79. During the period when ANA and EVA Air's Petition for Writ of *Certiorari* was
21 pending before the U.S. Supreme Court, Plaintiffs engaged in settlement discussions with EVA
22 and participated in a mediation before Robert A. Meyers, Esq. of JAMS. Class Counsel drafted a
23 mediation statement, reviewed documents and transactional data in preparation for the mediation,
24 and actively participated in the mediation session with EVA. The mediation resulted in the
25 execution of a settlement agreement on February 27, 2018, providing for cooperation and a
26
27

substantial payment of a total of \$21,250,000. This settlement was reached just prior to the Supreme Court denying the Petition for Writ of *Certiorari*.

80. Each of the foregoing settlements was premised on the following considerations: (1) the financial health of the settling airline, (2) the evidentiary record as of the date of the settlement agreement, (3) each settling Defendant's agreement to provide cooperation, (4) the volume of air traffic for U.S. originating travel, and (5) each Settling Defendant's legal defenses. The settlements reached with these Defendants create second round settlement funds of \$50,150,000.

81. This Court granted preliminarily approval of the settlements with Philippine Airlines, Air New Zealand, China Airlines, and EVA Air on May 16, 2018.⁸³ Class Counsel worked closely with the notice provider to ensure notice was published in accordance with notice program and publication schedules attached as exhibits to the Declaration of Dr. Shannon R. Wheatman.⁸⁴ Class Counsel attended a final approval hearing on the above referenced settlements before this Court on September 14, 2018.⁸⁵

82. Beginning in early 2018, Plaintiffs and ANA engaged in extensive arm's length negotiations before reaching a \$58 million settlement in early 2019. Class Counsel and ANA's counsel, all experienced and skilled attorneys, vigorously advocated their respective clients' positions. Negotiations included multiple days of mediation and the use of renowned mediator Kenneth R. Feinberg. Mr. Feinberg also served as a neutral in determining an allocation of the settlement between the three settlement classes in the ANA Settlement Agreement. Before the parties reached the settlement, Plaintiffs extensively investigated the claims against ANA, including through multiple discovery and proffer sessions from settling Defendants. Indeed, Plaintiffs were preparing for a March 4, 2019 trial against ANA and had already engaged in

⁸³ ECF No. 1161.

⁸⁴ ECF No. 1160-1162.

⁸⁵ ECF No. 1249.

enormous trial preparation, including producing expert reports, exchanging exhibit and witness lists with ANA, and the many other tasks associated with trial preparation.

NET SETTLEMENT FUND

83. Given the ANA Settlement Fund of \$58 million, Plaintiffs calculate the Net Settlement Fund as follows:

ANA Settlement Fund	\$ 58,000,000.00
Notice Expenses	(\$935,795.00)
Claims Administration Expenses	(\$400,000.00)
Unreimbursed Litigation Fund Expenses	(\$1,357,098.64)
Unreimbursed Firm Expenses	(\$50,799.84)
Vendor Settlement	\$1,250,000.00
Net Settlement Fund	\$56,506,306.52

84. The description of the notice expenses, claims administration expenses, unreimbursed litigation fund expenses, unreimbursed firm expense, and vendor settlement are detailed below.

NOTICE/CLAIMS ADMINISTRATION FOR CLASS MEMBERS

85. Class Counsel consulted with and engaged recognized experts in the class action notice field, Kinsella Media/Rust, for purposes of providing the classes with notice of the proposed settlement with ANA.⁸⁶ The Notice Program, developed in consultation with Kinsella Media/Rust, provided for direct notice, paid national and local media, earned media, a dedicated website, and a toll-free number.⁸⁷ In addition to applying to the Court for approval of Class Notice, Class Counsel also designed and implemented the Plan of Allocation and Claim Forms.⁸⁸ On May 16, 2018, this Court approved both the Notice Program and the Plan of Allocation.⁸⁹

⁸⁶ ECF No. 1297-3.

⁸⁷ *Id.*

⁸⁸ *Id.*; *see also* ECF No. 1297.

⁸⁹ ECF No. 1266.

86. The incurred notice expenses to complete the notice program are expected to be \$935,795.00 and the incurred claims administration expenses are expected to be approximately \$400,000.00. The Court has already authorized Class Counsel to pay the notice expenses and administration expenses from the Settlement Fund.⁹⁰

CLASS COUNSEL'S TIME

87. Attached hereto as **Exhibit 3** is Cotchett, Pitre & McCarthy, LLP's total hours and lodestar, computed at historical rates, from March 28, 2008 through July 31, 2019. The total time spent by Cotchett, Pitre & McCarthy, LLP during this period was 21,857.10 hours, with a corresponding lodestar of \$8,593,597.00.

88. Attached hereto as **Exhibit 4** is Hausfeld LLP's total hours and lodestar, computed at historical rates, from March 28, 2008 through July 31, 2019. The total time spent by Hausfeld LLP during this period was 13,977.55 hours, with a corresponding lodestar of \$8,555,919.50.

89. Attached hereto as **Exhibit 5** is Class Counsel's total hours and lodestar, computed at historical rates, from March 28, 2008 through July 31, 2019. The total time spent by these firms during this period was 109,036.16 hours, with a corresponding lodestar of \$45,152,522.00. Class Counsel incorporates previously submitted detailed time records as if fully set forth herein.⁹¹

90. These summaries were prepared from contemporaneous, daily time records regularly prepared and maintained by Co-Lead Class Counsel. The lodestar amounts reflected in these summaries are for work assigned and/or approved by Co-Lead Class Counsel and was performed by professional staff for the benefit of the classes. The hourly rates for the attorneys and professional support staff included these summaries are the usual and customary hourly rates charged by Class Counsel during this period.

⁹⁰ ECF No. 1303 at ¶ 16.

⁹¹ ECF Nos. 987, 987-2, 987-5-987-43, 988, 988-2 (firm declarations in support of fee request in connection with Round 1 Settlements); 1228, 1228-2, 1228-5-1228-22, 1229 (firm declarations in support of fee request in connection with Round 2 Settlements).

91. Class Counsel did not include in the lodestar fees for any time expended prior to the appointment of leadership on March 28, 2008. Co-Lead Class Counsel took meaningful steps to ensure that all work performed was efficient and limited to reasonable and necessary work and have submitted detailed time records in support. Co-Lead Class Counsel determined all of this time submitted was reasonable and necessary for the prosecution of this Action. Co-Lead Class Counsel audited the time records prior to their submission and eliminated time entries that were inefficient or duplicative. Co-Lead Class Counsel also applied their experience litigating other antitrust class actions to this Action, resulting in additional efficiencies. They brought to bear their substantial experience from other international cartel cases, such as *In re Static Random Access Memory Antitrust Litigation*, *In re Optical Disk Drive Antitrust Litigation*, *In re Cathode Ray Tube Antitrust Litigation*.

92. The 33-percent attorneys' fees request of the Net Settlement Fund of \$56,506,306.52 equals \$18,647,081.15, which represents approximately 74.25 percent of the unreimbursed lodestar of \$25,114,450.49.⁹²

93. If the Court grants Plaintiffs' 33-percent fee request on this third and final settlement round, the total fee award would equal \$38,685,152.66, or 28.31 percent of total net settlement funds of \$136,658,592.58, and a negative multiplier of 0.86.⁹³

⁹² The Court has awarded attorneys' fees totaling \$20,038,071.51, which is the sum of the \$9 million fee award from the first settlement round (ECF No. 1009) and the \$11,038,071.51 fee award from the second settlement round (ECF No. 1252).

Given that Plaintiffs' lodestar totals \$45,152,522.00, and that the Court has awarded fees totaling \$20,038,071.51, Plaintiffs' unreimbursed lodestar equals \$25,114,450.49.

A fee award of \$18,647,081.15 therefore represents about 74 percent of the unreimbursed lodestar of \$25,114,450.49. This means \$6,467,369.34 of Plaintiffs' lodestar will remain uncompensated even if the Court grants Plaintiffs' fee request.

⁹³ \$38,685,152.66 is the sum of the first and second round fee award of \$20,038,071.51 and the third and final round fee request of \$18,647,081.15.

\$136,658,592.58 is the sum of the first round net settlement fund of \$31,181,800.27, the second round net settlement fund of \$48,970,485.79, and this third and last round Net Settlement Fund of \$56,506,306.52.

\$38,685,152.66 is 28 percent of \$136,658,592.58.

\$38,685,152.66 is a -0.86 multiplier of \$45,152,522.00.

CLASS COUNSEL'S EXPENSES

94. The litigation fund has incurred expenses totaling \$6,341,702.95 in connection with the prosecution of this Action from March 28, 2008 through July 31, 2019. Class Counsel created and funded the litigation fund to pay for litigation expenses. Plaintiffs breakdown the litigation fund expenses for which they are seeking reimbursement by category, vendor, and amount in the summary attached hereto as **Exhibit 6**. These expenses were incurred on behalf of Plaintiffs by Class Counsel on a contingent basis. The expenses incurred in this Action are reflected on the books and records of Class Counsel. These books and records are prepared from expense vouchers, check records, and other source materials and represent an accurate recordation of the expenses incurred. The Court has previously reimbursed \$4,984,604.31 to the litigation fund.⁹⁴ Plaintiffs' unreimbursed litigation expenses therefore total \$1,357,098.64, which represents the difference between the expenses incurred by the litigation fund (\$6,341,702.95) and the expenses reimbursed to the litigation fund by the Court (\$4,984,604.31).

95. Separate from the litigation fund, Cotchett, Pitre & McCarthy, LLP incurred out-of-pocket litigation expenses of \$7,537.12, and Hausfeld LLP incurred out-of-pocket expenses of \$43,262.72, between May 17, 2018 and July 31, 2019. Plaintiffs breakdown each firm's expenses for which they are seeking reimbursement by category and amount in the summaries attached hereto as **Exhibits 7-8**. Plaintiffs' unreimbursed firm expenses therefore total \$50,799.84.

96. The unreimbursed litigation fund expenses of \$1,357,098.64 and unreimbursed firm expenses of \$50,799.84 total \$1,407,898.48.

⁹⁴ \$4,984,604.31 is the sum of (1) the \$1,877,660.12 in litigation fund expenses that the Court awarded in connection with the first settlement round (ECF No. 1009), (2) the \$3 million in future litigation fund expenses that the Court awarded in connection with the first settlement round (*id.*), and (3) the \$106,944.19 in litigation fund expenses the Court awarded in connection with the second settlement round (ECF No. 1252).

\$4,984,604.31 excludes the \$930,039.61 in individual firm expenses that the Court awarded in connection with the first settlement round (ECF No. 1009) and the \$38,426.02 in individual firm expenses that the Court awarded in connection with the second settlement round (ECF No. 1252) because these expenses were incurred by the individual firms and not the litigation fund.

97. As Plaintiffs informed the Court in connection with preliminary approval of the ANA settlement, following resolution of a dispute with one of Plaintiffs' litigation vendors, Plaintiffs received \$1.25 million to resolve this dispute, which Plaintiffs have proposed using to defray the requested reimbursement of expenses of \$1,407,898.48.⁹⁵

98. Now, at the conclusion of the Action, Plaintiffs request reimbursement of litigation expenses of \$157,898.48, which were neither previously reimbursed by the Court nor offset by the settlement with Plaintiffs' litigation vendor.⁹⁶ These unreimbursed expenses of \$157,898.48 are on top of the litigation fund expenses of \$4,984,604.31 previously granted by the Court and the aforementioned \$1.25 million settlement with the litigation vendor.

99. Alternatively, if the Court does not allow Plaintiffs to defray the unreimbursed litigation expenses with the \$1.25 settlement with the litigation vendor, Plaintiffs instead request reimbursement of reasonably and necessarily incurred expenses of \$1,407,898.48.

100. Class Counsel have reviewed the time and expenses reported by all firms in this Action, which are included in this Declaration and affirm that they are true and accurate.

We declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

Executed this 9th day of August 2019 at
Burlingame, California.

Executed this 9th day of August 2019 at San
Francisco, California.

/s/ Adam J. Zapala

/s/ Christopher L. Lebsock

Adam J. Zapala

Christopher L. Lebsock

⁹⁵ ECF No. 1297 at 15.

⁹⁶ \$157,898.48 is the sum of the unreimbursed litigation fund expenses of \$1,357,098.64 and the unreimbursed individual firm expenses of \$50,799.84, less the \$1.25 million settlement with the litigation vendor.

EXHIBIT 1

COTCHETT, PITRE & McCARTHY, LLP

ATTORNEYS AT LAW

SAN FRANCISCO BAY AREA | LOS ANGELES | NEW YORK

WWW.CPMLEGAL.COM

ADVOCATES FOR JUSTICE

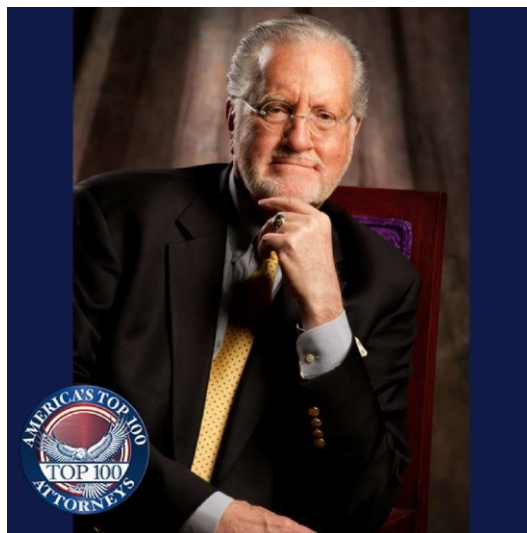


*"The attorneys ... displayed truly exceptional levels of skill and tenacity."
- Judge of the U.S. District Court*

OUR FIRM

Cotchett, Pitre & McCarthy, LLP based on the San Francisco Peninsula for over 45 years, engages exclusively in litigation and trials. The firm's dedication to prosecuting or defending socially just actions has earned it a national reputation. With offices in Burlingame, Los Angeles and New York, the core of the firm is its people and their dedication to principles of law, their work ethic and commitment to justice.

Most clients are referred by other lawyers, who know of the firm's abilities and reputation in the legal community. We are trial lawyers dedicated to achieving justice.



"The Cotchett firm has few peers that equal their ability in litigation. Their commitment to the cause of justice and their ethical standards stand apart. They are people who give back to the community and give lawyers a good name."
— Judge of the Superior Court (Retired)

PRACTICE AREAS

CPM represents Plaintiffs and Defendants in a wide range of areas, including:

- Antitrust & Global Competition
- Aviation / Helicopter Accidents
- Commercial Litigation
- Consumer Protection Litigation
- Defective Products / Mass Torts
- Elder Abuse
- Employment Law
- Environmental Litigation
- False Claims / Whistleblower Law
- First Amendment Defense
- Intellectual Property
- Municipal & Public Entity Litigation
- Personal Injury & Wrongful Death
- Pharmaceutical Litigation
- Securities / Financial Fraud
- Shareholder Rights / Corporate Governance

***“This court has had the distinct pleasure of having the parties in this case represented by some of the finest attorneys not only in this state but in the country.” Cotchett, Pitre & McCarthy has “well reputed experience in [consumer fraud] litigation.”
- Judge of the U.S. District Court***

LOCATIONS

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F: 646.219-6678



CASES INVOLVING CLASS COUNSEL

In re Auto Parts Antitrust Litigation

USDC, Eastern District of Michigan

CPM is co-lead counsel on behalf of consumers against suppliers of automotive parts, alleging that defendants engaged in a conspiracy that lasted over a decade to fix the prices of various automotive parts sold to automobile manufacturers, such as Toyota, Honda, and Nissan. The case involves one of the largest conspiracies in history.

CPM has heavily litigated and prevailed on many motions filed by Defendants. CPM manages discovery and document review which entails millions of pages of documents. CPM has also dedicated a significant amount of time and resources to depositions, interviews, proffers, negotiations, and mediations which has led to settlements with several Defendants.

To date, CPM and its two co-lead counsel have secured settlements on behalf of the class in excess of \$1.1 billion.

In re Domestic Airline Travel Antitrust Litigation

USDC, District of Columbia

CPM and Adam J. Zapala have been appointed Co-Lead Counsel on behalf of Plaintiffs against Defendants American Airlines, Inc., Delta Airlines, Inc., Southwest Airlines Co., and United Airlines, Inc., who are alleged to have conspired to fix, raise, maintain, and/or stabilize prices for air passenger transportation services within the United States, its territories and the District of Columbia in violation of Sections 1 and 3 of the Sherman Antitrust Act (15 U.S.C. §§ 1, 3), by, inter alia, colluding to limit capacity on their respective airlines.

To date, CPM and its co-counsel have secured settlements on behalf of the class in excess of \$60 million.

In re Capacitors Antitrust Litigation

USDC, Northern District of California

CPM is Lead Counsel and represents indirect purchasers of capacitors against Defendants, the leading manufacturers of capacitors sold in the United States, for allegedly engaging in two massive and separate conspiracies to unlawfully inflate, fix, raise, maintain or artificially stabilize the prices of electrolytic and film capacitors, respectively.

CPM has extensively engaged in discovery, propounding and responding to numerous written discovery requests. CPM has also developed and implemented intricate document review procedures for purposes of defeating motions to dismiss and contesting summary judgment motions on limited time.

To date, CPM has secured settlements with several Defendants on behalf of the class, totaling over \$80 million.

In re Resistors Antitrust Litigation
USDC, Northern District of California

The Court appointed CPM as sole Lead Counsel on behalf of a class of indirect purchaser plaintiffs of resistors purchased from defendants who allegedly conspired to unlawfully inflate, fix, raise, maintain or artificially stabilize prices.

To date, CPM has recovered over \$30 million for the class.

In re Lithium Batteries Antitrust Litigation
USDC, Northern District of California

The Court appointed CPM as Co-Lead Counsel on behalf of indirect purchasers of lithium-ion rechargeable batteries who allege that defendants conspired to fix the price of those products. CPM has been extensively involved in the review of millions of pages of documents, the production of Plaintiffs' documents, propounding and responding to discovery, and depositions.

To date, CPM and its co-counsel have secured \$64.45 million in settlements on behalf of the class.

In re Generic Pharmaceuticals Pricing Antitrust Litigation
USDC, Eastern District of Pennsylvania

CPM and Adam J. Zapala have been appointed as a steering committee member in a case brought by indirect purchasers of generic drugs to recoup overcharges that resulted from Defendants' alleged price-fixing conspiracy. On January 9, 2017, two executives of a manufacturer of generic doxycycline pled guilty in federal court in the Eastern District of Pennsylvania to criminal price-fixing, thereby confirming the existence of a conspiracy among manufacturers to fix prices.

In re Broiler Chicken Antitrust Litigation
USDC, Northern District of Illinois

CPM is Co-Lead Counsel and represents commercial and institutional indirect purchasers who allege Defendants implemented and executed a conspiracy to fix, raise, maintain, and stabilize the price of Broilers by coordinating their output and limiting production with the intent and expected result of increasing prices of Broilers in the United States. In furtherance of their conspiracy, Defendants exchanged detailed, competitively sensitive, and closely-guarded non-public information about prices, capacity, sales volume, and demand, including through third party co-conspirator Agri Stats.

In re Transpacific Passenger Air Transportation Antitrust Litigation
USDC, Northern District of California

CPM is Co-Lead counsel for a proposed class of purchasers who allege that they paid fuel surcharges illegally charged by Defendants on long-haul passenger flights for transpacific routes. Throughout the course of this heavily litigated case, Plaintiffs filed a comprehensive consolidated amended complaint detailing Defendants' alleged violations. CPM defended and,

on the whole, prevailed after extensive rounds of hard-fought motions to dismiss and for summary judgment, with arguments covering such complex regulatory areas as the filed-rate doctrine, the act of state doctrine, the state action doctrine, implied preclusion, federal preemption and the sufficiency of the conspiracy allegations under *Twombly* and *Iqbal*, amongst several other attacks on the pleadings. Class Certification was granted.

To date, CPM has recovered approximately \$90 million on behalf of the class.

In re Cathode Ray Tube (CRT) Antitrust Litigation
USDC, Northern District of California

CPM is an Executive Committee Member and represents a class of direct purchaser plaintiffs against manufacturers of cathode ray terminals (“CRT”) who allege that the prices were artificially raised, maintained or stabilized at a supra-competitive level by Defendants and their co-conspirators.

In re Optical Disk Drive (ODD) Antitrust Litigation
USDC, Northern District of California

CPM is a member of the executive committee in this multidistrict litigation alleging a conspiracy that manufacturers of optical disk drives (“ODD”) fixed prices of ODDs sold directly to Plaintiffs in the United States.

Plaintiffs reached \$74,750,000 in settlements.

In re Static Random Access Memory (SRAM) Antitrust Litigation
USDC, Northern District of California

The Court appointed CPM as sole Lead Counsel for direct purchaser plaintiffs of Static Random Access Memory (“SRAM”) chips. Important legal rulings were reached on cutting edge issues such as standing of class representatives and the proper showing for class certification. (Settled, 2011).

CPM successfully secured a \$77 million settlement on behalf of plaintiffs.

In re Dynamic Random Access Memory (DRAM) Antitrust Litigation
USDC, Northern District of California

CPM served as chair of the Discovery Committee in a multidistrict litigation arising from the alleged price-fixing of DRAM, a form of computer memory. Shortly before the scheduled trial, class counsel reached settlements with the last remaining defendants, bringing the total value of the ***class settlements to over \$325 million.***

In re Parking Heaters Antitrust Litigation

USDC, Eastern District of New York

CPM serves as Liaison Counsel for indirect purchaser plaintiffs who purchased air and coolant parking heaters aftermarket for commercial vehicles from Defendants.

Freight Forwarders Antitrust Litigation

USDC, Eastern District of New York

CPM is Co-Lead Counsel for purchasers of Freight Forwarding services in the United States and filed a complaint alleging that the major providers of Freight Forwarding conspired to fix the prices of such services in violation of U.S. federal antitrust law (15 U.S.C. § 1).

CPM was instrumental in securing approximately \$450 million in settlements with defendants for the benefit of the class.

In re International Air Transportation Surcharge Antitrust Litigation

USDC, Northern District of California

CPM served as Co-Lead Counsel for a class of purchasers who alleged that they paid fuel surcharges illegally charged by Defendants on long-haul passenger flights for transatlantic routes. (Settled, 2009).

Plaintiffs secured settlements on behalf of the class with Defendants Virgin Atlantic Airways, LTD and British Airways Plc worth approximately \$204 million.

Air Cargo Shipping Services Antitrust Litigation

USDC, Eastern District of New York

CPM, along with co-counsel, was the court-appointed lead counsel for a proposed class of U.S. indirect purchasers of international air freight services. The case alleged that the providers of international air freight services conspired to fix the prices of such services, including fuel surcharges. The case named almost forty international air freight carriers as Defendants. The claims of the United States indirect purchasers were brought under the antitrust laws and consumer protection laws of various U.S. states. The Court granted approval to a settlement with Defendants Deutsche Lufthansa AG, Lufthansa Cargo AG, and Swiss International Air Lines, Ltd. (Settled, 2009).

In re: Plasma Derivative Protein Therapies Antitrust Litigation

USDC, Northern District of California

CPM was lead counsel for indirect purchasers in this antitrust class action alleging price-fixing in the market for the life-saving blood products albumin and immunoglobulin.

Webkinz Litigation, Nuts for Candy v. Ganz Inc., et al.

USDC, Northern District of California

CPM was lead counsel representing a proposed class of persons or entities in the United States who ordered Webkinz from Ganz Inc. on the condition that they also order products from Ganz's "core line" of products. The complaint alleged that Ganz conditioned the purchase of its popular Webkinz plush line toy with a minimum \$1,000 purchase of non-Webkinz "core" line products in violation of federal antitrust laws. On September 17, 2012, Hon. Richard Seeborg of the Northern District of California approved a class action settlement on behalf of a class of small business retailers against Ganz Inc. for alleged antitrust violations where customers were required to purchase unwanted products as a condition to purchasing Ganz's popular Webkinz Toy. (Settled, 2012).

Municipal Derivative Investment Antitrust Litigation

USDC, Southern District of New York

Along with co-counsel, CPM represents Los Angeles and numerous public entities who purchased Guaranteed Investment Contracts ("GICs") and other derivative investments. GICs and derivative investments are purchased from financial institutions, insurance companies, and others through a competitive bidding process overseen by brokers. They are purchased when public entities issue tax-exempt municipal bonds to raise funds to finance public works projects and have funds that are not immediately needed for the project. CPM's investigation has uncovered, and the complaints allege, that the competitive bidding process is a sham as securities sellers and brokers in the derivative investment market have engaged in a conspiracy to allocate the market and rig the bidding process in violation of antitrust law and common law.

Toyota Motor Sales USA, Inc.

Livingston v. Toyota Motor Sales USA, Inc.

USDC, Northern District of California

CPM filed an antitrust class action under Sherman Act by purchasers of Toyota vehicles for secret rebates. (Settled, 1997).

Hip and Knee Implant Marketing Litigation

USDC, Northern District of California

CPM, with co-counsel, filed two complaints on behalf of a proposed classes of persons who underwent hip or knee implant surgery. The complaints allege that the major manufacturers of hip and knee implants have engaged in a pervasive kickback scheme, using phony consulting agreements with orthopedic surgeons, to improperly funnel money to doctors and hospitals in return for choosing the manufacturer's device during surgeries. This scheme artificially raised the costs of hip or knee implants paid for by members of the proposed class in violation of state antitrust and consumer protection laws.

***In re Commercial Tissue Products Public Entity
Indirect Purchaser Antitrust Litigation
County of San Mateo v. Kimberly-Clark Corp.
San Francisco County Superior Court***

CPM filed an antitrust class action on behalf of class of public entity consumers of commercial sanitary paper products against alleged price-fixing conspiracy among producers. (Appointed co-lead counsel for public entity class, 1998).

***Dry Creek Corporation v. El Paso Corporation
San Diego County Superior Court***

CPM filed an antitrust action against El Paso for allegedly withholding natural gas from California in order to drive up prices, which was successfully resolved on behalf of the Plaintiff.

***In re Hydrogen Peroxide Antitrust Litigation
USDC, Eastern District of Pennsylvania***

CPM filed an antitrust class action for conspiracy to fix prices of hydrogen peroxide manufactured and sold by Defendants who were engaged in an alleged price-fixing conspiracy.

***Kopies, Inc., et al. v. Eastman Kodak Co.
USDC, Northern District of California***

CPM was appointed Co-Lead counsel, and successfully prosecuted an antitrust class action on behalf of copier service firms against parts manufacturers for alleged illegal tying of products and services.

CPM successfully reached a \$45 million settlement with Kodak on behalf of plaintiffs.

***E&J Gallo Winery v. EnCana Energy Services, et al.
USDC, Eastern District of California***

CPM successfully represented E. & J. Gallo Winery in an antitrust action against natural gas companies for allegedly manipulating energy prices, which led to the 2000-2001 California energy crisis, in which energy companies not only gouged the State of California and its residents of billions of dollars but caused rolling blackouts throughout California. E. & J. Gallo Winery is one of the largest natural gas users in the State of California and it suffered millions of dollars in losses. CPM's aggressive prosecution of this case resulted in the case settling on the eve of. CPM's efforts led to the landmark Ninth Circuit opinion on the filed rate doctrine. *E. & J. Gallo Winery v. EnCana Corporation*, 503 F.3d 1027 (9th Cir. 2007).

National Gas Anti-Trust Cases I, II, III, & IV

San Diego Superior Court

CPM represented eleven public entities and others for the alleged reporting of false information by non-core natural gas retailers to published price indices to manipulate the natural gas market during the California energy crisis.

CPM successfully prosecuted this case, concluding in approximately \$124 Million in settlements.

Bathroom Fittings Cases

USDC, Northern District of California

CPM was a member of the Executive Committee in an antitrust class action alleging a conspiracy to fix prices of Bathroom Fittings manufactured by Defendants participating in an alleged price-fixing conspiracy.

Magazine Paper

San Francisco County Superior Court

CPM filed an antitrust class action alleging a price-fixing conspiracy against magazine paper products International Paper Co., MeadWestvaco Corporation, Norse Skog, Stora Enso, Sappi Limited, S.D. Warren Company and others.

Foundry Resins

USDC, Southern District of Ohio

CPM filed an antitrust class action alleging a conspiracy to fix prices of resins manufactured by Ashland Inc., Ashland Specialty Chemical Company, Borden Chemical Inc., Delta HA, Inc., HA International LLC.

In re Automotive Refinishing Paint Cases

Alameda County Superior Court

CPM was appointed Co-Liaison Counsel in an antitrust class action for conspiracy to fix the price of auto paint by manufacturers engaged in an alleged price-fixing conspiracy. The class was certified in 2004.

In re Methionine Antitrust Litigation

USDC, Northern District of California

CPM was appointed Co-Lead Counsel in this antitrust class action against several methionine manufacturers involved in an alleged conspiracy to fix the prices of and allocate the markets for methionine.

This case settled for \$107 million.

In re Citric Acid Antitrust Litigation
USDC, Northern District of California

CPM served as Co-Lead Counsel in an antitrust class action against the five largest sellers of citric acid in the United States, who are alleged to have conspired to raise and fix the price of citric acid at artificially high levels. Co -Lead counsel successfully certified the class in October 1996. *Co-Lead Counsel also reached approximately \$86.5 million in combined settlements with defendants* Archer Daniels Midland Co., Hoffmann-La Roche Inc., Jungbunzlauer, Inc., Haarmann & Reimer Corp., and Cerestar Bioproducts B.V.

In re Beer Antitrust Litigation
USDC, Northern District of California

CPM was appointed Co-Lead counsel in an antitrust class action on behalf of specialty beer brewers against Anheuser-Busch, Inc. for allegedly attempting to monopolize the U.S. beer industry by denying access to distribution channels.

In re Sodium Gluconate Antitrust Litigation
USDC, Northern District of California

CPM served as Lead Counsel in an antitrust class action against Defendants who allegedly price fixed sodium gluconate, and industrial cleaning agent.

CPM successfully certified the class, and reached a settlement on behalf class plaintiffs in the amount of \$4,801,600.

OUR PEOPLE

RELEVANT ATTORNEYS AT CPM

JOSEPH W. COTCHETT



ADMISSIONS

- California
- New York
- District of Columbia
- United States Supreme Court
- California Court of Appeals
- 9th Circuit Court of Appeals
- 3rd Circuit Court of Appeals
- 5th Circuit Court of Appeals

EDUCATION

- Hastings College of Law at the University of California, J.D.
- California State Polytechnic University, B.S. in Engineering

As stated by the National Law Journal, Joseph W. Cotchett is considered by plaintiffs and defense attorneys alike to be one of the foremost trial lawyers in the country. He has been named one of the 100 most influential lawyers in the nation for the past 15 years.

As reported in the *San Francisco / Los Angeles Daily Journal*, he is “considered one of the best trial strategists in the state” who built a career out of representing the underdog against powerful interests. He is a fearless litigator and once tried two cases at the same time (one in the morning and one in the afternoon) and won them both in San Diego Superior Court in 1984. His clients range from corporate giants to groups like Consumers Union of United States, Inc. In 2003, the *San Francisco Chronicle* said “[t]he **Burlingame attorney has had a star career that’s not only talked about in legal circles but has made headlines around the country. Known mostly as a plaintiffs’ lawyer, many of his cases are filed on behalf of fraud victims, and have a widows-and-orphan flavor to them.**” Cotchett consistently has been named one of the most influential lawyers in California, and has been named by the legal press as one of the top 10 trial attorneys in the state and has been listed in every edition of Best Lawyers in America since its inception.

During his 45-plus year legal career, he has tried more than 100 cases to verdict, and settled hundreds more, winning numerous jury verdicts, ranging from multi-million dollar

malicious prosecution jury verdicts to several defense verdicts in complex civil cases. He successfully negotiated a multi-million dollar settlement in a qui tam suit on behalf of the University of California and hundreds of millions of dollars in antitrust, securities and major fraud cases.

In the 1980s, Cotchett won mammoth judgments and settlements for investors in white-collar fraud cases, with jury verdicts of more than \$200 million arising out of the collapse of the Technical Equities Corp. in San Jose. He is known nationally as the lead trial lawyer for 23,000 plaintiffs in the Lincoln Savings & Loan Association/American Continental Corp. downfall in 1990 involving Charles Keating and others. He won one of the then largest jury verdicts, \$3.3 billion. He obtained nearly \$300 million in settlements from lawyers, accountants and other professionals caught up in the scandal in a jury trial in Tucson, Arizona.

He has represented both the National Football League and teams since the early 1980s in various legal actions. As counsel for E. & J. Gallo Winery, he won a defense jury verdict in a celebrated trade dress infringement case involving a wine produced by Gallo and the firm regularly represents Gallo in numerous matters.

In recent years, Cotchett has taken on major corporate entities and Wall Street. He and the firm were involved in litigation resulting from nearly every major corporate scandal including Enron, Worldcom, Global Crossing, Homestore.com, Qwest, Montana Power Company, Lehman, Bank of America, Goldman Sachs, Lehman Brothers and numerous others on behalf of private investors and public pensions. The firm has represented the California Public Employees' Retirement System, California State Teachers' Retirement System, and the University Of California Board Of Regents, along with numerous political subdivisions of the state, such as counties, cities and districts.

In 2000, he served as trial counsel for Consumers Union, successfully defending the watchdog consumer group in a product disparagement and defamation suit. Isuzu Motors of Japan had sued Consumers Union for disparagement of the 1995-96 Trooper, claiming millions in damages. Following an eight-week trial, a jury ruled in favor of Consumers Union. Trial Lawyers for Public Justice honored Cotchett as "Trial Lawyer of the Year Finalist" in 2000 in honor of his "outstanding contribution to the public interest" through his work for Consumers Union. Also in 2000, Consumer Attorneys of California gave Cotchett its "Presidential Award of Merit"

In 2002, Cotchett successfully represented the Chief Justice of the California Supreme Court and the individual judges and members of the Judicial Council, in litigation brought against them by the New York Stock Exchange and the National Association of Securities Dealers. The two Wall Street forces had filed suit against the Judicial Council challenging the State of California for establishing guidelines for arbitrators who hear complaints from investors in the state.

Cotchett received his B.S. in Engineering from California State Polytechnic University, San Luis Obispo in June 1960, being named an Outstanding Graduate, and his J.D. from Hastings College of Law at the University of California in June 1964. In June 2002, Cotchett received an Honorary Doctor of Laws from Cal Poly and The California State University Board of Trustees. In May 2006, Cotchett received an Honorary Doctor of Letters from Notre Dame de Namur University. In May 2011, Cotchett received an Honorary Doctor of Letters from the University of San Francisco. In each case, he was the graduation speaker honored by the universities.

Following California Polytech, he served in the U.S. Army Intelligence Corps, followed by years as a Special Forces paratrooper and JAG Corps officer, in the active reserves, and retired in 1991 with the rank of Colonel. He is a member of many veteran and airborne associations having served on active duty 1960-1961. From 2001 to 2005, he served on the board of the Army War College Foundation in Carlisle, Pennsylvania. The Foundation supports the prestigious Army War College at Carlisle Barracks, the graduate school for the senior commanders of all branches of the service, including officers from foreign allies.

He has been an active member of national, state and local bar associations, including the California, New York and District of Columbia bars. He is a Fellow of the prestigious American College of Trial Lawyers and The International Society of Barristers and an Advocate in the American Board of Trial Advocates. He also is a Fellow and former board member of The International Academy of Trial Lawyers. A former Master of the American Inns of Court, he serves on various advisory boards for professional organizations.

He also has served on the Advisory Board of the Witkin Institute, the mission of which is to further B.E. Witkin's commitment to advancing the understanding of California law and improving the administration of justice.

He is the author of numerous articles and a contributing author to numerous magazines. His books include California Products Liability Actions, Matthew Bender; California Courtroom Evidence, LexisNexis; Federal Courtroom Evidence, LexisNexis; Persuasive Opening Statements and Closing Arguments, California Continuing Education of the Bar (1988); The Ethics Gap, Parker & Son Publications (1991); California Courtroom Evidence Foundations, Parker Publications (1993); and numerous law review articles. He is a prolific author of op-ed pieces and articles on public policy, environmental issues and public integrity. In 2002, he co-authored and published the book The Coast Time Forgot, a historic guide to the San Mateo County coast.

Cotchett serves on the Federal Judicial Advisory Committee that submits and reviews federal judicial nominations in California to President Obama. The committee was authorized by the Obama Administration and California's two Democratic senators, Dianne Feinstein and Barbara Boxer. Cotchett is Chair of the Boxer Committee for the Central District of California (Los Angeles) and advises statewide. Cotchett also serves on a Judicial Advisory Committee to Governor Jerry Brown on state judicial appointments.

Cotchett has lectured at numerous law schools including Harvard Law School, the University of Southern California, Georgetown Law Center, Stanford, Boalt, and his alma mater U.C. Hastings. His subjects include complex cases, evidence, trial practice and professional ethics. He also is a keynote public speaker and lecturer on contemporary subjects of law.

He has been honored by the State Bar of California by serving on the Board of Governors from 1972 to 1975. Cotchett served on the California Judicial Council from 1976 to 1980; the Board of Directors, Hastings College of Law, University of California for twelve years; California Commission on the Future of the Courts; the California Select Committee on Judicial Retirement, the California Blue Ribbon Commission on Children in Foster Care, the latter three appointed by the Chief Justice of California.

His civic work includes past memberships on the board of directors of the San Mateo County Heart Association; San Mateo Boys & Girls Club (Past President); Peninsula Association of Retarded Children and Adults; Bay Meadows Foundation; Disability Rights Advocates; and numerous Bay Area organizations. He formerly served as a member of the board of Public Citizen in Washington, D.C. and served on the board of Earth Justice.

In 1996, he was awarded the Anti-Defamation League's Distinguished Jurisprudence Award. The award was established to recognize individuals in the legal community who have exhibited humanitarian concerns, and whose everyday actions exemplify the principals on which the Anti-Defamation League was founded.

In 1999, Cotchett was inducted by the State Bar of California to the Litigation Trial Lawyers Hall of Fame. This award is given to professionals who have excelled as trial lawyers and whose careers exemplify the highest values and professional accomplishment.

In 2000, the University of California Hastings College of Law opened the Cotchett Center for Advocacy recognizing Cotchett as one of its outstanding graduates. Chief Justice Ronald M. George of the California Supreme Court and Associate Justice Anthony Kennedy of the U.S. Supreme Court honored Cotchett as speakers at the Founder's Day dedication of the center. In November of 2006, Notre Dame de Namur University in Belmont, California dedicated the Joseph W. Cotchett Business Lab for students.

In March of 2000, Cotchett was named to the California State Parks Commission by Governor Gray Davis. The commission establishes general policies for the guidance of the Parks Department in the administration, protection and development of the 260 state parks in the system. He served as Chairperson in 2002-2003.

In 2003, Cotchett was honored by Disability Rights Advocates for his nearly 40 years of civil rights work. At a San Francisco dinner in October attended by lawyers, judges and community leaders, this was how Cotchett was described:

Joe Cotchett has been a champion for justice since his college days. As an engineering student in North Carolina, Joe challenged segregation by drinking from segregated water fountains and riding in the back of buses. Later, as a student at Cal Poly, in 1958 Joe successfully established the first integrated fraternity, which prompted the other fraternities on campus to follow suit. Joe's legal career has involved representing the underdog and doing extensive pro bono work. His civil rights commitment has been leveraged over and over by his financial support of legal fellowships. He has given a 'kick-start' to the public interest careers of the new law graduates at Trial Lawyers for Public Justice, Public Citizen, Southern Poverty Law Center and Disability Rights Advocates. Through these fellowships, Joe has helped to ensure social change through law. Joe guided DRA as a board and litigation committee member from its infancy years into the defender of disability rights it has become today.

In 2004, continuing a distinguished history of community and civic involvement, Cotchett endowed a \$7 million fund to support science and mathematics teacher education at California State Polytechnic University to serve inner city and rural minority children. To honor Cotchett, the university renamed its landmark Clock Tower building the "Cotchett Education Building." The gift supports science and mathematics teacher education initiatives at Cal Poly through the University Center of Teacher Education and the College of Science and Mathematics.

In 2011, Cotchett was inducted into the prestigious American Trial Lawyer Hall of Fame for his work nationwide in civil rights, and litigation on behalf of the under-privileged in our society. In 2011, he received the Distinguished Service Award from the Judicial Council of California and was named the Antitrust Lawyer of the Year by the State Bar. In April of 2011, he was honored by the California League of Conservation Voters with the Environmental Leadership Award and honored by the Consumer Watchdog with the Lifetime Achievement Award.

Cotchett and his family members are active in numerous Bay Area charitable organizations involving animals, children, women and minorities. They established the Cotchett Family Foundation that aids individuals and groups in need of assistance.

NIALL P. MCCARTHY



ADMISSIONS

- California
- United States Supreme Court
- All Federal Courts in California
- 9th Circuit Court of Appeals
- 7th Circuit Court of Appeals

EDUCATION

- Santa Clara University School of Law, J.D. (1992)
- University of California at Davis, B.A. (1989)

HONORS & AWARDS

- Top 100 Northern California Super Lawyers List
- Received California Lawyer Magazine Attorney of the Year (CLAY) Awards
- Selected as one of the Top 100 Lawyers in California by the Daily Journal
- San Mateo County Trial Lawyer of the Year
- Irish Legal 100

Niall P. McCarthy, a partner at Cotchett, Pitre & McCarthy, LLP, is a graduate of the University of California at Davis and Santa Clara University School of Law. He has practiced with the firm since 1992.

McCarthy has repeatedly been selected as one of the top plaintiff attorneys in California and the United States by multiple publications, including the Daily Journal, the National Law Journal, Lawdragon Magazine and Super Lawyers Magazine. He has received a California Lawyer Magazine Attorney of the Year (CLAY) Award. From 2004 to 2014 he was selected as a Northern California "Super Lawyer" by San Francisco Magazine. McCarthy has been named a Top 100 attorney by the Daily Journal and Super Lawyers Magazine. He has the highest possible rating, AV, from Martindale-Hubbell. In 2013, McCarthy was awarded the Trial Lawyer of the Year Award by the San Mateo County Trial Lawyers Association. He has also been elected to the American Board of Trial Advocates (ABOTA).

McCarthy has represented qui tam Relators in False Claims Act cases in state and federal courts. McCarthy handled the Hunter Laboratories Litigation in which he negotiated the then largest False Claims recovery in California history, \$301 million. In the mid 1990s, he was the lead attorney in a groundbreaking case brought under the California False Claims Act on behalf of the University of California San Francisco with respect to direct and overhead costs to the university. McCarthy has

extensive experience pursuing false claims cases arising out of health care fraud and other industries against the government. He coauthored the articles "Qui Tam Litigation, A Primer for the General Litigator," "Answering the Call: Attacking Healthcare Fraud with the False Claims Act," "Recent Developments in False Claims and Healthcare Litigation," and "False Claims Act Fundamentals." He has worked with the Department of Justice and Attorneys General offices throughout the United States on False Claims cases. McCarthy has handled many consumer fraud class actions. He has acted as Co-Lead National Class Counsel in actions against some of the largest banks and credit card companies in the country, which returned hundreds of millions of dollars to consumers. He is the author of "Home Equity Loss in California Through Predatory Lending," "Combating Predatory Lending in California," and has spoken in many forums on consumer fraud.

McCarthy also has practiced extensively in the area of elder abuse, including obtaining multi-million dollar recoveries on behalf of senior citizens in actions involving reverse mortgages. He has been retained by San Mateo County, Santa Clara County, Alameda County and Santa Cruz County to prosecute financial elder abuse cases. In addition, he has handled many notable cases against nursing homes, including well-publicized actions for the families of three victims who died at a San Mateo County nursing home during a heat wave, and an action on behalf of a developmentally disabled person who was severely burned while left unattended in a nursing home shower.

He authored "The Elder Abuse Statute: California's Underutilized Law," "Elder Abuse: Recent Legal and Legislative Developments," "Financial Elder Abuse in Real Estate Transactions Under the 2000 Revisions to the Elder Abuse Act" and "Elder Abuse Claims Not Subject to MICRA." He is a frequent speaker on elder abuse and has been featured in California Lawyer with respect to his work for seniors.

McCarthy has received many legal service awards including the Marvin Lewis Award for the Consumer Attorneys of California for guidance, loyalty and dedication, the William Nagle, Jr. Memorial Award from the San Mateo County Bar Association for innovations in the law and for professionalism, the Community Service Award from Santa Clara University School of Law for his work on behalf of consumers, the Bar Association of San Francisco's Award of Merit, the Access to Justice Award from the Lawyer's Club of San Francisco, the California Supreme Court Chief Justice's Award for Exemplary Service and Leadership, the Stanley Mosk Defender of Justice Award and the State Bar of California Presidential Award for Access to Justice.

McCarthy's other notable cases include compelling an insurance company to pay for a lifesaving bone marrow transplant for a cancer patient, and obtaining a punitive damage jury verdict in a case which unveiled a multi-state health insurance fraud. McCarthy obtained a defense award on a multi-million dollar fraud claim against his clients, and obtained a million-dollar recovery for the same clients on a cross-complaint in a year-long arbitration arising out of a failed healthcare industry merger. As co-lead counsel, he tried an action on behalf of the victims of a balcony collapse in San Francisco which resulted in a \$12 million verdict. He served as lead class counsel obtaining a \$15 million dollar verdict against Old Republic Title Co. after a trial in San Francisco Superior Court. He also obtained a substantial verdict against the government in a high profile FTCA case after a trial in federal court. He obtained a punitive damage jury verdict after trying an elder abuse case against a nursing home. In 2014, he won a unanimous jury verdict in a hotly contested financial elder abuse trial involving the misappropriation of a senior citizen's life savings. McCarthy has tried a variety of cases in state and federal court, including class actions. He has

also won multiple FINRA arbitrations.

McCarthy is a past president of the Consumer Attorneys of California and the San Mateo County Trial Lawyers. He was chairman of the Business Litigation Section of the San Mateo County Bar Association. He is currently a co-chair of the Open Courts Coalition, a diverse group of attorneys from all practice areas in California whose goal is to restore court funding. McCarthy has been an MCLE panelist on many topics including courtroom conduct, complex litigation, financial fraud, financial and physical elder abuse, the fundamentals of business litigation, Business and Professions Code 17200, predatory lending, qui tam actions, discovery for trial, trial of class actions, the Consumer Legal Remedies Act and taking effective depositions. He also is active in various Peninsula community activities, including having served as chairman of the Board of Directors of Community Gatepath, a nonprofit organization which benefits children and adults with disabilities. McCarthy received ABC 7/KGO TV's "Profiles of Excellence" Award for his work on behalf of Community Gatepath.

ADAM J. ZAPALA



ADMISSIONS

- California
- Michigan
- United States Supreme Court
- 9th Circuit Court of Appeals

EDUCATION

- University of California, Hastings College of the Law, J.D.
- Stanford University, B.A.

HONORS & AWARDS

- Northern California Super Lawyer (2017-2018)
- Northern California Super Lawyers, Rising Stars List (2014 – 2016)

Partner Adam J. Zapala focuses his practice on antitrust, employment, false claims act litigation, consumer protection and class actions. Mr. Zapala received a B.A. from Stanford University and his J.D. from University of California, Hastings College of the Law.

While at CPM, Mr. Zapala has served in leadership positions on the following major complex matters, among many others:

- *Precision Associates et al. v. Panalpina World Transport et. al.*, No. 08-CV-00042-JG-VVP (E.D. N.Y.) (recovering over \$400 million on behalf of plaintiffs' class);
- *In re Automotive Parts Antitrust Litigation*, No. 12-md-02311 (E.D. Mich.) (to date, recovering over \$600 million on behalf of indirect purchasers);
- *In re Transpacific Air Passenger Transportation Antitrust Litigation*, No. 07-CV-5634-CRB, MDL 1913 (N.D. Cal.) (ongoing case recovering over \$40 million on behalf of plaintiffs' class);
- *In re Capacitors Antitrust Litigation*, Case No. 3:14-cv-03264 (N.D. Cal.) (ongoing case where indirect purchasers have recovered over \$30 million to date);
- *In re Resistors Antitrust Litigation*, No. 15-cv-03820-JD (N.D. Cal.) (ongoing case);

- *In re Vizio, Inc. Consumer Privacy Litigation*, No. 16-md-02693-JLS (C.D. Cal.) (cutting edge privacy litigation on behalf of plaintiffs' class).

While at Hastings, Mr. Zapala received awards for best moot court brief, the Pro Bono Publico award, most outstanding student in Group Advocacy and Systemic Reform, and Excellence for the Future Award in Pre-trial Practice.

Previously, Mr. Zapala worked at a prominent San Francisco firm, where he represented labor unions, Taft-Hartley Pension and Health & Welfare funds, employees and consumers in complex litigation, arbitration and NLRB proceedings. While at this firm, Mr. Zapala served as trial counsel in countless matters on behalf of labor unions and employee benefit funds. He has argued cases before the California First, Third, and Sixth District Court of Appeal. Mr. Zapala also previously served as a staff attorney with Bay Area Legal Aid, where he focused on representing indigent clients in a wide variety of civil litigation matters. While there, Mr. Zapala developed expertise in Medi-Cal, Medicare and other publicly-financed healthcare systems. While in law school, Mr. Zapala also worked for the public interest law firms of Public Advocates, Inc. and Public Justice, focusing on civil rights class action litigation.

Mr. Zapala also has legislative and policy experience, working on Capitol Hill as a policy aide for Senator Ron Wyden (D-Oregon) in Washington D.C. Mr. Zapala has deep ties to the Bay Area. He grew up in San Jose, California and attended Bellarmine College Preparatory. While at Stanford University, Mr. Zapala became a four-time Academic All-American, a four-time All-American, and Captain of the Stanford Men's Soccer Team. In 2001, he was drafted in the Major League Soccer ("MLS") Super Draft by the Dallas Burn (now FC Dallas).

ELIZABETH T. CASTILLO



ADMISSIONS

- California
- Michigan
- 9th Circuit Court of Appeals
- 6th Circuit Court of Appeals

EDUCATION

- University of California Hastings College of the Law, J.D.
- Boston University, B.A., Economics and Political Science

HONORS & AWARDS

- American Antitrust Institute 2016 Outstanding Antitrust Litigation Achievement by a Young Lawyer Award
- Super Lawyers Northern California Rising Stars List (2015 - 2018)

Elizabeth (Tran) Castillo is a Partner on the Antitrust & Global Competition Team. Her practice focuses on complex litigation—specifically, antitrust class actions against international cartels. Ms. Castillo is the lead associate at CPM on *In re Automotive Parts Antitrust Litigation (Auto Parts)*, which has become the largest indirect purchaser class action in terms of settlement value in history. Ms. Castillo received the American Antitrust Institute’s 2016 Outstanding Antitrust Litigation Achievement by a Young Lawyer Award for her work in Auto Parts.

Ms. Castillo earned her J.D. from the University of California, Hastings College of the Law (UC Hastings) in 2011. At UC Hastings, she was a Super Regional Semifinalist in the Jessup International Law Moot Court Competition. She also received Honorable Mentions for both Best Brief and Best Oral Argument in Moot Court. Additionally, she served as a Judicial Extern to the Honorable A. James Robertson II in the Superior County of California, County of San Francisco, and as a Teaching Assistant for both Legal Writing & Research and Moot Court. Throughout law school, Ms. Castillo mentored underserved high school students on preparing for college. Ms. Castillo received her B.A. in Economics and Political Science, with a concentration in Public Policy, from Boston University (BU) in 2008. At BU, she interned at an international law firm and business advocacy organization in London and Sydney, respectively, during her junior year. Ms. Castillo has national and state legislative experience. She interned for then-U.S. Representative Neil Abercrombie (D-Hawaii, 1991-2010; Governor of Hawaii, 2010-2014) in Washington, D.C. and State Representative Scott Nishimoto (D-Hawaii, 2003-present) in Honolulu.

ADAM J. TROTT



ADMISSIONS

- California

EDUCATION

- U.C. Berkeley School of Law (Boalt Hall), J.D.
- University of California, Los Angeles, B.A

Mr. Trott received his J.D. from the U.C. Berkeley School of Law (Boalt Hall). While at Berkeley, he served as managing editor of the Berkeley Journal of International Law and published an article in Berkeley's legal journal dedicated to environmental law, Ecology Law Quarterly. During his final year, Mr. Trott interned at the U.S. Department of the Treasury's general counsel's office in Washington, D.C., where he provided advice on CFIUS enforcement and various international monetary and fiscal matters.

After receiving his J.D., Mr. Trott served as Legal and Policy Consultant for the United Nations Global Compact, the world's largest corporate social responsibility initiative, in New York City. While there, Mr. Trott spearheaded the creation of a new reporting framework encouraging businesses around the world to improve their own human and labor rights practices, and those of their supply chains, and worked directly with businesses in Eastern Europe, Africa and Central Asia facing local and cross-border corruption issues. Mr. Trott was a panelist at multiple seminars centered on these issues with business and political leaders and spoke at several related conferences in Europe and North America.

Mr. Trott then moved to San Francisco to join a large law firm, representing clients in antitrust, data privacy, and securities litigation, and Foreign Corrupt Practices Act matters. He also represented several pro bono clients seeking asylum in the United States. Prior to joining Cotchett, Pitre & McCarthy, Mr. Trott volunteered at and worked as an attorney for Disability Rights California, where he represented and provided advocacy services for its clients.

Mr. Trott received his B.A., summa cum laude with College Honors, in Classical Studies and History from the University of California, Los Angeles. While at UCLA, Mr. Trott was heavily involved with the school's music department and marching band, focusing on clarinet performance, and interned for then- and current U.S. Representative Brad Sherman.

TAMARAH P. PREVOST



ADMISSIONS

- California

EDUCATION

- Santa Clara University School of Law, J.D.
- Simon Fraser University, B.A.

Tamarah Prevost is a Senior Associate at Cotchett, Pitre & McCarthy, LLP, practicing in a wide range of civil litigation areas including antitrust, consumer protection, employment law, elder abuse, false claims act litigation, and other complex civil matters.

Ms. Prevost received her J.D. from Santa Clara University School of Law. While at Santa Clara, Ms. Prevost was involved in a variety of extracurricular activities. She was named the Best Oral Advocate in the Semi Final Round of Santa Clara Law's Honors Moot Court Competition, and was published in the Santa Clara Journal of International Law. She received the CALI Award for her "Leadership for Lawyers" class and maintained a heavy involvement in the Women and Law Association, which included her planning a fundraiser to benefit victims of domestic violence. Ms. Prevost also served as a Judicial Extern for the Honorable Justice Nathan Mihara of the Sixth District Court of Appeal, California.

Prior to law school, Ms. Prevost lived in Vancouver, British Columbia, and while there, obtained her Bachelor of Arts degree with First Class Honors from Simon Fraser University. She took a semester off during this time to live in Puerto Viejo, Costa Rica and volunteer at a non-profit organization committed to alleviating poverty for the indigenous population. While living in Vancouver, Ms. Prevost was also actively involved in the Rotary Club of New Westminster.

Ms. Prevost is also involved in community activities, where she is Board of Directors – Director of Governance: Digital Moose Lounge, a non-profit organization that serves as the first point of contact for Canadians new to the Bay Area.

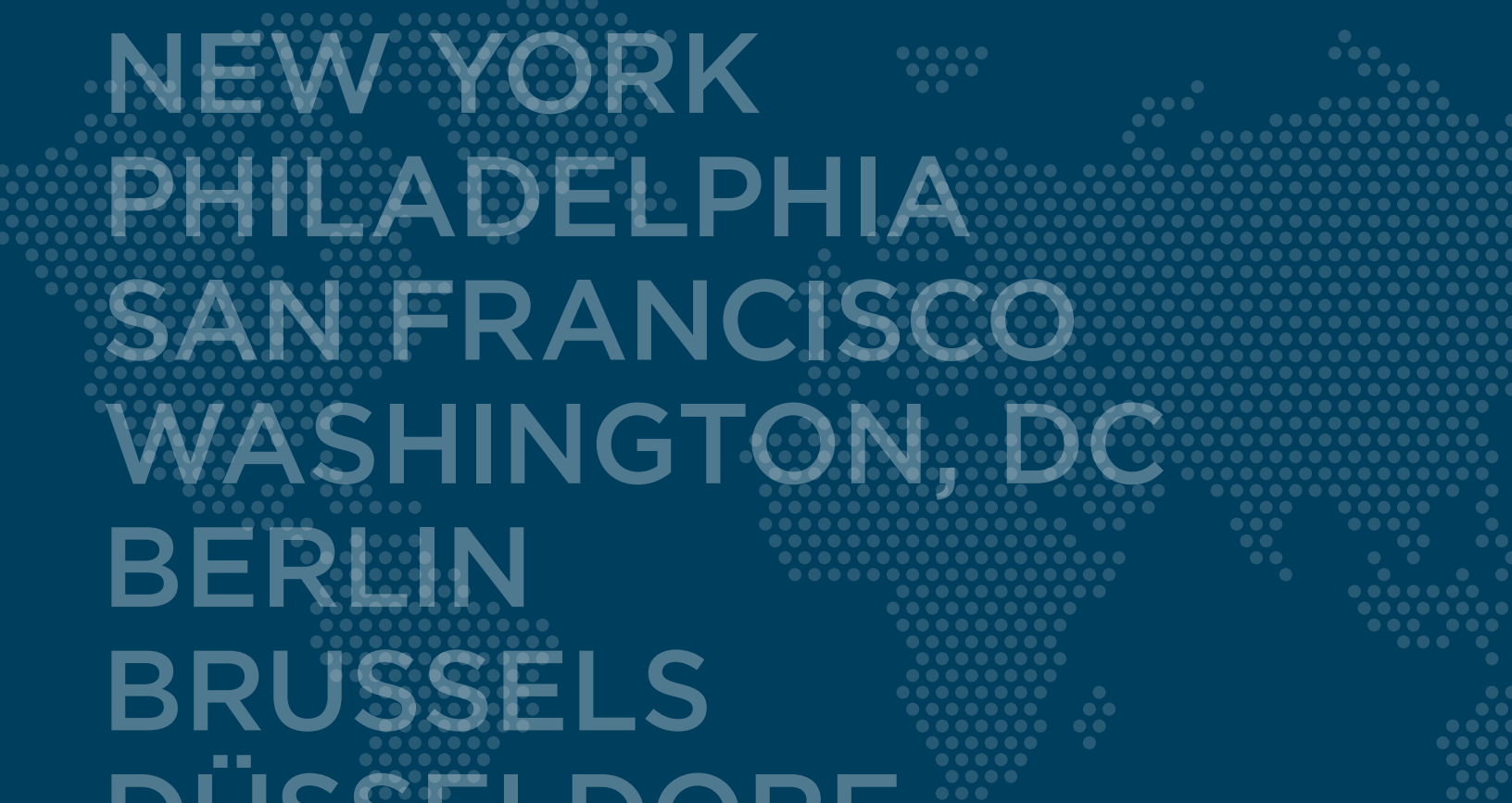
EXHIBIT 2

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Hausfeld Firm Resume

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Hausfeld Firm Summary

In the last decade, Hausfeld attorneys have won landmark trials, negotiated complex settlements among dozens of defendants, and recovered billions of dollars for clients both in and out of court. Renowned for skillful prosecution and resolution of complex and class-action litigation, Hausfeld is the only claimants' firm to be ranked in the top tier in private enforcement of antitrust/competition law in both the United States and the United Kingdom by *The Legal 500* and *Chambers & Partners*. Our German office was also ranked by *The Legal 500* for general competition law.

From our locations in Washington, D.C., Boston, New York, Philadelphia, San Francisco, Berlin, Brussels, Paris, Düsseldorf, Stockholm, and London, Hausfeld contributes to the development of law in the United States and abroad in the areas of antitrust/competition, consumer protection, environmental threats, human and civil rights, mass torts, and securities fraud. Hausfeld attorneys have studied the global integration of markets—and responded with innovative legal theories and a creative approach to claims in developed and emerging markets.

Hausfeld was founded by Michael D. Hausfeld, who is widely recognized as one of the country's top civil litigators and a leading expert in the fields of private antitrust/competition enforcement and international human rights. *The New York Times* has described Mr. Hausfeld as one of the nation's "most prominent antitrust lawyers," while *Washingtonian Magazine* characterizes him as a lawyer who is "determined to change the world—and succeeding," noting that he "consistently brings in the biggest judgments in the history of law."

Antitrust and Competition Litigation

Hausfeld's reputation for leading groundbreaking antitrust class actions in the United States is well-earned. Having helmed more than 40 antitrust class actions, Hausfeld attorneys are prepared to **litigate and manage cases with dozens of defendants** (*In re Blue Cross Blue Shield Antitrust Litigation*, with more than thirty defendants), **negotiate favorable settlements for class members and clients** (*In re Air Cargo Shipping Services Antitrust Litigation*, settlements of more than \$1.2 billion), **take on the financial services industry** (*In re Foreign Exchange Antitrust Litigation*, with settlements of more than \$2.3 billion), **take cartelists to trial** (*In re Vitamin C Antitrust Litigation*, trial victory of \$162 million against Chinese manufacturers of vitamin C), and **push legal boundaries where others have not** (*O'Bannon v. NCAA*, another trial victory in which the court found that NCAA rules prohibiting additional scholarship payments to players as part of the recruiting process are unlawful).

Hausfeld is "the world's leading antitrust litigation firm."

– *Politico*

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Hausfeld: A Global Reach

Hausfeld's international reach enables it to advise across multiple jurisdictions and pursue claims on behalf of clients worldwide. Hausfeld works closely with clients to deliver outstanding results while always addressing their business concerns. Hausfeld does so by anticipating issues, considering innovative strategies, and maximizing the outcome of legal disputes in a way that creates shareholder value. Its inventive cross border solutions work to the benefit of the multinational companies it often represents.

Creative Solutions to Complex Legal Challenges

Hausfeld lawyers consistently apply forward-thinking ideas and creative solutions to the most vexing global legal challenges faced by clients. As a result, the firm's litigators have developed numerous innovative legal theories that have expanded the quality and availability of legal recourse for claimants around the globe that have a right to seek recovery. Hausfeld's impact was recognized by the *Financial Times*, which honored Hausfeld's European team with the "Innovation in Legal Expertise - Dispute Resolution," award, which was followed up by FT commending Hausfeld's North American team for its innovative work in the same category. In addition, *The Legal 500* has ranked Hausfeld as the only top tier claimants firm in private enforcement of antitrust/competition law in both the United States and the United Kingdom. For example, the landmark settlement that Hausfeld negotiated to resolve claims against Parker ITR for antitrust overcharges on marine hoses represented the first private resolution of a company's global cartel liability without any arbitration, mediation, or litigation—creating opportunities never before possible for dispute resolution and providing a new model for global cartel settlements going forward.

Unmatched Global Resources

The firm combines its U.S. offices on both coasts and vibrant European presence with a broad and deep network around the globe to offer clients the ability to seek redress or confront disputes in every corner of the world and across every industry. With over 100 lawyers in offices in Washington, D.C., Boston, New York, Philadelphia, San Francisco, Berlin, Düsseldorf, Brussels, Paris, Stockholm, and London, Hausfeld is a "market leader for claimant-side competition litigation" (*The Legal 500*).

"Hausfeld, which 'commits extensive resources to the most difficult cases,' widely hails as one of the few market-leading plaintiff firms."

– *The Legal 500*

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Antitrust Litigation

Hausfeld's antitrust litigation experience is unparalleled

Few, if any, U.S. law firms are litigating more class actions on behalf of companies and individuals injured by anticompetitive conduct than Hausfeld. The firm has litigated cases involving price-fixing, price manipulation, monopolization, tying, and bundling, through individual and class representation and has experience across a wide variety of industries, including automotive, banking, chemicals, construction, manufacturing, energy, financial services, food and beverage, health care, mining and metals, pharmaceuticals and life sciences, retail, sports and entertainment, technology, and transportation. Clients rely on us for our antitrust expertise and our history of success in

"Hausfeld LLP, 'one of the most capable plaintiffs' firms involved in the area of civil cartel enforcement,' is [w]idely recognised as a market leader for claimant-side competition litigation... [It is the] market leader in terms of quantity of cases, and also the most advanced in terms of tactical thinking."

– *The Legal 500*

the courtroom, and at the negotiation table, and the firm does not shy away from challenges, taking on some of the most storied institutions. Hausfeld is not only trusted by its clients, it is trusted by judges to pursue these claims, as evidenced by the fact that the firm has been appointed as lead or co-lead counsel in over 40 antitrust cases in the last decade. In one example, Judge Morrison C. England of the Eastern District of California praised Hausfeld for having "the breadth of experience, resources and talent necessary to navigate" cases of import.

Recognizing the firm's antitrust prowess, *Global Competition Review* has opined that Hausfeld is "one of—if not the—top Plaintiffs' antitrust firm in the U.S." *The Legal 500* and

Chambers and Partners likewise consistently rank Hausfeld among the top five firms in the United States for antitrust litigation on behalf of plaintiffs. And in naming Hausfeld to its Plaintiffs' Hot List, *The National Law Journal* opined that Hausfeld "punches above its weight" and "isn't afraid to take on firms far larger than its size and deliver results, especially in antitrust litigation."

Hausfeld has achieved outstanding results in antitrust cases

Hausfeld lawyers have achieved precedent-setting legal decisions and historic trial victories, negotiated some of the world's most complex settlement agreements, and have collectively recovered billions of dollars in settlement and judgments in antitrust cases. Key highlights include:

- ***In re Foreign Exchange Benchmark Rates Antitrust Litig., 13-cv-7789 (S.D.N.Y.)***

Hausfeld serves as co-lead counsel in this case alleging financial institutions participated in a conspiracy to manipulate a key benchmark in the foreign exchange market. To date, the firm has obtained over **\$2.3 billion** in settlements from **fifteen defendants**. The case is ongoing against the remaining defendant.

- ***In re LIBOR-Based Financial Instruments Antitrust Litig., No. 11-md-2262 (S.D.N.Y.)***

Hausfeld serves as co-lead counsel in this case against sixteen of the world's largest financial institutions for conspiring to fix LIBOR, the primary benchmark for short-term interest rates. To date, the firm has obtained **\$590 million** in settlements with four defendants. An antitrust class has been certified and the case is ongoing against the remaining defendants.

- ***In re Blue Cross Blue Shield Antitrust Litig., No. 13-mdl-2496 (N.D. Ala.)***

The Court appointed Hausfeld attorneys as co-lead counsel, and to the Plaintiffs' Steering Committee, in this case against Blue Cross Blue Shield entities. This case was brought against over 30 Blue Cross companies and its trade association (BCBSA), and alleges that they illegally agreed not to compete with each other for health insurance subscribers across the United States. After defeating motions to dismiss, Hausfeld marshalled evidence from a

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record that consisted of over 14 million documents from more than thirty defendants and won a landmark ruling when the district court ruled that the per se standard would be applied to defendants' conduct. Plaintiffs will next move towards class certification and trial.

- ***O'Bannon v. NCAA, No. 09-cv-03329 (N.D. Cal.)***

In the landmark O'Bannon litigation, Hausfeld represented college athletes who collectively alleged that the NCAA, its members, and its commercial partners, violated federal antitrust law by unlawfully foreclosing former players from receiving any compensation related to the use of their names, images, and likenesses in television broadcasts, rebroadcasts, and videogames. In 2013, the plaintiffs announced a \$40 million settlement agreement with defendant Electronic Arts, Inc., which left the NCAA as the remaining defendant. Following trial in 2014, the Court determined that the NCAA had violated the antitrust laws and issued a permanent injunction. The Ninth Circuit affirmed the NCAA's violation of the antitrust laws and upheld significant injunctive relief—the practical effect of which is that college athletes can now each receive up to \$5,000 more every year as part of their scholarship package (to cover their education, travel and medical expenses, and acquire pre-professional training as they enter the work force).

- ***In re Vitamin C Antitrust Litig., No. 06-md-01738 (E.D.N.Y.)***

Hausfeld serves as co-lead counsel in the first class antitrust case in the United States against Chinese manufacturers. Hausfeld obtained settlements for the class of **\$22.5 million from two of the defendants**—the first after summary judgment, and the second just before closing arguments at trial. Days later, the jury reached a verdict against the remaining defendants, and the court entered a judgment for **\$148 million** after trebling the damages awarded. On appeal to the U.S. Supreme Court, our clients prevailed, and the case was remanded for further consideration by the Second Circuit.

- ***In re Air Cargo Shipping Services Antitrust Litig., No. 06-md-1775 (E.D.N.Y.)***

Hausfeld served as co-lead counsel in this case alleging over thirty international airlines engaged in a conspiracy to fix the price of air cargo shipping services. The firm negotiated more than **\$1.2 billion** in settlements from over 30 defendants for the class, won certification of the class and defeated the defendants' motions for summary judgment.

- ***In re Packaged Seafood Products Antitrust Litigation, No. 3:15-md-02670-JLS-MDD (S.D. Cal.)***

The Court appointed Hausfeld attorneys as sole interim lead counsel for the putative class of direct purchasers of packaged seafood products, alleging a price-fixing conspiracy among the leading U.S. manufacturers—Chicken of the Sea, StarKist and Bumble Bee. Hausfeld successfully defeated most of the defendants' motions to dismiss and is now engaged in extensive discovery.

- ***In re Disposable Contact Lens Antitrust Litig., No. 3:15-md-2626-J-20JRK (M.D. Fla.)***

Hausfeld serves as one of the three co-lead counsel for a nationwide class of consumers alleging horizontal and vertical conspiracies by the four leading contact lens manufacturers and their primary distributor to impose minimum resale price maintenance policies called "unilateral pricing policies," or "UPPs." On June 16, 2016, the court denied the defendants' motions to dismiss the plaintiffs' federal and state antitrust claims, and on December 4, 2018, the court certified a nationwide class of consumers asserting federal antitrust claims, as well as Maryland and California sub-classes. Summary judgment has been fully briefed since December 2018, and a decision is expected shortly.

- ***In re International Air Passenger Surcharge Antitrust Litig., No. 06-md-01793 (N.D. Cal.)***

Hausfeld served as co-lead counsel in this case against two international airlines alleged to have fixed fuel surcharges on flights between the United States and United Kingdom. Lawyers at the firm negotiated a ground-breaking **\$200 million** international settlement that provides recovery for both U.S. purchasers under U.S. antitrust laws and U.K. purchasers under U.K. competition laws.

- ***In re Municipal Derivatives Antitrust Litig., No. 08-cv-2516 (S.D.N.Y.)***

Hausfeld served as co-lead counsel in this case against banks, insurance companies, and brokers accused of rigging bids on derivative instruments purchased by municipalities. The firm obtained over **\$200 million** in settlements with more than **ten defendants**.

- ***In re Automotive Aftermarket Lighting Products Antitrust Litig., No. 09-ML-2007 (C.D. Cal.)***

Hausfeld served as co-lead counsel in this case against three manufacturers for participating in an international conspiracy to fix the prices of aftermarket automotive lighting products. The firm obtained over **\$50 million** in settlements.

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- *In re Processed Egg Products Antitrust Litig., No. 08-cv-04653 (E.D. Pa.)*

Hausfeld served as co-lead counsel in this case alleging that egg producers, through their trade associations, engaged in a scheme to artificially inflate egg prices by agreeing to restrict the supply of both laying hens and eggs. The firm obtained over **\$135 million** in settlements, won certification of a class of shell egg purchasers, and tried the case against the remaining defendants.

- *In re Fresh and Process Potatoes Antitrust Litig., No. 10-MD-2186 (D. Idaho)*

Hausfeld served as chair of the executive committee in this case alleging that potato growers, their cooperatives, processors, and packers conspired to manipulate the price and supply of potatoes. In defeating defendants' motion to dismiss, the firm secured a judicial determination that supply restrictions are not protected conduct under a limited federal antitrust exemption available to certain grower associations—a novel question that had never before been decided by any court. The firm obtained **\$19.5 million** in settlements and valuable injunctive relief prohibiting future production limitation agreements, achieving global resolution of the case.

- *In re American Express Anti-Steering Rules Antitrust Litig., No. 11-md-2221 (E.D.N.Y)*

As lead counsel, Hausfeld represents a class of merchants and retailers against American Express. The merchants allege that American Express violated antitrust laws by requiring them to accept all American Express cards, and by preventing them from steering their customers to other payment methods.

- *In re Rail Freight Fuel Surcharge Antitrust Litig., No. 07-mc-00489 (D.D.C.)*

In one of the largest pending antitrust class actions in the United States, Hausfeld serves as co-lead counsel for a proposed class of nearly 16,000 rail freight shippers that collectively allege the defendants—the four largest freight railroads in the United States—conspired to fix the price of rail freight services through coordinated fuel surcharge programs and policies, which allowed the defendants to reap tremendous supra-competitive profits and harm rail freight shippers nationwide for years.

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Litigation Achievements

Significant Trial Victories

While many law firms like to talk about litigation experience, Hausfeld lawyers regularly bring cases to trial—and win. Among our trial victories are some of the largest antitrust cases in the modern era. For example, in *O'Bannon v. NCAA (N.D. Cal.)*, we conducted a three-week bench trial before the chief judge of the Northern District of California, resulting in a complete victory for college athletes who alleged an illegal agreement among the National Collegiate Athletic Association and its member schools to deny payment to athletes for the commercial licensing of their names, images, and likenesses. Our victory in the *O'Bannon* litigation followed the successful trial efforts in *Law v. NCAA (D. Kan.)*, a case challenging earning restrictions imposed on assistant college coaches in which the jury awarded **\$67 million** to the class plaintiffs that one of our lawyers represented.

In *In re Vitamin C Antitrust Litigation (E.D.N.Y.)*, we obtained, on behalf of our direct purchaser clients, a **\$148 million** jury verdict and judgment against Chinese pharmaceutical companies that fixed prices and controlled export output of Vitamin C—on the heels of \$22.5 million in settlements with other defendants, which represented the first civil settlements with Chinese companies in a U.S. antitrust cartel case. Years earlier, we took on a global vitamin price-fixing cartel in *In re Vitamins (D.D.C.)*, in which we secured a **\$1.1 billion settlement** for a class of vitamin purchasers and then took the remaining defendants to trial, culminating in a **\$148 million jury verdict**.

Our trial experience extends to intellectual property matters and general commercial litigation as well. Recently, we represented entertainment companies that sought to hold internet service provider Cox Communications accountable for willful contributory copyright infringement by ignoring the illegal downloading activity of its users. Following a trial in *BMG Rights Management (US) LLC, v. Cox Enterprises, Inc. (E.D. Va.)*, the jury returned a **\$25 million verdict** for our client. After the defendants appealed and prior to a new trial, the parties settled.

Exceptional Settlement Results

Over the past decade, Hausfeld has recouped over \$20 billion for clients and the classes they represented. We are proud of our record of successful dispute resolution. Among our settlement achievements, a selection of cases merit special mention.

In the high profile *In re Foreign Exchange Benchmark Rates Antitrust Litigation (S.D.N.Y.)*, we negotiated settlements totaling more than \$2.3 billion with fifteen banks accused of conspiring to manipulate prices paid in the foreign-exchange market. In another case involving allegations of pricefixing among the world's largest airfreight carriers, *In re Air Cargo Shipping Services Antitrust Litigation (E.D.N.Y.)*, we negotiated settlements with more than 30 defendants totaling over \$1.2 billion—all in advance of trial. In the ongoing *In re: LIBOR-Based Financial Instruments Antitrust Litigation (S.D.N.Y.)* case, we have secured settlements to date totaling \$590 million with Barclays (\$120 million), Citi (\$130 million), Deutsche Bank (\$240 million), and HSBC (\$100 million). The court has granted final approval to each of these settlements.

Most recently, Hausfeld served as class counsel in *Hale v. State Farm Mutual Automobile Insurance Co. (S.D.Ill.)*. This case involved allegations that State Farm worked to help elect an Illinois state supreme court justice in order to overturn a billion-dollar judgment against it. On the day opening statements were to be delivered to the jury, State Farm agreed to settle for \$250 million. Finally, in the global *Marine Hose* matter, we broke new ground with the first private resolution of a company's global cartel liability without any arbitration, mediation, or litigation. That settlement enabled every one of Parker ITR's non-US marine-hose purchasers to recover up to 16% of their total purchases.

These cases are just five among dozens of recent landmark settlements across our practice areas.

HAUSFELD

Reputation and Leadership in the Antitrust Bar

Court Commendations

Judges across the country have taken note of Hausfeld's experience and results achieved in antitrust litigation.

"All class actions generally are more complex than routine actions... But this one is a doozy. This case is now I guess nearly more than ten years old. The discovery as I've noted has been extensive. The motion practice has been extraordinary... The recovery by the class is itself extraordinary. The case, the international aspect of the case is extraordinary. Chasing around the world after all these airlines is an undertaking that took enormous courage."

– Judge Brian M. Cogan

In re Air Cargo Shipping Services Antitrust Litigation, No. 06-md-1775 (E.D.N.Y.)

Comparing Hausfeld's work through trial to *Game of Thrones*: "where individuals with seemingly long odds overcome unthinkable challenges... For plaintiffs, their trial victory in this adventurous, risky suit, while more than a mere game, is nothing less than a win..."

– Magistrate Judge Nathanael M. Cousins

O'Bannon v. Nat'l College Athletic Ass'n, No. 09-cv-3329 (N.D. Cal.)

Hausfeld lawyers achieved "really, an outstanding settlement in which a group of lawyers from two firms coordinated the work... and brought an enormous expertise and then experience in dealing with the case." "[Hausfeld lawyers are] more than competent. They are outstanding."

– Judge Charles R. Breyer

In re International Air Passenger Surcharge Antitrust Litig., No. 06-md-01793 (N.D. Cal.) (approving a ground-breaking \$200 million international settlement that provided recovery for both U.S. purchasers under U.S. antitrust laws, and U.K. purchasers under U.K. competition laws.)

Hausfeld has "the breadth of experience, resources and talent necessary to navigate a case of this import." Hausfeld "stands out from the rest."

– District Judge Morrison C. England Jr.

Four In One v. SK Foods, No. 08-cv-3017 (E.D. Cal.)

"The class is represented by what I would describe as an all-star group of litigators..."

– District Judge David R. Herdon

Hale v. State Farm, No. 12-cv-00660-DRH-SCW (S.D. Ill.)

HAUSFELD

Awards and Recognitions



The Legal 500:

In 2019, for the tenth consecutive year, Hausfeld was ranked in the top tier nationally for firms in antitrust civil litigation and class actions by The Legal 500. The publication described Hausfeld lawyers as “pragmatic, smart and focused litigation experts,” and the firm as “at the top of its game,” with “a number of heavyweight practitioners.” The publication has previously stated that:

“DC firm Hausfeld LLP remains top-notch in antitrust litigation... Hausfeld LLP is one of the most capable plaintiffs firms involved in the area of civil cartel enforcement, and is handling some of the major cartel-related cases...”

The Legal 500 has also recognized that Hausfeld is a “market transformer,” the “most innovative firm with respect to antitrust damages,” is “[d]riven by excellence,” “anticipates the evolving needs of clients,” and delivers “outstanding advice not only in legal terms but also with a true entrepreneurial touch. . . .”

Who’s Who Legal:

In 2018, Who’s Who Legal recognized the firm as “[a] powerhouse in the plaintiffs’ litigation field, with particularly deep capability in competition matters,” highlighting “nine outstanding litigators.”

Concurrences

In 2018, an article authored by Hausfeld lawyer Scott Martin, joined by co-authors Brian Henry and Michaela Spero, was awarded *Concurrences’* 2018 Writing Award for Private Enforcement (Business) Category. The article, “Cartel Damage Recovery: A Roadmap for In-House Counsel,” was originally published in *Antitrust Magazine*.

In 2017, Hausfeld’s Competition Bulletin was selected to be ranked among the top antitrust firms distributing newsletters and bulletins. Hausfeld is the only Plaintiffs’ firm to be ranked, and we secured the number one spot for Private Enforcement Newsletters.

In 2015, Hausfeld Partners Michael Hausfeld, Michael Lehmann and Sathya Gosselin won the *Concurrences’* 2015 Antitrust Writing Awards in the Private Enforcement (Academic) category for their article, “Antitrust Class Proceedings—Then and Now,” *Research in Law and Economics*, Vol. 26, 2014.



Financial Times:

In 2018, *Financial Times’* Innovative Lawyers Report honored Hausfeld with the ‘Innovation in Legal Expertise - Dispute Resolution’ award for the firm’s work with Dutch transportation insurer TVM. *Financial Times* followed up this award by commending Hausfeld in its 2018 North America Innovative Lawyers Report for its representation of plaintiffs in *In Re Foreign Exchange Benchmark Rates Antitrust Litigation*. Hausfeld is proud to be the only plaintiffs’ firm to have received recognition in the category of ‘dispute resolution’ for 2018 on both sides of the Atlantic.

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In 2016, the *Financial Times* named Hausfeld as a top innovative law firm. Writing about Hausfeld's innovation in the legal market, the *Financial Times* noted: "The firm has taken the litigation finance model to Germany, to turn company inhouse legal departments into profit centres."

In 2015, Michael Hausfeld was recognized by the *Financial Times* as one of the Top 10 Innovative Lawyers in North America.

In 2013, Hausfeld won the *Financial Times* Innovative Lawyer Dispute Resolution Award. The FT stated that Hausfeld has "[p]ioneered a unique and market-changing litigation funding structure that improved accessibility and enabled victims to pursue actions with little or no risk."



Global Competition Review:

In 2018, Hausfeld attorneys were awarded *Global Competition Review's* "Litigation of the Year – Cartel Prosecution" commending its work on *In re Vitamin C Antitrust Litigation*. In this historic case, the Supreme Court ruled in favor of Hausfeld's clients, setting forth criteria and a framework for courts to use when assessing the credibility and weight to give to a foreign government's expression of its own laws.

In 2016, Hausfeld was awarded *Global Competition Review's* "Litigation of the Year – Cartel Prosecution" for its work on *In re Foreign Exchange Antitrust Benchmark Litigation*. The award recognized Hausfeld's success in the Foreign Exchange litigation to date, which has included securing settlements for more than \$2.3 billion in on behalf of a class of injured foreign exchange investors and overcoming three motions to dismiss in the action.

In 2015, Hausfeld attorneys were awarded *Global Competition Review's* "Litigation of the Year – Non-Cartel Prosecution," which recognized their trial victory in *O'Bannon v. NCAA*, a landmark case brought on behalf of college athletes challenging the NCAA's restrictions on payment for commercial licensing of those athletes' names, images, and likenesses in various media.



U.S. News & World Report:

In 2018, 2017, and 2016, *U.S. News & World Report* – Best Law Firms named Hausfeld to its top tier in both Antitrust Law and Litigation, and among its top tiers in Commercial Litigation. Hausfeld was also recognized in New York, San Francisco, and Washington, DC in Antitrust Law, Litigation, Mass Torts and Commercial Litigation.



American Antitrust Institute:

In 2018, Hausfeld and its co-counsel received the *American Antitrust Institute's* award for 'Outstanding Antitrust Litigation Achievement in Private Law Practice' for their trial and appellate victories in *In re Vitamin C Antitrust Litigation*.

In 2016, the *American Antitrust Institute* honored two Hausfeld case teams—*In re Air Cargo Shipping Services Antitrust Litig.* (E.D.N.Y.) and *In re Municipal Derivatives Antitrust Litig.* (S.D.N.Y.)—with its top award for Outstanding Antitrust Litigation Achievement in Private Law Practice. Taken together, these two cases have yielded settlements of over \$1.4 billion to class members after nearly a decade of litigation. The award celebrates private civil

HAUSFELD



actions that provide significant benefits to clients, consumers, or a class and contribute to the positive development of antitrust policy.

In 2015, Hausfeld and fellow trial counsel won the American Antitrust Institute's award for Outstanding Antitrust Litigation Achievement in Private Law Practice for their trial and appellate victories in *O'Bannon v. NCAA*.

Chambers & Partners:

In 2019, *Chambers and Partners* named Hausfeld to its highest tier, Band 1, for "Antitrust: Plaintiff – USA – Nationwide," noting that the firm is:

"able to deploy a deep bench of trial attorneys with outstanding litigation experience," and is "renowned for its abilities representing plaintiffs in multidistrict class action antitrust suits across the country involving a wide variety of antitrust issues."

Hausfeld was one of just three law firms ranked in Band 1. Hausfeld's New York office was also named to Band 1 for "Antitrust: Mainly Plaintiff – New York."

The publication has also previously noted the firm's attributes as including:

- A reputation as a "[m]arket-leading plaintiffs' firm with considerable experience in antitrust class action suits and criminal cartel investigations."
- "[N]umerous successes in the area, resulting in major recovery or settlements for its clients."
- Firm Chair Michael Hausfeld's record as "a very successful and able antitrust litigator," and "one of the titans of the Plaintiffs Bar."

Additionally, between 2016 and 2019, *Chambers & Partners UK* ranked Hausfeld in the top tier among London firms representing private claimants in competition matters and recognized the firm's accomplishments in Banking Litigation.



National Law Journal:

In 2015, Hausfeld was named to the *National Law Journal's* "Plaintiffs Hot List" for the fourth year in a row. The publication elaborated:

"Hausfeld's creative approaches underpinned key antitrust wins last year, including a trailblazing victory for former college athletes over the use of their likenesses in television broadcasts and video games..." and Hausfeld, along with its co-counsel, "nailed down a \$99.5 million settlement with JPMorgan Chase & Co. in January in New York federal court for alleged manipulation of market benchmarks. And it helped land nearly \$440 million in settlements last year, and more than \$900 million thus far, in multidistrict antitrust litigation against air cargo companies."

In 2014, *The National Law Journal* named Hausfeld as one of a select group of America's Elite Trial Lawyers, as determined by "big victories in complex cases that have a wide impact on the law and legal business." The award notes that Hausfeld is among those "doing the most creative and substantial work on the plaintiffs side."

HAUSFELD

Diversity and Inclusion

Hausfeld is committed to diversity and inclusion, because we know that embracing a variety of viewpoints and backgrounds allows us to gain better insights and strengthen our practice. Our diversity is reflected throughout our dozens of case teams leading class actions across the country. We are proud that half of our lawyers are women, who lead some of the largest price-fixing and market manipulation antitrust MDLs in the United States on behalf of our firm.

Hausfeld's Diversity and Inclusion Committee is committed to examining and improving all aspects of our hiring, benefits, training, support, and promotion practices to ensure that we maintain the highest standards for ourselves, and continually strive for improvement. We seek to ensure that all of our attorneys are provided the resources they need to excel, and are given opportunities to lead, both within and outside the firm.

Thought Leadership

Hausfeld lawyers do more than litigation. They exercise thought leadership in many fields. Hausfeld lawyers host, lecture at, and participate in leading legal conferences worldwide and address ground-breaking topics including: the pursuit of damages actions in the United States and the European Union on behalf of EU and other non-U.S. plaintiffs; nascent private civil enforcement of EU competition laws; application of the FTAIA; the impact of *Wal-Mart Stores, Inc. v. Dukes* and *Comcast Corp. v. Behrend* on class certification; reforms to the Federal Civil Rules of Procedure; emerging issues in complex litigation; and legal technology and electronic discovery.

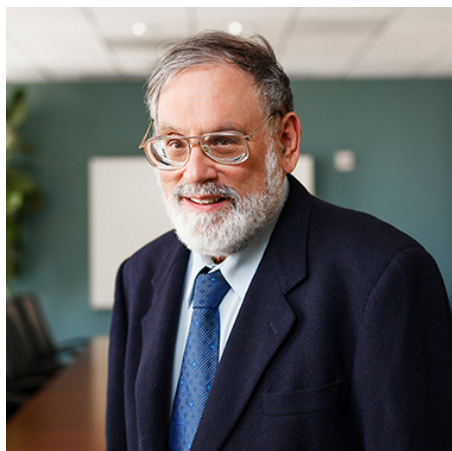
Hausfeld attorneys have presented before Congressional subcommittees, regulators, judges, business leaders, in-house counsel, private lawyers, public-interest advocates, elected officials and institutional investors, and hold leadership positions in organizations such as the American Bar Association, the American Antitrust Institute, the Women Antitrust Plaintiffs' Attorneys network group, the Sedona Conference and the Institute for the Advancement of the American Legal System.

Selected Articles

- Nathaniel C. Giddings & Aaron Patton, "**Social Media and Antitrust: A Discovery Primer**," *Antitrust Magazine* (Summer 2018).
- Steven Nathan and Irving Scher, "**The Role of Comity in Antitrust Discovery**," Hausfeld Competition Bulletin/Lexology (May 2018).
- Sarah LaFreniere (Co-Author), "**The Volkswagen Scandal: Catalyst for Class Action Change?**" *Law360* (Feb. 27, 2018).
- Jeanette Bayoumi, "**Are Nationwide Classes at Risk for Overturned Settlements following the Ninth Circuit's Ruling in Hyundai?**" Hausfeld Competition Bulletin/Lexology (February 2018).
- Michael D. Hausfeld, Irving Scher, and Laurence Sorkin, "**Litigating Indirect Purchasers Claims: Lessons for the EU from the U.S. Experience**," *Antitrust Magazine* (Fall 2017)
- Scott Martin, Michaela Spero, and Brian Henry, "**Cartel Damage Recovery: A Roadmap for In-House Counsel**," *Antitrust Magazine* (Fall 2017)—Recipient of *Concurrences'* 2018 Antitrust Writing Award for Private Enforcement (Business) Category.
- Christopher Lebsack and Samantha Stein, "**Oligopoly & No Direct Evidence? Good Luck, Says Third Circuit**," Hausfeld Competition Bulletin/Lexology (November 2017).
- Michael D. Hausfeld and Irving Scher, "**Damage Class Actions After Comcast: A View from the Plaintiffs' Side**," *Antitrust Magazine* (Spring 2016).
- James J. Pizzirusso, "**Proving Damages in Consumer Class Actions**," Consumer Protection Committee, Vol. 22/ No. 1, ABA Section of Antitrust Law (Mar. 2016).
- Braden Beard, "**A Costly Fifth Circuit Reminder to A Manufacturer: Don't Join Your Distributors' Conspiracy**," Hausfeld Competition Bulletin/Lexology (March 2016).
- Jeannine Kenney, "**Courts determine that non-cash consideration is subject to antitrust scrutiny under Actavis**," Hausfeld Competition Bulletin/Lexology (Oct. 2015).

HAUSFELD

- Bonny E. Sweeney, **"Earning ACPERA's Civil Benefits,"** 29 *Antitrust Magazine* 37 (Summer 2015).
- Irving Scher, **"The FTC's Revised Fred Meyer Guides: Back to the Sixties,"** *Antitrust Source* (February 2015).
- Brent W. Landau and Gary Smith, **"Bundling Claims Under Section 1 of the Sherman Act: Focusing on Firms' Abilities to Create Anticompetitive Effects in a Market, Rather Than Their Share of It,"** *Antitrust Health Care Chronicle*, Vol. 28/ No. 1, ABA Section of Antitrust Law (Jan. 2015).
- Michael D. Hausfeld, Gordon C. Rauser, Gareth J. Macartney, Michael P. Lehmann, Sathya S. Gosselin, **"Antitrust Class Proceedings – Then and Now,"** *Research in Law and Economics* (Vol. 26, 2014)—Recipient of *Concurrences'* 2015 Antitrust Writing Award for Private Enforcement (Academic) Category.
- Brent W. Landau and Brian A. Ratner, **"Chapter 39: USA,"** *The International Comparative Legal Guide to Cartels & Leniency* (Ch. 39, 2014).
- Michael D. Hausfeld and Brian A. Ratner, **"Prosecuting Class Actions and Group Litigation – Understanding the Rise of International Class and Collective Action Litigation and How this Leads to Classes that Span International Borders,"** *World Class Actions* (Ch. 26, 2012)
- Michael D. Hausfeld and Kristen Ward Broz, **"The Business of American Courts in Kiobel,"** *JURIST* – Sidebar (Oct. 2012).
- Michael D. Hausfeld, Brent W. Landau, and Sathya S. Gosselin, **"CAT'-astrophe: The Failure of 'Follow-On' Actions,"** International Cartel Workshop, Presented by the ABA Section of Antitrust Law & The International Bar Association (Feb. 1-3, 2012).
- Michael D. Hausfeld and Brent W. Landau, et al., **"Private Enforcement of Antitrust Law in the United States, A Handbook - Chapter 4: Initiation of a Private Claim,"** (2012).
- Brian A. Ratner and Sathya S. Gosselin, **"The Novelty of Wal-Mart v. Dukes,"** American Bar Association, Business Torts & Civil RICO Committee, Business Torts & RICO News, Vol. 8, Issue 1, (Fall 2011).
- Bonny E. Sweeney, **"Overview of Section 2 Enforcements and Developments,"** 2008 Wis. L. Rev. 231 (2008).



Michael P. Lehmann

Michael Lehmann is a Senior Partner at Hausfeld's San Francisco office. He obtained his undergraduate degree from the University of California at Berkeley in 1974 and his J.D. from Hastings College of the Law in 1977.

In 1978, he joined the Furth, Fahrner & Mason law firm and began practicing antitrust and business litigation. He was at that firm until 2007; it was the Furth & Lehmann firm when he left, with him having achieved the title of Managing Partner. During the first part of his career at the Furth firm, he did extensive defense work for a varied roster of clients, such as the Santa Fe Southern Pacific Railway Co., Sprint Communications Co., Kellogg Co., Grolier Inc., News Inc., Columbia Pictures, Georgia-Pacific Co., and William Sullivan (former owner of the New England Patriots). He was among those representing these entities as either defendants in class action antitrust litigation, plaintiffs in individual antitrust cases, defendants in proceedings brought by the Federal Trade Commission, petitioners in proceedings before the United States Food and Drug Administration, or respondents in arbitration proceedings before the International Chamber of Commerce. During this phase of his career, Mr. Lehmann helped Kellogg defeat a charge by the FTC that it and other ready-to-eat cereal companies engaged in a "shared monopoly" and wrote submissions to the FDA that caused it to permit certain types of health claims on food labels.

While at Furth, Mr. Lehmann played significant roles (including several co-lead positions) on the plaintiffs' side in major antitrust class actions, such as the *Brand Name Prescription Drug Antitrust Litigation*, the *Dynamic Random Access Memory (DRAM) Antitrust Litigation*, the *Static Random Access Memory (SRAM) Antitrust Litigation*, the *Cathode Ray Tube (CRT) Antitrust Litigation*, the *TFT-LCD (Flat Panel) Antitrust Litigation*, the *Cosmetics Antitrust Litigation*, the *Graphics Processing Units (GPU) Antitrust Litigation*, the *Compact Disc Minimum Advertised Price Antitrust Litigation*, the *Publication Paper Antitrust Litigation*, the *High Pressure Laminates Antitrust Litigation*, the *Bristol Bay Salmon Fishery Antitrust Litigation*, and the *Intel Microprocessor Antitrust Litigation*.

In 2007, Mr. Lehmann left the Furth firm to set up the San Francisco office of Cohen Milstein, Hausfeld & Toll, where he was a partner. When the separate Hausfeld firm was created in November of 2008, he left Cohen Milstein and joined Hausfeld as one of the founding partners and has worked there ever since. Among the cases he has worked on since joining Hausfeld (in addition to some of those already mentioned) are: the *Packaged Seafood Products Antitrust Litigation*, the *Inductors Antitrust Litigation*, the *Disposable Contact Lens Antitrust Litigation*, the *Aftermarket Automotive Lighting Products Antitrust Litigation*, the *Municipal Derivatives Antitrust Litigation*, the *Transpacific Air Passenger Transportation Antitrust Litigation*

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, the *International Air Transportation Surcharge Antitrust Litigation*, the *Domestic Airlines Antitrust Litigation*, the *Blue Cross & Blue Shield Antitrust Litigation*, the *NCAA Student-Athlete Name & Licensing Litigation*, the *Optical Disk Drive Antitrust Litigation*, the *Fresh & Process Potatoes Antitrust Litigation*, the *Rail Freight Fuel Surcharge Antitrust Litigation*, the *Generic Drugs Antitrust Litigation*, the *Diisocyanates Antitrust Litigation*, and the *Chicago Board Options Exchange Volatility Index Antitrust Litigation*, and the *In re Farm-Raised Salmon and Salmon Products Antitrust Litigation*. The Hausfeld firm has sole lead, co-lead or other leadership positions in many of these cases.

Mr. Lehmann has written or co-written numerous articles on antitrust and legal matters. He has been recognized either generally or in the antitrust field in the publications *Best Lawyers in America* and *San Francisco's Best Lawyers*, as a Northern California Super Lawyer and is the recipient of a Martindale-Hubbell Judicial AV Preeminent rating.

PRACTICE AREAS

Sports and Entertainment

Antitrust / Competition

EDUCATION

J.D. 1977, Hastings College of the Law

A.B. 1974, University of California at Berkeley

BAR ADMISSIONS

California

AFFILIATIONS & MEMBERSHIPS

Named a 'Recommended Lawyer' for Antitrust - Civil Litigation/Class Actions - Plaintiff by The Legal 500 (2019)

Member, American Bar Association

NEWS & PRESS

DOJ Charges Against CDR Reaffirm Allegations in Muni Bond Antitrust Civil Complaint. October 30, 2009.

Hausfeld LLP Files Lawsuit Against the NCAA on Behalf of Former Student Athletes. July 21, 2009.

IN THE NEWS

June 28, 2019

Three Hausfeld Partners Singled Out by 'Best Lawyers' in Germany

January 28, 2019

Five Hausfeld Lawyers Recognised as Thought Leaders for Competition by Who's Who Legal

November 20, 2018

U.S. News & World Report and Best Lawyers Rank Hausfeld as a Top Firm

June 20, 2018

16 Hausfeld Lawyers Recognized in Who's Who of Competition in the US and Europe

January 18, 2017

Hausfeld Files Suit Against Qualcomm for Monopoly Abuse

September 21, 2016

Hausfeld Asks Volkswagen to Explain its Mistreatment of the European Judicial Process

EVENTS

June 14, 2019

ABA's 2019 Global Private Litigation Conference – 17 June 2019, Berlin

ARTICLES

August 28, 2018

Six Hausfeld Lawyers Recognized in 2019 Edition of "Best Lawyers in America"

June 23, 2014

Twombly, Iqbal And The Prisoner's Pleading Dilemma

June 23, 2014

Observations from the Field: ACPERA's First Five Years



Christopher L. Lebsack

A partner at Hausfeld, Christopher Lebsack represents consumers and businesses in complex legal disputes in a variety of jurisdictions across the globe. Chris regularly consults with clients, trade associations, and law firms about competition issues and legal strategies that span international borders.

He is a member of the firm's antitrust and financial services groups and represents banks, insurance companies, and manufacturers and distributors in litigation. Chris enjoys crafting creative legal solutions for his clients, and where necessary, advocating new and novel legal theories to advance his clients' interests.

Representative recent U.S. cases include:

- *In Re: Packaged Seafood Products Antitrust Litigation*, S.D. Cal. Case No. 3:15-md-02670-JLS-MDD (lead counsel for distributors of shelf-stable tuna products);
- *In Re: Disposable Contact Lens Antitrust Litigation*, M.D. Fl. Case No. 3:15-md-2626-HES (lead counsel for plaintiffs, class certified);
- *In Re: Transpacific Passenger Air Transportation Antitrust Litig.*, N.D. Cal. Case No. 07-CV-5634-CRB (lead counsel for plaintiffs, approximately \$150 million settlement, Final Approval pending);
- *In Re: Korean Ramen Antitrust Litig.*, N.D. Cal. Case No. C-13-04115-WHO (lead counsel for distributor plaintiffs, class certified, treid to verdict in 2018);
- *District Council #16 v. Sutter et al.*, Case No. RG15753647 and *Duncan v. Sutter et al.*, Case No. RG17846895 (lead counsel for ERISA plan plaintiffs in fraudulent billing and insurance fraud schemes).

Experience

Chris has briefed and/or argued matters in numerous courts across the United States, including in the California Courts of Appeal, the California Supreme Court, the Second, Ninth, and Eleventh Circuits, and the United States Supreme Court.

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PRACTICE AREAS

Antitrust / Competition

Financial Services and Securities

Commercial Contingency

EDUCATION

University of California, Hastings College of the Law, J.D., 1996

University of Colorado, Boulder, B.A., 1993; Phi Beta Kappa

BAR ADMISSIONS

United States Supreme Court

California Supreme Court

Ninth Circuit Court of Appeals

Second Circuit Court of Appeals

Northern District of California

Eastern District of California

Central District of California

Southern District of California

AFFILIATIONS & MEMBERSHIPS

Recommended Lawyer - Antitrust - Civil Litigation/Class Actions - Plaintiff, *The Legal 500*, 2019

State Bar of California, Member

American Bar Association, Member

Hastings Constitutional Law Quarterly, former Senior Managing Editor

PUBLICATIONS

Christopher L. Lebsack, "Evolving Class Certification Standards in Federal Courts," *The Journal of State Bar of California Litigation Section*, (November 3, 2010)

Christopher L. Lebsack and Michael Lehmann, "Dismissal Standards Following *Bell Atlantic v. Twombly* - A One-Year Retrospective" *The Antitrust Review of the Americas* (2009)

Christopher L. Lebsack, "Pimco: Another Guidepost for Class Certification" *Law 360* (September 23, 2009)

IN THE NEWS

January 28, 2019

Five Hausfeld Lawyers Recognised as Thought Leaders for Competition by Who's Who Legal

June 20, 2018

16 Hausfeld Lawyers Recognized in Who's Who of Competition in the US and Europe

January 18, 2017

Hausfeld Files Suit Against Qualcomm for Monopoly Abuse

June 16, 2016

Contact Lens Antitrust Victory: District Court Denies the Majority of Defendants' Motions to Dismiss

May 23, 2016

Scott Martin of Hausfeld Appointed Interim Co-Lead Counsel in NFL Sunday Ticket Antitrust Litigation

July 30, 2015

CVS Faces New Class Action Alleging Scheme to Overcharge Pharmacy Customers

EVENTS

June 14, 2019

ABA's 2019 Global Private Litigation Conference – 17 June 2019, Berlin

ARTICLES

February 16, 2018

Optical Disk Drive Summary Judgment Orders Clarify FTAIA Claims, But Land Blow to Conspiracy Claims

November 10, 2017

Oligopoly & No Direct Evidence? Good Luck, Says Third Circuit.

March 7, 2013

CMEA Capital Sued For Sexual Harassment



Gary I. Smith Jr.

Gary is a partner in the firm's Philadelphia office, where he focuses his practice on antitrust litigation. In his young career, Gary has already secured over \$882.5 million to benefit the victims of anticompetitive practices.

Gary has represented a diverse range of clientele, including hospital systems, investment and pension funds, universities, local governments, dental laboratories, pediatricians, farmers, and construction contractors.

Gary has litigated cases at every level, from state trial court all the way to the Supreme Court of the United States, during which he has gained a wide range of experience briefing and arguing dispositive motions, taking and defending fact and expert witness depositions, and serving on trial teams, inclusive of first- and second-chair jury trial experience. He has gained experience and institutional knowledge challenging monopolistic practices and cartel activity in a wide range of industries—from the agricultural sector to the transportation and aviation sectors to the financial markets—with a particular emphasis on healthcare, where Gary has litigated cases concerning biologics (vaccines), pharmaceuticals, and medical product distribution markets.

Gary also regularly writes on antitrust topics, most notably contributing to the American Bar Association's Section of Antitrust's seminal publication, *Antitrust Law Developments*. Gary has earned local accolades as a Rising Star in Antitrust Litigation by Pennsylvania *Super Lawyers* (2017-2019) and national accolades as one of five Rising Star under 40 in Health Care Law by *Law360* (2017).

He has played a leading role in cases that have gained nationwide attention, including:

Experience

- *In re Dental Supplies Antitrust Litigation*, No. 16-696-BMC (E.D.N.Y.), in which a proposed class of private dental practices claim that the four major distributors of dental products and equipment conspired to fix margins, divide markets and allocate customers, and orchestrate industry boycotts of lower-priced, innovative rivals. The Federal Trade Commission filed a related lawsuit against the dental distributor companies a year after the private plaintiffs first initiated their action, borrowing legal theories first investigated and advanced by the private plaintiffs. The private plaintiffs' action was settled just minutes before a class certification *Daubert* hearing



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was set to commence for \$80 million, while the Federal Trade Commission's action remains ongoing.

- *In re LIBOR-Based Financial Instruments Antitrust Litigation*, No. 11-md-2262-NRB (S.D.N.Y.), in which a certified class of purchasers of over-the-counter (OTC) financial instruments with interest payments tied to the London Interbank Offering Rate (LIBOR) are challenging the collusive manipulation of U.S. Dollar LIBOR by the world's largest financial institutions. The collusion is claimed to have suppressed the U.S. Dollar LIBOR rate, which allowed the defendant banks to benefit financially to the detriment of their counterparties in OTC instruments. The case has resulted in \$590 million in settlements with four banks (Barclays, Citibank, HSBC, and Deutsche Bank), and continues against the remaining thirteen defendant banks.
- *Adriana M. Castro, M.D., P.A. v. Sanofi Pasteur Inc.*, No. 2:11-cv-07178-JMV (D.N.J.), in which a certified class of wholesalers, hospitals, and physicians that purchased Sanofi's quadrivalent conjugate meningococcal vaccine (MCV4) Menactra (a vaccine for Meningitis) claimed that Sanofi monopolized the MCV4 market by threatening large price penalties across Sanofi's broad line of pediatric vaccines if pediatricians purchased MCV4 vaccines from Sanofi's only MCV4 rival, Novartis. Sanofi's conditional pricing practices had the purpose and effect of foreclosing Sanofi's only MCV4 rival from the market, allowing Sanofi to continue to charge monopoly prices for Menactra. The case settled in December 2016 for \$61.5 million.
- *In re Transpacific Passenger Air Transportation Antitrust Litigation*, No. 08-md-01913-CRB (N.D. Cal.), in which a certified class of consumers of transpacific passenger air travel allege that thirteen airlines conspired to fix the prices of certain transpacific passenger air fares and fuel surcharges. The last of the thirteen defendants settled in early 2019 for \$58 million, bringing the total settlements in the case to over \$147 million.

Gary is also committed to serving the community through pro bono work. Most recently, Gary has been working with a team of Hausfeld lawyers to advise victims of clergy sexual abuse who have received settlement offers from the Philadelphia Archdiocese.

Gary graduated from the University of Arizona in May of 2008, where he received a B.S.B.A. in Business Economics, and from the Sandra Day O'Connor College of Law in May of 2011, where he received his J.D.

While in law school, Gary worked as a research assistant for Visiting Associate Professor of Law Amandeep S. Grewal, received honors as a Willard H. Pedrick Scholar, and spent a semester externing with the Securities and Exchange Commission in Washington, D.C.

PRACTICE AREAS

Antitrust / Competition

EDUCATION

Sandra Day O'Connor College of Law at Arizona State University, J.D. 2011

University of Arizona, B.S.B.A. in Business Economics, 2008

BAR ADMISSIONS

Pennsylvania

United States District Court for the Eastern District of Pennsylvania

Arizona

United States District Court for the District of Arizona

United States Court of Appeals for the Ninth Circuit

AFFILIATIONS & MEMBERSHIPS

Super Lawyers, Pennsylvania Antitrust Litigation Rising Star (2017-2019)

Law360, Rising Star Under 40 in Health Care Law (2017)

American Bar Association,

- Section of Antitrust Law

- Young Lawyers Division

Contributor, ABA Antitrust Section, Antitrust Law Developments 8th Edition

Pennsylvania Bar Association

Willard H. Pedrick Scholar

NEWS & PRESS

16 Big Banks To Face Revived Libor Antitrust Suit

Barclays Pays \$120M To Exit Part Of Libor MDL

\$250M Citi, Barclays Libor Deals Look Worthy, Judge Says

Susman Godfrey L.L.P. and Hausfeld LLP Announce Lawsuits and Settlements
Totaling \$340 Million That Impact Individuals and Institutions Who Owned a
U.S. Dollar LIBOR-Based Instrument Between August 2007 and May 2010

HSBC Inks \$100M Deal With OTC Investors In Libor-Rig MDL

Judge Certifies OTC Libor Class But Denies Others

Deutsche Inks \$240M Deal To Settle Libor-Rigging Row

OTC Investors Win Class Cert. On Libor Antitrust Claims

Hausfeld, Susman Awarded \$58.4M In Libor MDL Fees, Costs

Hausfeld, Susman Win \$63M In Attys' Fees In Libor MDL

Dental Distributors Fire Back Against Antitrust Action

Dentists Smiling as Price-Fixing Conspiracy Case Survives

Dentists Get \$80M From Supply Cos. To End Collusion Case

Airlines Can't Ditch Price-Fixing MDL, 9th Circ. Rules

EVA, Others To End Trans-Pacific Price-Fix Row For \$50M

Airline Passengers Win Class Cert. In Price-Fixing Suit

EVA Airways Settles Price-Fixing Class Action For \$21M

Airline Pushes Supreme Court To Hear Filed-Rate Fight

Flyers Ask Justices To Pass On Antitrust Filed-Rate Fight

Justices Skip Airline's Challenge To 9th Circ. Rate Ruling

Flyers Ink \$58M Deal With Last Airline In Price-Fixing Suit

Chicken Farmers Accuse Processors of Illegal "No Poach" and Wage Suppression

Merck Hit With Antitrust Suit Over Vaccine Bundle Discounts

Doctors' Counsel Nab \$27M In Sanofi Vaccine Antitrust Row

Rising Star: Hausfeld's Gary Smith

PUBLICATIONS

Author, Second Circuit Rejects Third Circuit's Views on Class Member Ascertainability, Lexology (Aug. 9, 2017)

Author, No Safe Harbor: The Third Circuit Once Again Declines to Apply the Price Cost Test to a Loyalty Discount Case, Lexology (Aug. 13, 2016)

Author, Third Circuit Reaffirms the Continued Viability of the Intertwined Standard for Antitrust Standing, Lexology (Mar. 1, 2016).

Co-Author (with Brent W. Landau), "Bundling Claims Under Section 1 of the Sherman Act: Focusing on Firms' Abilities to Create Anticompetitive Effects in a Market, Rather Than Their Share of It," Antitrust Health Care Chronicle, Vol. 28/ No. 1, ABA Section of Antitrust Law (Jan. 2015).

PRESENTATIONS & SPEECHES

Panelist, ABA Section of Antitrust Law Agriculture and Food Antitrust Case Update 2019, February 28, 2019

IN THE NEWS

January 14, 2019

Hausfeld Announces Record Number of Promotions Globally, Demonstrating Continued Firm Growth

August 2, 2017

Hausfeld Associate Gary Smith Named Rising Star under 40 in Health Care by Law360

May 23, 2016

Second Circuit Reinstates Antitrust Claims Against Sixteen Defendant Banks for Rigging LIBOR

ARTICLES

February 14, 2018

Ascertainability

August 9, 2017

Second Circuit Rejects Third Circuit's Views On Class Member Ascertainability

August 12, 2016

No Safe Harbor: The Third Circuit Once Again Declines to Apply the Price Cost Test to a Loyalty Discount Case

March 1, 2016

Third Circuit Reaffirms the Continued Viability of the Intertwined Standard for Antitrust Standing



Swathi Bojedla

Swathi is a partner in the firm's Washington, D.C. office. Swathi's career has spanned a wide range of practice areas at Hausfeld, focusing most notably on the Sports & Entertainment, Antitrust, Consumer Protection, and Mass Torts practice areas. From initial case investigations through trial, she has represented the firm's clients in all aspects of litigation. Her work has encompassed some of the highest-profile class action sports and antitrust cases in recent years, and she has been involved in the recovery of over \$500 million in settlement awards on behalf of the firm's clients.

Swathi was initially drawn to Hausfeld's leadership in cutting edge litigation that advances the public interest and promotes a level playing field. As an avid sports fan, she has relished the opportunity to represent current and former athletes as they seek fair treatment for the dedication they put into the game. In *Dryer et al. v. National Football League*, she represented a class of retired NFL players whose names, images, and likenesses were being used in NFL Films features. She was involved in negotiating a \$50 million settlement agreement, which created a Greater Good Fund to provide health and welfare programs to former NFL players and also established a licensing agency, in partnership with IMG, to help former players market their names, images, and likenesses. She continues to advise the Court-appointed Board of Directors on implementation of the settlement agreement. In *In re NCAA Student-Athlete Name and Likeness Licensing Litigation*, Swathi represented a class action on behalf of current and former Division I men's basketball and FBS football players against the NCAA and its member institutions based on rules foreclosing athletes from receiving compensation for the use of their names, images, and likenesses. In 2014, plaintiffs completed a three-week bench trial in which Swathi was part of a trial team that successfully obtained class injunctive relief allowing college athletes to receive compensation for their NIL rights, a landmark victory for college athletes. She has also litigated against the United States Olympic Committee and USA Track & Field to open up the market for sponsorship of athletes. For her work on these and other cases, Swathi was named a Rising Star Under 40 in Sports by Law360 in 2016.

Experience

Outside of the sports realm, Swathi has litigated a variety of other cases across the legal spectrum, securing favorable results for her clients. In *In re Municipal Derivatives Litigation*, Swathi worked as part of a team that secured nearly \$250 million in settlements for a class of municipalities affected by alleged bid-rigging in the market for municipal bonds. And in *In re Air Cargo Shipping Services Antitrust Litigation*

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, Swathi joined the trial team to prepare for trial against the final four defendants in a worldwide conspiracy to fix fuel surcharge on air cargo; her work assisted in driving settlements with the final defendants totaling nearly \$200 million. In 2016, she was recognized for her work in both cases at the American Antitrust Institute Enforcement Awards, where she won two of the three awards for Outstanding Antitrust Litigation Achievement in Private Law Practice.

Swathi has also represented numerous financial institutions across the country who have suffered damages as a result of data breaches at retailers including Target, Home Depot, Kmart, and Wendy's. Through her work on these cases, she has developed an expertise in data breach law and card brand recovery processes, and has helped to design and implement unique settlement frameworks in this developing area of law. And in 2013, Swathi participated in a mass tort action arising from the placement of unnecessary stents in patients at a Baltimore-area hospital, which culminated in a month-long jury trial in Maryland state court and a global resolution compensating over 240 affected patients.

Prior to her arrival at Hausfeld, Swathi spent time at Georgetown Law's Institute for Public Representation, a civil rights clinic, where she worked on Title VII litigation in the D.C. District Court. She has maintained this interest at Hausfeld, where she represented several female employees alleging sexual harassment against their former supervisor and employer, a San Francisco venture capitalist firm. She has also worked on several presidential campaigns and in the U.S. Senate, both for then-Senator Hillary Rodham Clinton and as a law clerk to the U.S. Senate Judiciary Committee.

Swathi attended law school at Georgetown University, where she was Managing Editor for the *Georgetown Journal of Law and Public Policy*. Prior to Georgetown, she graduated from Brown University with a B.A. in Human Biology and Public Policy. She remains actively involved in the Brown University alumni community, serving as a member of the Women's Leadership Council as well as the D.C. Area Co-Chair for the school's admissions interviewing program. Swathi also currently sits on the Board of Directors for the D.C. non-profit Changing Perceptions, which focuses on providing professional and personal support to formerly incarcerated citizens.

PRACTICE AREAS

Mass Torts and Public Health Threats

Sports and Entertainment

Antitrust / Competition

EDUCATION

Georgetown University Law Center, J.D., 2011

Brown University, B.A., Human Biology & Public Policy, 2007

BAR ADMISSIONS

New York

Washington, D.C.

District Court for the District of Columbia

District Court for the Southern District of New York

District Court for the District of Colorado

Tenth Circuit Court of Appeals

AFFILIATIONS & MEMBERSHIPS

Law360 Sports Editorial Advisory Board, Member (2019)

Brown University Women's Leadership Council, Member (2016-present)

Changing Perceptions, Board of Directors (2016-present)

Clerk, U.S. Senate Judiciary Committee

Brown University Alumni Interviewing Program, Washington, D.C. Chair (2012-present)

Managing Editor, *Georgetown Journal of Law and Public Policy* (2010-2011)

NEWS & PRESS

"Rising Star: Hausfeld's Swathi Bojedla", *Law360* (Apr. 27, 2016)

"Minority Business Leader Awards: Swathi Bojedla," *Washington Business Journal* (Feb. 26, 2016)

PUBLICATIONS

Aerotec Int'l v. Honeywell Int'l: An Antitrust Primer for Aftermarket Issues, Hausfeld Competition Bulletin (November 2016)

Consumers Strike Out: Time Warner Cable Defeats Challenge to Rate Hikes for Unwanted Sports Content

, Trade, Sports & Professional Associations Newsletter (Spring 2015)

Going to Trial as an Associate, ABA Trial Practice Committee: Trying Antitrust Newsletter (Fall 2015)

Swathi Bojedla, *Is Major League Baseball's Antitrust Exemption in Jeopardy?*, ABA Antitrust Section Media & Technology E-Bulletin, Vol. 1, Iss. 3 (2013)

Michael Hausfeld and Swathi Bojedla, *The NFLPA's Potential Legal Liability to Former Players for Traumatic Brain Injury*, Concussions Litigation Reporter, Vol. 1, No. 1 (2012)

PRESENTATIONS & SPEECHES

Inside O'Bannon v. NCAA, Legal Talk Network podcast (Oct. 21, 2015)

Preparing for an Antitrust Trial as an Associate, ABA Section of Antitrust Law (Aug. 24, 2015)

The Sports Report: Sports, Consumer Protection and Antitrust – What's Hot in 2015!, ABA Trade, Sports and Professional Associations (June 16, 2015)

AWARDS

Outstanding Antitrust Litigation Achievement in Private Law Practice (*In re Municipal Derivatives Antitrust Litigation*), American Antitrust Institute (2016)

Rising Stars Under 40 Award for Sports Law, *Law360* (2016)

Minority Business Leaders Award, *Washington Business Journal* (2016)

Rising Star, *Super Lawyers* (2016-2019)

Outstanding Antitrust Litigation Achievement in Private Law Practice (*O'Bannon v. NCAA*), American Antitrust Institute (2015)

Litigation of the Year - Non-Cartel Prosecution (*O'Bannon v. NCAA*), *Global Competition Review* (2015)

IN THE NEWS

January 14, 2019

Hausfeld Announces Record Number of Promotions Globally, Demonstrating Continued Firm Growth

February 12, 2017

Hausfeld Attorneys Nominated in Multiple Categories by GCR Awards 2017

November 11, 2016

American Antitrust Institute Awards Hausfeld Twice with Outstanding Antitrust Litigation Achievement

January 20, 2016

Lawsuit filed on Behalf of Run Gum to End Group Boycott of Athlete Sponsors from Olympic Trials

November 19, 2015

Hausfeld Wins AAI's Award for Outstanding Antitrust Litigation Achievement in Private Law Practice

September 29, 2015

College Athletes Win Historic Legal Victory in Ninth Circuit

ARTICLES

November 16, 2018

Third Circuit Resuscitates Medical Device Antitrust Claims Against Blue Cross Blue Shield

May 22, 2018

Sealy and Topco Considered Polestars in Blue Cross Blue Shield Market Allocation Case

November 10, 2017

In re Auto Body Shop Antitrust Litigation: Pleading an Illegal Agreement through Plus Factors

November 14, 2016

Aerotec Int'l v. Honeywell Int'l: An Antitrust Primer for Aftermarket Issues

June 20, 2014

The NFLPA's Potential Legal Liability to Former Players for Traumatic Brain Injury



Seth R. Gassman

Seth R. Gassman has over a decade of antitrust litigation and regulatory experience, and has represented clients in many different industries over the course of his career, including in manufacturing, transportation, pharmaceuticals and health care.

Seth currently represents victims of domestic and international anticompetitive conduct. Among his current cases, he is litigating *In re Rail Freight Fuel Surcharge Antitrust Litigation*, where Hausfeld serves as co-lead counsel representing a certified class of shippers who allege that the nation's largest freight-shipping railroads conspired to fix rail-freight fuel surcharges, and *In re New Jersey Tax Sale Certificates Antitrust Litigation*, where the firm serves as co-lead counsel representing a proposed class of New Jersey property owners who – as the result of an alleged bid-rigging scheme that has already led to several criminal guilty pleas – either must pay inflated rates to redeem liens on their property or face foreclosure.

 SAN FRANCISCO

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 sgassman@hausfeld.com

Experience

Seth is also actively involved in litigating *In re Blood Reagents Antitrust Litigation*, where he represents a class of laboratories and other purchasers who allege that the two leading manufacturers of a critical component used in a number of tests performed to detect and identify certain properties of the cell and serum components of human blood fixed prices for nearly a decade, and *In re Transpacific Passenger Air Transportation Antitrust Litigation*, where he represents a proposed class of airline passenger who allege that several major airlines conspired to inflate the costs of tickets for travel between the United States and Asia/Oceania .

Seth is the co-author of "No Rest{itution} for the Weary: Crime Victims and Treble Damages in Antitrust Cases," *BNA's Antitrust and Trade Regulation Report*, November 18, 2011; "Antitrust Class Actions: Continued Vitality," *Global Competition Review*, *The Antitrust Review of the Americas*, 2008; and "Global Enforcement of Anticompetitive Conduct," presented in Florence, Italy at The Tenth Annual Sedona Conference on Antitrust Law & Litigation: The Globalization of Antitrust Enforcement, September 2008.

Seth began his legal career at Cahill Gordon & Reindel LLP. While there, he focused on antitrust litigation and regulatory compliance. He received a J.D. from New York University School of Law, where he was the symposium editor of the *Journal of Legislation and Public Policy*. In the spring of 2003, he was awarded the Newman Prize for "Direct Democracy as Cultural Dispute

Resolution: The Missing Egalitarianism of Cultural Entrenchment.” Seth earned a B.A., with honors, in English from the University of California at Berkeley.

He is a member of the California, New York and District of Columbia bars, as well as the Southern and Eastern Districts of New York and the Eastern District of Michigan.

PRACTICE AREAS

Environmental Threats

Antitrust / Competition

EDUCATION

New York University School of Law, J.D., 2003

University of California, Berkley, B.A., *with honors*, 1999

BAR ADMISSIONS

District of Columbia

New York

Southern and Eastern Districts of New York

Eastern District of Michigan

California

Northern District of California

AFFILIATIONS & MEMBERSHIPS

Senior Symposium Editor, *New York University School of Law Journal of Legislation and Public Policy*

Newman Prize Recipient for article, “Direct Democracy as Cultural Dispute Resolution: The Missing Egalitarianism of Cultural Entrenchment”

Commencement Speaker, University of California at Berkeley, Departmental Graduation

PUBLICATIONS

Jay L. Himes and Seth R. Gassman, “No Rest{itution} for the Weary: Crime Victims and Treble Damages in Antitrust Cases,” *BNA’s Antitrust and Trade Regulation Report*,”

November 18, 2011

Michael Hausfeld, Steig Olson & Seth Gassman, "Antitrust Class Actions: Continued Vitality," *Global Competition Review, The Antitrust Review of the Americas*, 2008

"Global Enforcement of Anticompetitive Conduct," presented in Florence, Italy at The Tenth Annual Sedona Conference on Antitrust Law & Litigation: The Globalization of Antitrust Enforcement, September 2008.

Gassman, Seth. "Direct Democracy as Cultural Dispute Resolution: The Missing Egalitarianism of Cultural Entrenchment." 6 *NYU Journal of Legislation and Public Policy* 525 (2002-2003)

IN THE NEWS

November 6, 2017

Hausfeld Files Climate Change Suit On Behalf Of Clean Air Council Against Federal Government

August 13, 2015

Hausfeld Appointed Co-Lead Interim Counsel for Direct Purchaser Plaintiffs in Parking Heaters

March 16, 2015

Hausfeld Files Suit against Espar for Illegal Price-Fixing in Parking Heaters Aftermarket

PERSPECTIVES

June 27, 2019

The Next Step in the Pharmaceutical Patent Wars: Will Congress Act?

EXHIBIT 3

In re Transpacific Passenger Air Transportation Antitrust Litigation

Case No. 07-cv-05634-CRB

EXHIBIT 3

COTCHETT, PITRE & McCARTHY, LLP

Hours Reported and Lodestar on a Historical Basis

March 28, 2008 through July 31, 2019

NAME	TOTAL HOURS	HOURLY RATE	LODESTAR
ATTORNEY HOURS			
Cotchett, Joseph (P)	82.7	\$950	\$ 78,565.00
Cotchett, Joseph W. (P)	618.40	\$900	\$ 556,560.00
Cotchett, Joseph W. (P)	5.00	\$750	\$ 3,750.00
Cotchett, Joseph W. (P)	7.60	\$300	\$ 2,280.00
McCarthy, Niall (P)	12.50	\$925	\$ 11,562.50
McCarthy, Niall P. (P)	20.40	\$750	\$ 15,300.00
Fineman, Nancy L. (P)	191.00	\$700	\$ 133,700.00
Williams, Steven (P)	253.10	\$850	\$ 215,135.00
Williams, Steven N. (P)	2124.40	\$700	\$1,487,080.00
Williams, Steven N. (P)	22.50	\$300	\$ 6,750.00
Zapala, Adam (P)	1082.10	\$750	\$ 811,575.00
Zapala, Adam (P)	10.70	\$450	\$ 4,815.00
Zapala, Adam (P)	76.50	\$415	\$ 31,747.50
Zapala, Adam J. (SA)	1541.10	\$415	\$ 639,556.50
Zapala, Adam J. (A)	207.70	\$360	\$ 74,772.00
Zapala, Adam J. (A)	202.50	\$300	\$ 60,750.00
Summer, Alexandra (P)	2.00	\$750	\$ 1,500.00
Gregory, Philip L. (P)	25.60	\$600	\$ 15,360.00
Damrell, Frank C. (OC)	22.60	\$775	\$ 17,515.00
Damrell, Frank C. (OC)	13.90	\$300	\$ 4,170.00
McCloskey, Paul N. (OC)	154.10	\$700	\$ 107,870.00
McCloskey, Paul N. (OC)	14.30	\$300	\$ 4,290.00
Castillo, Elizabeth (P)	82.30	\$650	\$ 53,495.00
Castillo, Elizabeth (SA)	309.70	\$600	\$ 185,820.00
Castillo, Elizabeth (SA)	2.00	\$360	\$ 720.00
Barnett, Alexander E.(SA)	6.50	\$415	\$ 2,697.50
Chang, Joyce (A)	25.60	\$425	\$ 10,880.00
Chang, Joyce (A)	10.90	\$360	\$ 3,924.00
Edling, Matthew K. (P)	14.60	\$500	\$ 7,300.00
Edling, Matthew K. (A)	149.90	\$360	\$ 53,964.00
Edling, Matthew K. (A)	43.30	\$350	\$ 15,155.00
Edling, Matthew K. (P)	12.40	\$300	\$ 3,720.00
Edling, Matthew K. (A)	2.70	\$275	\$ 742.50
Gardea, Ana (SA)	57.50	\$600	\$ 34,500.00

In re Transpacific Passenger Air Transportation Antitrust Litigation

Case No. 07-cv-05634-CRB

NAME	TOTAL HOURS	HOURLY RATE	LODESTAR
Liang, Aron K. (SA)	186.60	\$415	\$ 77,439.00
Liang, Aron K. (A)	106.40	\$400	\$ 42,560.00
Liang, Aron K. (A)	1.00	\$300	\$ 300.00
Liang, Aron K. (A)	23.50	\$275	\$ 6,462.50
Liang, Aron K. (A)	3.00	\$250	\$ 750.00
Okcu, Niki B. (SA)	149.00	\$415	\$ 61,835.00
Prevost, Tamarah (A)	2.60	\$425	\$ 1,105.00
Ram, Mark (A)	33.10	\$425	\$ 14,067.50
Siddiqui, Imtiaz A. (SA)	24.10	\$415	\$ 10,001.50
Siddiqui, Imtiaz A. (SA)	4.50	\$400	\$ 1,800.00
Swartzberg, Neil J. (SA)	45.50	\$415	\$ 18,882.50
Swartzberg, Neil J. (SA)	43.20	\$400	\$ 17,280.00
Trott, Adam (SA)	38.90	\$600	\$ 23,340.00
Buescher, Eric J. (A)	20.90	\$360	\$ 7,524.00
Buescher, Eric J. (A)	.50	\$300	\$ 150.00
Chang, Joyce (A)	2.20	\$360	\$ 792.00
Gross, Stuart G. (A)	161.00	\$360	\$ 57,960.00
Gross, Stuart G. (A)	12.00	\$275	\$ 3,300.00
Gross, Stuart G. (A)	40.30	\$250	\$ 10,075.00
Hwang, Jessica (A)	172.60	\$300	\$ 51,780.00
Jordan, Greg (FLR)	237.00	\$425	\$ 100,725.00
Kim, Gene W. (A)	55.00	\$360	\$ 19,800.00
LiCalsi, Joanna W. (A)	99.00	\$360	\$ 35,640.00
LiCalsi, Joanna W. (A)	36.60	\$300	\$ 10,980.00
Mock, Mary F. (A)	.40	\$360	\$ 144.00
Nozaki, Shinichi (FLR)	369.20	\$425	\$ 156,910.00
Nozaki, Shinichi (FLR)	5.50	\$300	\$ 1,650.00
Rao, Divya (SA)	21.20	\$400	\$ 8,480.00
Rao, Divya (SA)	11.20	\$375	\$ 4,200.00
Schnarr, Brian M. (A)	45.90	\$360	\$ 16,524.00
Tran, Elizabeth T. (A)	873.10	\$360	\$ 314,316.00
Tran, Elizabeth T. (A)	301.60	\$300	\$ 90,480.00
NON-ATTORNEYS			
Detert, Erich (SPL)	21.50	\$250	\$ 5,375.00
Engineer, Nirav (SPL)	126.30	\$250	\$ 31,575.00
Grafilo, Mark (SPL)	11.00	\$250	\$ 2,750.00
Menzel, Patrick (SPL)	459.50	\$250	\$ 114,875.00
Menzel, Patrick (SPL)	190.10	\$225	\$ 42,772.50
Thornton, Donald (SPL)	66.10	\$175	\$ 11,567.50
Verducci, Jaclyn (SPL)	633.20	\$325	\$ 205,790.00
Verducci, Jaclyn (SPL)	5,644.50	\$250	\$1,411,125.00
Verducci, Jaclyn (PL)	156.70	\$225	\$ 35,257.50

In re Transpacific Passenger Air Transportation Antitrust Litigation

Case No. 07-cv-05634-CRB

NAME	TOTAL HOURS	HOURLY RATE	LODESTAR
Verducci, Jaclyn (PL)	3.50	\$150	\$ 525.00
Agudelo, Zryes (PL)	5.00	\$225	\$ 1,125.00
Banis, Alexandra (PL)	135.70	\$225	\$ 30,532.50
Brady, Kimberely (PL)	2.00	\$225	\$ 450.00
Blehm, Morgan (PL)	1.20	\$275	\$ 330.00
Clark, Linda (PL)	29.80	\$225	\$ 6,705.00
Bott, Evan (PL)	14.30	\$225	\$ 3,217.50
Caylao, Michael (PL)	88.30	\$275	\$ 24,282.50
Caylao, Michael (PL)	10.50	\$225	\$ 2,362.50
Compesi, Marisa (PL)	497.80	\$225	\$ 112,005.00
Concepcion, Latoya (PL)	539.40	\$225	\$ 121,365.00
Cox, Allison (PL)	310.20	\$275	\$ 85,305.00
Doe, Brian (PL)	20.00	\$225	\$ 4,500.00
Fajardo, Muriel (PL)	19.00	\$150	\$ 2,850.00
Gaa, Reid (PL)	29.30	\$275	\$ 8,057.50
Lin, Virginia (PL)	60.70	\$275	\$ 16,692.50
Lein, Kristin (PL)	937.70	\$225	\$ 210,982.50
Lipson, Carlo (PL)	116.70	\$275	\$ 32,092.50
Lyons, Patrick (PL)	16.40	\$275	\$ 4,510.00
Quackenbush, Kyle (PL)	250.50	\$225	\$ 56,362.50
Schmidt, Jesse (PL)	281.90	\$225	\$ 63,427.50
Song, Jenny (PL)	6.30	\$225	\$ 1,417.50
Walker, Christina (PL)	301.70	\$225	\$ 67,882.50
Walker, Christina (PL)	2.00	\$125	\$ 250.00
LAW CLERKS			
Chang, Joyce (LC)	31.30	\$150	\$ 4,695.00
Coleman, Elizabeth (LC)	22.70	\$150	\$ 3,405.00
Davis, Julian (LC)	52.00	\$150	\$ 7,800.00
Goodwin, Nicole (LC)	66.50	\$150	\$ 9,975.00
Hess, Hilary (LC)	60.70	\$150	\$ 9,105.00
Kohan, Eric (LC)	18.60	\$175	\$ 3,255.00
Larrabee, Alex (LC)	3.30	\$150	\$ 495.00
Peixoto, Gabriel (LC)	55.50	\$150	\$ 8,325.00
Schnarr, Brian M. (LC)	23.00	\$150	\$ 3,450.00
TOTAL:	21857.10		\$8,593,597.00

In re Transpacific Passenger Air Transportation Antitrust Litigation

Case No. 07-cv-05634-CRB

(P) Partner
(OC) Of Counsel
(SA) Senior Associate
(A) Associate
(SPL) Senior Paralegal
(PL) Paralegal
(LC) Law Clerk
(SA) Staff Attorney
(FLR) Foreign Language
Reviewer

EXHIBIT 4

In re Transpacific Passenger Air Transportation Antitrust Litigation

Case No. 07-cv-05634-CRB

EXHIBIT 4

HAUSFELD LLP

Hours Reported and Lodestar on a Historical Basis

March 28, 2008 – July 31, 2019

NAME	TOTAL HOURS	HOURLY RATE	LODESTAR
ATTORNEYS			
Arthur N. Bailey, Jr. (P)	7.75	\$365.00	\$2,828.75
Arthur N. Bailey, Jr. (P)	158.00	\$420.00	\$66,360.00
Arthur N. Bailey, Jr. (P)	28.50	\$460.00	\$13,110.00
Arthur N. Bailey, Jr. (P)	2.00	\$550.00	\$1,100.00
Arthur N. Bailey, Jr. (P)	0.40	\$630.00	\$252.00
Arthur N. Bailey, Jr. (P)	2.30	\$790.00	\$1,817.00
William P. Butterfield (P)	0.40	\$660.00	\$264.00
Melinda R. Coolidge (P)	1.50	\$410.00	\$615.00
Melinda R. Coolidge (P)	0.60	\$430.00	\$258.00
Melinda R. Coolidge (P)	0.50	\$650.00	\$325.00
Robert G. Eisler (P)	51.90	\$775.00	\$40,222.50
Robert G. Eisler (P)	18.20	\$850.00	\$15,470.00
Reena A. Gambhir (P)	0.50	\$375.00	\$187.50
Reena A. Gambhir (P)	4.80	\$490.00	\$2,352.00
Michael D. Hausfeld (P)	19.00	\$750.00	\$14,250.00
Michael D. Hausfeld (P)	49.75	\$865.00	\$43,033.75
Michael D. Hausfeld (P)	14.20	\$950.00	\$13,490.00
Michael D. Hausfeld (P)	9.20	\$975.00	\$8,970.00
Michael D. Hausfeld (P)	1.50	\$990.00	\$1,485.00
Michael D. Hausfeld (P)	0.50	\$995.00	\$497.50
Michael D. Hausfeld (P)	23.00	\$1,375.00	\$31,625.00
Megan E. Jones (P)	66.20	\$460.00	\$30,452.00
Megan E. Jones (P)	68.00	\$510.00	\$34,680.00
Megan E. Jones (P)	401.70	\$575.00	\$230,977.50
Megan E. Jones (P)	170.00	\$600.00	\$102,000.00
Megan E. Jones (P)	74.80	\$610.00	\$45,628.00
Megan E. Jones (P)	0.90	\$630.00	\$567.00
Megan E. Jones (P)	0.40	\$680.00	\$272.00

In re Transpacific Passenger Air Transportation Antitrust Litigation

Case No. 07-cv-05634-CRB

NAME	TOTAL HOURS	HOURLY RATE	LODESTAR
Megan E. Jones (P)	0.30	\$790.00	\$237.00
Jon T. King (P)	3.70	\$450.00	\$1,665.00
Jon T. King (P)	1.00	\$495.00	\$495.00
Jon T. King (P)	1.50	\$550.00	\$825.00
Brent W. Landau (P)	1.65	\$425.00	\$701.25
Brent W. Landau (P)	6.50	\$470.00	\$3,055.00
Brent W. Landau (P)	2.50	\$550.00	\$1,375.00
Brent W. Landau (P)	0.60	\$560.00	\$336.00
Brent W. Landau (P)	0.40	\$630.00	\$252.00
Brent W. Landau (P)	0.20	\$690.00	\$138.00
Christopher L. Lebsock (P)	36.75	\$450.00	\$16,537.50
Christopher L. Lebsock (P)	640.40	\$520.00	\$333,008.00
Christopher L. Lebsock (P)	981.40	\$575.00	\$564,305.00
Christopher L. Lebsock (P)	720.20	\$650.00	\$468,130.00
Christopher L. Lebsock (P)	771.20	\$660.00	\$508,992.00
Christopher L. Lebsock (P)	759.50	\$670.00	\$508,865.00
Christopher L. Lebsock (P)	244.40	\$690.00	\$168,636.00
Christopher L. Lebsock (P)	75.10	\$710.00	\$53,321.00
Christopher L. Lebsock (P)	191.30	\$740.00	\$141,562.00
Christopher L. Lebsock (P)	639.70	\$850.00	\$543,745.00
Michael P. Lehmann (P)	33.75	\$695.00	\$23,456.25
Michael P. Lehmann (P)	260.55	\$800.00	\$208,440.00
Michael P. Lehmann (P)	267.60	\$880.00	\$235,488.00
Michael P. Lehmann (P)	46.70	\$925.00	\$43,197.50
Michael P. Lehmann (P)	9.00	\$930.00	\$8,370.00
Michael P. Lehmann (P)	26.30	\$935.00	\$24,590.50
Michael P. Lehmann (P)	42.00	\$950.00	\$39,900.00
Michael P. Lehmann (P)	15.00	\$985.00	\$14,775.00
Michael P. Lehmann (P)	733.10	\$1,100.00	\$806,410.00
Richard S. Lewis	4.00	\$750.00	\$3,000.00
Steig D. Olson (P)	3.50	\$470.00	\$1,645.00
Brian A. Ratner (P)	0.50	\$510.00	\$255.00
Brian A. Ratner (P)	1.50	\$630.00	\$945.00
Hilary K. Scherrer (P)	2.80	\$425.00	\$1,190.00
Hilary K. Scherrer (P)	0.40	\$470.00	\$188.00
Charles E. Tompkins (P)	19.75	\$440.00	\$8,690.00
Charles E. Tompkins (P)	2.00	\$505.00	\$1,010.00

In re Transpacific Passenger Air Transportation Antitrust Litigation

Case No. 07-cv-05634-CRB

NAME	TOTAL HOURS	HOURLY RATE	LODESTAR
Swathi Bojedla (A)	103.20	\$350.00	\$36,120.00
Swathi Bojedla (A)	99.00	\$370.00	\$36,630.00
Swathi Bojedla (A)	248.40	\$500.00	\$124,200.00
Swathi Bojedla (P)	0.30	\$610.00	\$183.00
Sathya Gosselin (P)	5.20	\$670.00	\$3,484.00
Seth A. Gassman (OC)	262.60	\$510.00	\$133,926.00
Seth A. Gassman (OC)	533.60	\$550.00	\$293,480.00
Seth A. Gassman (OC)	134.90	\$570.00	\$76,893.00
Seth A. Gassman (OC)	304.10	\$620.00	\$188,542.00
Seth A. Gassman (OC)	1175.00	\$730.00	\$857,750.00
Michael Schumacher (OC)	268.00	\$580.00	\$155,440.00
Michael Schumacher (OC)	29.50	\$600.00	\$17,700.00
Bruce Wecker (OC)	51.50	\$880.00	\$45,320.00
Gary Smith (A)	339.20	\$370.00	\$125,504.00
Gary Smith (A)	153.90	\$390.00	\$60,021.00
Gary Smith (A)	34.00	\$410.00	\$13,940.00
Gary Smith (A)	112.50	\$440.00	\$49,500.00
Gary Smith (A)	160.30	\$500.00	\$80,150.00
Stephanie Cho (A)	8.30	\$330.00	\$2,739.00
Stephanie Cho (A)	0.20	\$350.00	\$70.00
Stephanie Cho (A)	1.00	\$400.00	\$400.00
Stephanie Cho (A)	0.20	\$450.00	\$90.00
Andrea L. Hertzfeld (A)	35.75	\$295.00	\$10,546.25
Andrea L. Hertzfeld (A)	14.00	\$340.00	\$4,760.00
Spencer H. Jenkins (A)	0.30	\$290.00	\$87.00
Jeannine Kenney (A)	1.80	\$410.00	\$738.00
Kristen Ward (A)	10.60	\$325.00	\$3,445.00
Kristen Ward (A)	0.10	\$370.00	\$37.00
Michaela Spero (A)	501.10	\$420.00	\$210,462.00
Kiara Chavez (STA)	20.00	\$350.00	\$7,000.00
Caleigh Macdonald (STA)	107.90	\$400.00	\$43,160.00
Daniel Ulmer (FLR)	576.00	\$450.00	\$259,200.00
NON-ATTORNEYS			
Diane Bone (PL)	1.50	\$215.00	\$322.50
Diane Bone (PL)	145.85	\$275.00	\$40,108.75
Diane Bone (PL)	28.20	\$300.00	\$8,460.00
Candice Elder (PL)	76.90	\$275.00	\$21,147.50

In re Transpacific Passenger Air Transportation Antitrust Litigation

Case No. 07-cv-05634-CRB

NAME	TOTAL HOURS	HOURLY RATE	LODESTAR
Candice Elder (PL)	86.20	\$290.00	\$24,998.00
Candice Elder (PL)	74.30	\$300.00	\$22,290.00
Candice Elder (PL)	47.50	\$310.00	\$14,725.00
Candice Elder (PL)	4.70	\$320.00	\$1,504.00
Marilani Huling (PL)	0.60	\$300.00	\$180.00
Brian Lucas (PL)	6.00	\$230.00	\$1,380.00
Brian Lucas (PL)	0.50	\$255.00	\$127.50
William E. Lucina (PL)	5.50	\$230.00	\$1,265.00
James Mitchell (PL)	113.20	\$275.00	\$31,130.00
James Mitchell (PL)	0.50	\$300.00	\$150.00
James Mitchell (PL)	1.00	\$310.00	\$310.00
James Mitchell (PL)	10.00	\$340.00	\$3,400.00
James Mitchell (PL)	0.50	\$350.00	\$175.00
Elliot Robinson (PL)	0.60	\$275.00	\$165.00
Elliot Robinson (PL)	21.50	\$290.00	\$6,235.00
Elliot Robinson (PL)	28.50	\$300.00	\$8,550.00
Kristina Stubbs (PL)	4.00	\$250.00	\$1,000.00
Kristina Stubbs (PL)	2.90	\$275.00	\$797.50
Kristina Stubbs (PL)	1.00	\$300.00	\$300.00
Caitlin Dwelley (LC)	0.50	\$250.00	\$125.00
John Kim (LC)	3.20	\$325.00	\$1,040.00
Kelly Nguyen (PL)	4.50	\$270.00	\$1,215.00
Lesley Semones (PL)	16.60	\$320.00	\$5,312.00
Edward Sittler (PL)	179.00	\$280.00	\$50,120.00
Edward Sittler (PL)	5.20	\$340.00	\$1,768.00
Edward Sittler (PL)	3.70	\$350.00	\$1,295.00
Kenya McCune (PL)	30.70	\$280.00	\$8,596.00
Claudia Wu (PL)	57.00	\$270.00	\$15,390.00
TOTAL:	13977.55		\$8,555,919.50

In re Transpacific Passenger Air Transportation Antitrust Litigation

Case No. 07-cv-05634-CRB

(P) Partner
(OC) Of Counsel
(SA) Senior Associate
(A) Associate
(SPL) Senior Paralegal
(PL) Paralegal
(LC) Law Clerk
(STA) Staff Attorney
(FLR) Foreign Language
Reviewer

EXHIBIT 5

In re Transpacific Passenger Air Transportation Antitrust Litigation

Case No. 07-cv-05634-CRB

EXHIBIT 5**Summary of All Firm Hours and Lodestars**
March 28, 2008 through July 31, 2019

Firm Name	Cumulative Hours	Cumulative Lodestar	Previous Submissions ECF Nos.
Cotchett, Pitre & McCarthy, LLP	21,857.10	\$8,593,597.00	987-2 1229
Hausfeld LLP	13,977.55	\$8,555,919.50	988-2 1228-2
Andrus Anderson LLP	1,935.10	\$837,517.50	987-6 1228-6
Baker, Keener & Nahra, LLP	6.00	\$1,800.00	987-7
Berman Tabacco (f/k/a Berman DeValerio)	12.15	\$5,482.25	987-8
Cohen Mistein Sellers & Toll PLLC	1,672.50	\$634,900.00	987-9
Cuneo Gilbert & LaDuca LLP	117.50	\$61,362.50	987-10
Emerson Poynter LLP	595.20	\$190,478.00	987-11
Engstrom Lipscomb & Lack	427.40	\$255,447.50	987-12
Freed Kanner London Millen LLC	2,877.10	\$1,040,727.00	987-13
Girard Gibbs LLP	3,702.50	\$1,329,127.25	987-14 1228-7
Girardi Keese	52.00	\$38,450.00	987-15
Glancy Prongay & Murray LLP (f/k/a Glancy Binkow & Goldberg LLP)	224.65	\$115,327.50	987-16 1228-8
Grant & Eisenhofer P.A.	6,916.00	\$2,740,581.50	987-17 1228-9
Gross & Belsky P.C. (f/k/a Gross Belsky & Alonso LLP)	4,274.80	\$1,332,787.50	987-18 1228-10

In re Transpacific Passenger Air Transportation Antitrust Litigation

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Firm Name	Cumulative Hours	Cumulative Lodestar	Previous Submissions ECF Nos.
Gustafson Gluek PLLC	4,587.05	\$1,596,367.50	987-19 1228-11
Heins Mills & Olson, P.L.C.	1,442.80	\$489,865.00	987-20 1228-12
Kabateck LLP	302.00	\$65,632.00	987-21 1228-13
Kaplan Fox & Kilsheimer LLP	1,472.75	\$645,259.50	987-22
Kralowec Law, P.C.	36.90	\$15,221.00	987-41 1228-20
Labaton Sucharow LLP	43.30	\$21,357.00	987-23
Law Offices of Brian Barry	4,124.96	\$1,382,863.50	987-24
Law Offices of Sherman Kassof	72.30	\$32,835.00	987-25
Lite DePalma Greenberg, LLC	496.80	\$154,242.50	987-26 1228-14
Lockridge Grindal Nauen PLLP	2,814.75	\$874,493.75	987-27
Meredith Cohen Greenfogel & Skirnick P.C.	27.50	\$17,895.00	987-28
Milberg LLP	502.50	\$213,828.75	987-29
Minami Tamaki LLP	2,093.10	\$828,539.00	987-30 1228-15
Moscone Emblidge & Otis LLP	28.30	\$13,270.00	987-31
Nast-Law LLC	149.30	\$45,638.00	987-32
Pearson Simon & Warshaw LLP	1,137.00	\$467,565.00	987-33
Pomerantz LLP	3,327.35	\$1,073,263.50	987-34
Pritzker Levine LLP	1,067.70	\$527,404.25	987-35 1228-16
Reinhardt Wendorf & Blanchfield	4,678.00	\$1,570,421.25	987-36 1228-17
Robins Kaplan LLP	5,508.80	\$1,814,095.00	987-37

In re Transpacific Passenger Air Transportation Antitrust Litigation

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Firm Name	Cumulative Hours	Cumulative Lodestar	Previous Submissions ECF Nos.
Saveri & Saveri, Inc.	3,676.20	\$1,607,078.75	987-38 1228-18
Spector Roseman & Kodroff P.C.	4,432.50	\$1,810,747.00	987-39
Steyer Lowenthal Boodrookas Alvarez & Smith LLP	3,239.50	\$1,633,522.50	987-40 1228-19
Trump Alioto Trump & Prescott LLP	1,154.75	\$465,506.25	987-42 1228-21
Zelle LLP (f/k/a Zelle Hofmann Voelbel & Mason LLP)	3,972.50	\$2,052,106.00	987-43 1228-22
TOTAL:	109,036.16	\$45,152,522.00	

EXHIBIT 6

In re Transpacific Passenger Air Transportation Antitrust Litigation

Case No. 07-cv-05634-CRB

EXHIBIT 6**SUMMARY OF LITIGATION FUND EXPENSES****MARCH 28, 2008 – JULY 31, 2019****Expenses Incurred by the Litigation Fund = \$6,341,702.95***See below for litigation expenses broken down by category, vendor, and amount***Expenses Reimbursed to the Litigation Fund by the Court = \$4,984,604.31¹****Litigation Fund Expenses Sought for Reimbursement = \$1,357,098.64²**

VENDOR	TOTAL AMOUNT INCURRED
Court Reporters	
Belle Ball	\$15.30
Debra Pas	\$68.00
Dianne Skillman	\$223.34
Joanne Bryce	\$193.60
Joanne M. Farrell	\$11.00
Katherine Sullivan	\$56.70
Lydia R. Zinn	\$113.75
Marie Foley	\$106.11
MK Litigation Solutions (Marla Knox)	\$30.25
Raynee H. Mercado	\$86.45
Rhonda Aquilina	\$46.75
Ronald E. Tolkin	\$120.64
Sahar McVickar	\$146.70
Delivery / Service of Process / Court Filings	
A&A Legal Service	\$5,076.40
Bateman & Slade, Inc.	\$1,575.11
Capitol Processing Service	\$420.00

¹ \$4,984,604.31 is the sum of (1) the \$1,877,660.12 in litigation fund expenses that the Court awarded in connection with the first settlement round (ECF No. 1009), (2) the \$3 million in future litigation fund expenses that the Court awarded in connection with the first settlement round (*id.*), and (3) the \$106,944.19 in litigation fund expenses the Court awarded in connection with the second settlement round (ECF No. 1252).

\$4,984,604.31 excludes the \$930,039.61 in individual firm expenses that the Court awarded in connection with the first settlement round (ECF No. 1009) and the \$38,426.02 in individual firm expenses that the Court awarded in connection with the second settlement round (ECF No. 1252) because these expenses were incurred by the individual firms and not the litigation fund.

² \$1,357,098.64 is the amount of litigation fund expenses sought for reimbursement by Plaintiffs. \$1,357,098.64 is the difference between the expenses incurred by the litigation fund (\$6,341,702.95) and the expenses reimbursed to the litigation fund by the Court (\$4,984,604.31).

In re Transpacific Passenger Air Transportation Antitrust Litigation

Case No. 07-cv-05634-CRB

VENDOR	TOTAL AMOUNT INCURRED
Demovsky Lawyer Service	\$427.95
Massey & Gail LLP	\$17,850.00
Experts / Consultants	
Airline Information Research, Inc.	\$6,239.35
Airline Tariff Publishing Company	\$1,250.00
ECON One	\$311,971.55
Michael E. Levine	\$50,029.95
Michael F. Stone	\$24,621.08
Nathan Associates, Inc.	\$3,775,722.84
OSKR	\$272,827.95
Paul L. Gretch	\$20,000.00
RECON Research Corporation	\$30,600.00
Wiley Rein LLP	\$50,126.19
Document Review / Document Discovery	
D4 LLC	\$119,610.95
Digital One Legal Solutions	\$2,865.63
Encore Discovery	\$52,832.23
Epiq Ediscovery Solutions	\$517,935.35
Hard Drive	\$93.98
iDiscovery Solutions	\$41,984.00
Robert Taylor	\$12,153.75
Depositions	
Legalink, Inc	\$194,377.17
Merrill Brink International Corporation	\$58,731.75
Veritext Legal Solutions	\$20,922.54
Perfect Imaging & Document Management	\$7,696.17
Translations / Interpreting / Foreign Proceedings	
Authense Law Offices	\$7,712.78
California Translation International	\$62,357.33
Consortra Translations	\$62,447.79
Eiber Translations, Inc.	\$1,195.00
Global Interpreting Network	\$2,475.00
Minami Tamaki	\$7,097.49
Transperfect Translations International, Inc.	\$35,693.07
US Embassy, Tokyo, Japan	\$1,592.00
WongPartnership LLP	\$45,247.68
Mediation / Settlement Conferences	
Antonio Piazza / Mediated Negotiations	\$11,000.00
Federal Arbitration Inc.	\$20,301.00
JAMS	\$57,723.00

In re Transpacific Passenger Air Transportation Antitrust Litigation

Case No. 07-cv-05634-CRB

VENDOR	TOTAL AMOUNT INCURRED
The Law Offices of Kenneth R. Fienberg PC	\$37,524.00
Trial / Trial Prep	
Evidence Technologies	\$16,895.00
Hanzo Archives, Inc.	\$400.00
Meta E-Discovery LLC	\$750.00
Publication Notice	
Kinsella Media	\$368,289.00
Bank & Miscellaneous Fees	
All Shredding Corp	\$235.17
Donald Wortman	\$556.90
Good & Fowler	\$2,735.00
Harland Clarke Checks	\$165.26
Wire Transaction Fee	\$150.00
TOTAL	\$6,341,702.95

EXHIBIT 7

In re Transpacific Passenger Air Transportation Antitrust Litigation

Case No. 07-cv-05634-CRB

EXHIBIT 7

COTCHETT, PITRE & McCARTHY, LLP

Expenses Incurred

May 17, 2018 – July 31, 2019

EXPENSE CATEGORY	AMOUNT INCURRED
Court Costs (Filing fees, etc.)	\$ 0.00
Computer Research (Lexis, Westlaw, PACER, etc.)	\$1,133.74
Document Production	\$ 329.34
Experts / Consultants	\$ 0.00
Messenger Delivery	\$ 0.00
Photocopies – In House	\$ 807.20
Photocopies – Outside	\$ 0.00
Postage	\$ 23.11
Service of Process	\$ 0.00
Special Master	\$ 0.00
Overnight Delivery (Federal Express, etc.)	\$ 195.85
Telephone / Facsimile	\$ 17.97
Transcripts (Hearings, Depositions, etc.)	\$ 0.00
Travel (Airfare and Ground Travel)	\$2,760.87
Travel (Meals and Lodging)	\$2,269.04
TOTAL:	\$7,537.12

EXHIBIT 8

In re Transpacific Passenger Air Transportation Antitrust Litigation

Case No. 07-cv-05634-CRB

EXHIBIT 8

HAUSFELD LLP

Expenses Incurred

May 17, 2018 – July 31, 2019

EXPENSE CATEGORY	AMOUNT INCURRED
Court Costs (Filing fees, etc.)	\$0
Computer Research (Lexis, Westlaw, PACER, etc.)	\$10,533.91
Document Production	\$0
Experts / Consultants	\$0
Messenger Delivery	\$0
Photocopies – In House	\$756.72
Photocopies – Outside	\$0
Postage	\$0
Service of Process	\$0
Special Master	\$0
Overnight Delivery (Federal Express, etc.)	\$1,964.18
Telephone / Facsimile	\$809.20
Transcripts (Hearings, Depositions, etc.)	\$143.40
Travel (Airfare and Ground Travel)	\$11,746.00
Travel (Meals and Lodging)	\$17,309.31
TOTAL:	\$43,262.72

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

**IN RE TRANSPACIFIC PASSENGER
AIR TRANSPORTATION
ANTITRUST LITIGATION**

Case No. 3:07-cv-05634-CRB

MDL No. 1913

This Document Relates To:

ALL ACTIONS

**DECLARATION OF RICHARD M. PEARL
IN SUPPORT OF PLAINTIFFS' MOTION
FOR AWARD OF ATTORNEYS' FEES AND
REIMBURSEMENT OF EXPENSES**

Hearing Date: October 18, 2019

Judge: Hon. Charles R. Breyer

Time: 10:00 a.m.

Courtroom: 6, 17th Floor

1 I, Richard M. Pearl, declare:

2 1. I am a member in good standing of the California State Bar. I am in private practice
3 as the principal of my own law firm, the Law Offices of Richard M. Pearl, in Berkeley, California.
4 I specialize in issues relating to court-awarded attorneys' fees, including the representation of
5 parties in fee litigation and appeals, serving as an expert witness, and serving as a mediator and
6 arbitrator in disputes concerning attorneys' fees and related issues. In this case, I have been asked
7 by Co-Lead Class Counsel for the Plaintiff Classes to render my opinion on the reasonableness
8 of the percentage-based fee they are seeking from the most recent settlement fund of \$58 million
9 ("Settlement Fund"). Specifically, I understand that Co-Lead Class Counsel and other
10 participating firms (together, "Class Counsel") are seeking 33% of the net of the Settlement Fund,
11 and I conclude that such an amount would constitute a more than reasonable fee award in this
12 case. Moreover, if Class Counsel are awarded 33% of the net settlement fund of \$58 million, I
13 also review their overall fees in the Action to determine if they constitute a reasonable percentage
14 of the overall settlement fund of \$148,152,000.00. Finally, I render an opinion on the
15 reasonableness of the lodestar they have submitted to the Court, while recognizing that this
16 lodestar amount is merely as a cross-check against the percentage-based fee Class Counsel have
17 requested.
18

19 **I. Professional Background**

20 2. Briefly summarized, my background is as follows: I am a 1969 graduate of Boalt
21 Hall School of Law, University of California, Berkeley, California. I took the California Bar
22 Examination in August 1969 and passed it in November of that year, but because I was working
23 as an attorney in Atlanta, Georgia for the Legal Aid Society of Atlanta (LASA), I was not admitted
24 to the California Bar until January 1970. I worked for LASA until the summer of 1971, when I
25 then went to work in California's Central Valley for California Rural Legal Assistance, Inc.
26 (CRLA), a statewide legal services program. From 1977 to 1982, I was CRLA's Director of
27 Litigation, supervising more than fifty attorneys. In 1982, I went into private practice, first in a
28

1 small law firm, then as a sole practitioner. Since 1982, my practice has been a general civil
 2 litigation and appellate practice, with an emphasis on cases and appeals involving court-awarded
 3 attorneys' fees. Martindale Hubbell rates my law firm "AV." I also have been selected as a
 4 Northern California "Super Lawyer" in Appellate Law for 2005 through 2019. A copy of my
 5 current Resumé is attached hereto as Exhibit 1.

6 3. I am the author of *California Attorney Fee Awards* (3d ed. Cal. CEB 2010) and its
 7 annual supplements published since February 2011, including its March 2019 Supplement. I also
 8 authored all its previous editions and annual supplements. California appellate courts have cited
 9 this treatise on more than 35 occasions. *See, e.g., Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th
 10 553, 576, 584 (2004); *Lolley v. Campbell*, 28 Cal. 4th 367, 373 (2002); *Chacon v. Litke*, 181 Cal.
 11 App. 4th 1234, 1259 (2010); *Syers Properties III, Inc. v. Rankin*, 226 Cal. App. 4th 691, 698, 700
 12 (2014). I also have lectured and written extensively on court-awarded attorneys' fees. I have been
 13 a member of the California State Bar's Attorneys' Fees Task Force and have testified before the
 14 State Bar Board of Governors and the California Legislature on attorneys' fee issues. In addition,
 15 I authored a federal manual on attorneys' fees entitled *Attorneys' Fees: A Legal Services Practice*
 16 *Manual*, published by the Legal Services Corporation. I also co-authored the chapter on "Attorney
 17 Fees" in Volume 2 of CEB's *Wrongful Employment Termination Practice*, 2d Ed. (1997).

19 4. More than 90% of my practice is devoted to issues involving court-awarded
 20 attorneys' fees. I have been counsel in over 200 attorneys' fee applications in state and federal
 21 courts, primarily representing other attorneys. I also have briefed and argued more than 40
 22 appeals, at least 25 of which have involved attorneys' fees issues. I have been lead appellate
 23 counsel on numerous Ninth Circuit appeals involving attorneys' fees, including:

- 24 • *Davis v. City & County of San Francisco*, 976 F.2d 1536 (9th Cir. 1992);
- 25 • *Mangold v. CPUC*, 67 F.3d 1470 (9th Cir. 1995);
- 26 • *Velez v. Wynne*, 220 Fed. Appx. 512 (9th Cir. 2007);
- 27 • *Camacho v. Bridgeport Financial, Inc.*, 523 F.3d 973 (9th Cir. 2008);
- 28

- *Guerrero v. Cal. Dept. of Corrections etc.*, 701 Fed. Appx. 613 (9th Cir. 2017); and
- *Orr v. Brame*, 727 Fed. App'x. 265 (9th Cir. 2018).

5. I also have successfully handled five cases in the California Supreme Court involving court-awarded attorneys' fees:

- *Maria P. v. Riles*, 43 Cal. 3d 1281 (1987), a landmark early decision on the scope of California Code of Civil Procedure section 1021.5;
- *Delaney v. Baker*, 20 Cal. 4th 23 (1999), which held that heightened remedies, including attorneys' fees, are available in suits against nursing homes under California's Elder Abuse Act;
- *Ketchum v. Moses*, 24 Cal. 4th 1122 (2001), which held, *inter alia*, that contingent risk multipliers remain available under California attorney fee law, despite the United States Supreme Court's contrary ruling on federal fee-shifting statutes (in *Ketchum*, I was primary appellate counsel in the Court of Appeal and "second chair" in the Supreme Court);
- *Flannery v. Prentice*, 26 Cal. 4th 572 (2001), which held that in the absence of an agreement to the contrary, statutory attorneys' fees belong to the attorney whose services they are based upon; and
- *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 55 (2004), which held, *inter alia*, that the "catalyst" theory was still valid under California law despite contrary federal Supreme Court authority.

I also represented and argued on behalf of *amicus curiae* in *Conservatorship of McQueen*, 59 Cal. 4th 602 (2014), and, along with Richard Rothschild, filed an *amicus curiae* brief in *Vasquez v. State of California*, 45 Cal. 4th 243 (2009).

6. I also have briefed and argued many California Court of Appeal cases involving attorneys' fees, including:

- *Robles v. Emp't Dev. Dep't*, __ Cal. App. 5th __, 2019 Cal. App. LEXIS 704 (2019);

- 1 • *Heron Bay Home Owners Assn. v. City of San Leandro*, 19 Cal. App. 5th 376 (2018);
- 2 • *Center for Biological Diversity v. County of San Bernardino*, 185 Cal. App. 4th 866
- 3 (2010);
- 4 • *Environmental Protection Information Center v. California Dept. of Forestry & Fire*
- 5 *Protection, et al.*, 190 Cal. App. 4th 217 (2010); and
- 6 • *Molina et al v. Lexmark International, et al.*, No. B227746, 2013 Cal. App. Unpub. LEXIS
- 7 6684 (Cal. App. 2d Dist. Sept. 19, 2013).

8 For an expanded list of my representative decisions, *see* Exhibit 1.

9 7. I have been retained by various governmental entities, including the State of
10 California, to consult with them regarding their affirmative attorney fee claims. *See, e.g., In re*
11 *Tobacco Cases I*, 216 Cal. App. 4th 570, 584 (2013).

12 8. I am frequently called upon to opine about the reasonableness of attorneys' rates
13 and fees, and numerous federal and state courts have cited my testimony on that issue favorably.
14 Perhaps most notably, my declaration testimony was cited favorably in:

- 16 • Report and Recommendation of Special Master re Motions for Attorneys' Fees and Other
17 Amounts by Indirect-Purchaser Class Plaintiffs and State Attorneys General, *In re TFT-*
18 *LCD (Flat Panel) Antitrust Litig.*, No. 3:07-md-01827 (N.D. Cal. Nov. 9, 2012), ECF No.
19 7127, *adopted in relevant part*, 2013 U.S. Dist. LEXIS 49885 (N.D. Cal. Apr. 1, 2013).
- 20 • Report And Recommendation Of Special Master Re Motions (1) To Approve Indirect
21 Purchaser MGHC's Settlements With the Phillips, Panasonic, Hitachi, Toshiba, Samsung
22 SDI, Technicolor, And Technologies Displays Americas Defendants, and (2) For Award
23 Of Attorneys' Fees, Reimbursement Of Litigation Expenses, And Incentive Awards To
24 Class Representatives, *In re Cathode Ray Tube Antitrust Litig.*, No. 3:07-cv-5944 JST,
(N.D. Cal. Jan. 28, 2016), ECF. No. 4351, *adopted in relevant part*, 2016 U.S. Dist.
LEXIS 88665 (N.D. Cal. July 7, 2016).

My declaration testimony also has been cited favorably by the following federal courts:

- 25 • *Prison Legal News v. Schwarzenegger* 608 F.3d 446, 455 (9th Cir. 2010), in which the
26 expert declaration referred to is mine;
- 27 • *Antoninetti v. Chipotle Mexican Grill, Inc.*, 08-55867 (9th Cir. filed Dec. 26, 2012);

- 1 • *Gutierrez v. Wells Fargo Bank*, No. C 07-05923 WHA, 2015 U.S. Dist. LEXIS 67298 (N.D. Cal. May 21, 2015);
- 2 • *Holman et al v. Experian Information Solutions, Inc.*, No. 11-cv-0180 CW (DMR), 2014
- 3 U.S. Dist. LEXIS 173698 (N.D. Cal. Dec. 12, 2014);
- 4 • *Rosenfeld v. United States Dept. of Justice*, 904 F. Supp. 2d 988 (N.D. Cal. 2012);
- 5 • *Stonebrae v. Toll Bros.*, No. C-08-0221 EMC, 2011 U.S. Dist. LEXIS 39832, at *9 (N.D.
- 6 Cal. Apr. 7, 2011) (thorough discussion), *aff'd* Nos. 11-16161, 11-16274, 2013 U.S. App.
- 7 LEXIS 6369 (9th Cir. 2013);
- 8 • *Hajro v. United States Citizenship & Immigration Service*, 900 F. Supp. 2d 1034, 1054
- 9 (N.D. Cal. 2012);
- 10 • *Wren v. RGIS Inventory Specialists*, No. C-06-05778 JCS, 2011 U.S. Dist. LEXIS 38667
- 11 (N.D. Cal. Apr. 1, 2011);
- 12 • *Armstrong v. Brown*, No. C 94-2307 CW, 2011 U.S. Dist. LEXIS 87428 (N.D. Cal. Apr.
- 13 8, 2011);
- 14 • *Californians for Disability Rights, Inc. v. California Dept. of Transportation*, No. C 06-
- 15 05125 SBA (MEJ), 2010 U.S. Dist. LEXIS 141030 (N.D. Cal. Dec. 13, 2010);
- 16 • *Prison Legal News v. Schwarzenegger*, 561 F. Supp. 2d 1095 (N.D. Cal. 2008) (an earlier
- 17 motion);
- 18 • *Oberfelder v. City of Petaluma*, No. C-98-1470 MHP, 2002 U.S. Dist. LEXIS 8635 (N.D.
- 19 Cal. Jan. 29, 2002), *aff'd* Nos. 01-17302, 02-15423, 67 Fed. Appx. 408 (9th Cir. 2003);
- 20 • *Bancroft v. Trizechahn Corp.*, No. CV 02-2373 SVW (FMOx), 2006 U.S. Dist. LEXIS
- 21 100929 (C.D. Cal. Aug. 14, 2006) (Order Granting Reasonable Attorneys' Fees etc.);
- 22 • *Willoughby v. DT Credit Corp.*, No. CV 05-05907 MMM (Cwx), (C.D. Cal. July 17, 2006)
- 23 Order Awarding Reasonable Attorneys' Fees After Remand;
- 24 • *A.D. v. California Highway Patrol*, No. C 07-5483 SI, 2009 U.S. Dist. LEXIS 110743
- 25 (N.D. Cal. Nov. 10, 2009), *rev'd on other grounds*, 712 F.3d 446 (9th Cir. 2013),
- 26 *reaffirmed and additional fees awarded on remand*, at 2013 U.S. Dist. LEXIS 169275
- 27 (N.D. Cal. Nov. 27, 2013);
- 28 • *National Federation of the Blind v. Target Corp.*, No. C 06-01802 MHP, 2009 U.S. Dist.
- LEXIS 67139 (N.D. Cal. Aug. 3, 2009).

9. The reported cases referencing my testimony also include the following California appellate court cases:

- *Laffitte v. Robert Half International Inc.*, 231 Cal. App. 4th 860 (2014) (vacated on grant of review);
- *In re Tobacco Cases I*, 216 Cal. App. 4th 570 (2013);
- *Heritage Pacific Financial LLC v. Monroy*, 215 Cal. App. 4th 972, 1009 (2013);
- *Children's Hospital & Medical Center v. Bonta*, 97 Cal. App. 4th 740 (2002);
- *Wilkinson v. South City Ford*, Nos. A125299, A126329, A126325, 2010 Cal. App. Unpub. LEXIS 8680 (Cal. App. 1st Dist. Oct. 29, 2010);
- *Church of Scientology v. Wollersheim*, 42 Cal. App. 4th 628 (1996).

10. In addition, numerous trial courts have relied upon my testimony in unpublished fee orders. See, e.g., *Kaku v. City of Santa Clara*, No. 17CV319862, 2019 WL 331053 (Cal. Super. Jan. 22, 2019).

II. Class Counsel's Request for A Fee of Up to 33% of the Net ANA Settlement Fund Is Reasonable

11. In this Action, I have been asked by Co-Lead Class Counsel to express my opinion as to the reasonableness of their requested percentage-based fee of up to 33% of the net Settlement Fund¹ from the final \$58 million settlement in this matter and the lodestar they have presented as a cross-check. To form this opinion, I have reviewed numerous documents in the Action, including: the Court's previous orders with respect to fees; select documents from Class Counsel's previous fee petitions, which included information on lodestar, rates, and fees, as well as the Joint Declaration concurrently filed herewith; the preliminary approval papers related to the most recent settlement; and certain documents related to the substance of the Action, such as

¹ I understand from Class Counsel and from published opinions that this Court typically awards attorneys' fees based on the net settlement fund rather than the gross settlement fund. Based on the Court's practice, I have tailored my opinion to address Class Counsel's request for 33% of the common fund after a deduction for reimbursement of expenses.

1 Plaintiffs' Ninth Circuit brief following this Court's summary judgment opinion related to the
2 filed rate doctrine. I also have communicated about the Action with Mr. Gassman, Mr. Lebsock,
3 Mr. Zapala and other Class Counsel.

4 12. It is my understanding that Class Counsel request a common fund attorneys' fee
5 award of \$18,647,081.15, which equates to 33% of the net \$58 million settlement fund provided
6 by the Settlements in this matter, assuming the requested reimbursement of litigation expenses is
7 granted in full. I also have been informed that Class Counsel's lodestar, using historical rates, is
8 \$45,152,522.00, and therefore the fee requested of \$18,647,081.15 plus the prior fee awards of
9 \$20,038,071.51 equate to a *negative* multiplier of 0.86 on this lodestar. I also understand that the
10 two prior fee awards in this Action have awarded class counsel a total of \$20,038,071.51 on what
11 was then a total settlement fund of \$90,152,000.

12 13. In my opinion, an attorneys' fee award of 33% from a \$58 million fund is well
13 within the range of reasonable fee awards in comparable federal class actions and also constitutes
14 a reasonable fee in this Action given the factors outlined below. For common fund fee applications
15 like this one, district courts in the Ninth Circuit have the discretion to use either the lodestar
16 method or the percentage-of-the-fund method in common fund cases. *See Paul, Johnson, Alston*
17 *& Hunt v. Grawlty*, 886 F.2d 268, 272 (9th Cir. 1989). In light of the well-recognized
18 disadvantages of the lodestar method and the well-recognized advantages of the percentage-of-
19 the-fund method (*see* Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little?*, 158 U.
20 Pa. L. Rev. 2043, 2051 (2010) [hereinafter "Class Action Lawyers"]), it is my opinion that courts
21 should generally use the percentage-of-the-fund method in common fund cases unless special
22 circumstances counsel otherwise (*e.g.*, the settlement calls for non-monetary relief that is more
23 substantial than the monetary relief but the non-monetary relief cannot be fairly valued). This
24 Court has previously found the percentage-of-the fund method appropriate when approving
25 Plaintiffs' two prior fee motions, and there do not appear to be any special circumstances that
26 have occurred since those awards to change course.
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14. Courts usually examine a number of factors when deciding what percentage to award plaintiffs' counsel under the percentage-of-the-fund approach. *See* Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical L. Stud. 811, 832 (2010) [hereinafter "Empirical Study"]. In the Ninth Circuit, courts use 25% as the "'benchmark' percentage for the fee award," which "can then be adjusted upward or downward to account for any unusual circumstances involved in the case." *Paul, Johnson, Alston & Hunt v. Graulity, supra*, 886 F.2d at 272; *see also Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990) (stating that the 25% benchmark percentage "should be adjusted . . . when special circumstances indicate that the percentage recovery would be either too small or too large in light of the hours devoted to the case or other relevant factors"). But, as the Ninth Circuit has held, the 25% benchmark is only "a starting point" for the analysis. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 955 (9th Cir. 2015).

15. In this Action, this Court previously approved an attorney fee award of 28.6% from a net settlement fund of \$31,181,800.27 for the first fee motion (*see* ECF No. 1009),² and 22.54% from a net settlement fund of \$48,970,485.79 for the second fee motion (*see* ECF No. 1252).³ Plaintiffs now ask for an attorney fee award of 33% of the net settlement fund for the ANA Settlement Fund. If this amount were to be granted, the total fees awarded for this action would amount to \$38,685,152.66, or only 26.11% of the overall gross amount recovered of \$148,152,000.00 or 28.31% of the overall net settlement fund recovered in the case (\$136,658,592.58), assuming the costs as requested are approved for the Round 3 settlement.

² For the Round 1 settlements, the gross settlement fund was \$39,502,000. The Court calculated a net settlement fund of \$31,181,800.27, with deductions for court awarded expenses in the amount of \$2,807,699.73, notice and claims administration costs of \$2,400,000, a future expense fund of \$3,000,000, and class representative incentive awards totaling \$112,500.

³ For the Round 2 settlements, the gross settlement fund was \$50,650,000. The Court calculated a net settlement fund of \$48,970,485.79, with deductions for court awarded expenses in the amount of \$145,370.21, notice and claims administration costs of \$1,531,644.00, and a class representative incentive award of \$2,500.

16. In my opinion, a fee that exceeds the 25% benchmark is reasonable for this settlement, and a total fee that represents 28.31% of the overall net settlement fund recovered for the entire Action is reasonable. In this District, many courts have concluded that the benchmark is actually closer to 30% *of the gross amount recovered*. See, e.g., *In re Activision Secs. Litig.*, 723 F. Supp. 1373, 1377 (N.D. Cal. 1989) (observing that “the benchmark is closer to 30%” and that the fee award in common fund cases “almost always hovers around 30% of the fund created by the settlement”); *In re Omnivision Technologies*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008) (Conti, J.) (“in most common fund cases, the award exceeds [the 25%] benchmark.”). Accordingly, a fee equal to 33% of the net Settlement Fund is more than reasonable here.

17. The Ninth Circuit has identified several factors that district courts may examine in deciding whether to increase or decrease an award from the benchmark, including:

- a. The results achieved by Class Counsel. See *Six Mexican Workers*, 904 F.2d at 1311; *Vizcaino, v. Microsoft Corp.*, 290 F.3d 1043, 1048 (9th Cir. 2002);
- b. The complexity of the case. See *Six Mexican Workers*, 904 F.2d at 1311; *In re Pacific Enters. Securities Litig.*, 47 F.3d 373, 379 (9th Cir. 1995);
- c. The risks the case involved. See *In re Pacific Enters. Securities Litig.*, 47 F.3d at 379; *Vizcaino*, 290 F.3d at 1048-49;
- d. The length of time the case has transpired. See *Six Mexican Workers*, 904 F.2d at 1311; *Vizcaino*, 290 F.3d at 1050;
- e. The non-monetary benefits obtained by Class Counsel. See *In re Pacific Enters. Securities Litig.*, 47 F.3d at 379; *Vizcaino*, 290 F.3d at 1049; *Staton v. Boeing*, 327 F.3d 938, 946 (9th Cir. 2003).
- f. The percentages awarded in other class action cases. See *Vizcaino*, 290 F.3d at 1050;
- g. The percentages in standard contingency-fee agreements in similar individual cases. See *id.* at 1049; and

1 h. Plaintiffs' counsel's lodestar. *See id.* at 1050-51.

2 18. In my opinion, an award of 33% of the net Settlement Fund from the most recent
3 settlement here is well within the range of reasonable fee awards under the Ninth Circuit's
4 approach because all of the above factors strongly suggest that the award here should exceed the
5 25% benchmark, and fees of 33% are commonly awarded. I base that opinion on the following
6 factors:

7 19. **The Exceptional Results Obtained.** In the legal marketplace, law firms that
8 obtain excellent or exceptional results for their clients can and do expect that those exceptional
9 results will be reflected in their fees. Here, the results obtained are certainly exceptional: after
10 nearly 12 years of litigation, much of it very intensive with multiple trips to the Ninth Circuit,
11 counsel have achieved over \$148 *million* in settlements, including \$58 million in this stage alone.
12 These funds are non-reversionary and provide direct and substantial compensation to class
13 members injured by Defendants' alleged misconduct. In my view, comparing these exceptional
14 results to the relief obtained in more typical class actions (*e.g.*, wage and hour and securities class
15 actions) provides strong support for adjusting the benchmark percentage upward to 33% of the
16 final \$58 million settlement.

17 20. **The Exceptional Novelty, Difficulty and Complexity of the Litigation.** As the
18 Court is aware, both the legal and factual issues here were quite novel, difficult, and complex.
19 Those complexities are amply described in Plaintiffs' Motion for Award of Attorneys' Fees and
20 Reimbursement of Expenses, the Memorandum in Support, and the Joint Declaration
21 concurrently filed herewith (together, "Motion") and will not be repeated here. Suffice it to say
22 that they go far beyond the complexities found in the vast majority of cases, class actions or
23 otherwise, a factor that also strongly justifies an upward adjustment from the 25% benchmark.

24 21. **The Extraordinary Risk Taken by Class Counsel.** In the legal marketplace,
25 lawyers who assume a significant financial risk on behalf of their clients rightfully expect that
26 their compensation will be significantly greater than it would be if no risk or delay were involved,
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1 *i.e.*, under the traditional arrangement where the client is obligated to pay for costs and fees
 2 incurred on a monthly basis, win or lose. In my experience, attorneys are willing to take on such
 3 contingent fee cases only if they can expect to receive significantly higher effective hourly rates
 4 in successful cases, particularly in cases that are expected to be hard-fought and where the result
 5 is uncertain, as was the case here. As a result, in common fund cases, the risk taken by Class
 6 Counsel can and should be a significant factor in computing what percentage of the fund to award.
 7 *See, e.g., Allapattah Servs. Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 2004-05 (S.D. Fla. 2006)
 8 (“Factors indicating ‘exceptional success’ include success achieved under unusually difficult or
 9 risky circumstances and the size of plaintiffs’ recovery.” [Citation omitted].) As the courts have
 10 recognized, fee awards that compensate for risk do not result in any “windfall” or undue “bonus”
 11 for the attorney. Rather, the fees awarded are *earned compensation*, reflecting the need for the
 12 legal services market to compensate for the risk of non-payment for what can be thousands of
 13 hours of time spent and many thousands of dollars in costs and expenses advanced. Court-
 14 awarded fees that reflect that risk of loss simply make such representation competitive in the legal
 15 marketplace. *See Ketchum v. Moses*, 24 Cal. 4th 1122, 1132-1138 (thorough discussion of risk
 16 multipliers).

17
 18 22. Several factors made this Action especially high risk:

- 19 a. The financial risk was staggering. Over a 12-year period, Class Counsel’s
 20 law firms have worked approximately 109,036.16 *hours*, all on a
 21 contingent fee basis. This is a tremendous commitment, much higher than
 22 in most cases, and consequently, one that imposed an exceptionally high
 23 risk. If this Action had not been successful—if interim settlements had not
 24 been obtained—and Plaintiffs had been required to try the Action against
 25 all the Defendants and lost, Class Counsel would have lost far more than
 26 their total \$45,152,522.00 lodestar and their \$6,341,702.95 in out-of-
 27 pocket expenses. That is especially true given that Class Counsel’s lodestar
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1 is *less* than the requested fee, meaning that even with a 33% fee,
2 \$6,467,369.34 in billable hours will go uncompensated.

3 b. The legal obstacles were formidable. As explained in the Motion, the
4 difficulties and uncertainties of winning this Action, in terms of unsettled
5 antitrust law, unsettled affirmative defenses (including the application of
6 the filed-rate doctrine, which posed a case dispositive risk to the Plaintiffs);
7 unsettled class certification law, and difficult obstacles to obtaining foreign
8 discovery and facts necessary to demonstrate collusion, were far greater
9 than in most class actions.

10 c. The Defendants—many of whom constitute some of the largest airlines in
11 the world—had far more resources to resist a suit of this nature than Class
12 Counsel had to prosecute it. Accordingly, Defendants were able to employ
13 highly competent lawyers from many preeminent law firms to mount an
14 aggressive defense.

15 d. Settlement of the Action came only after extensive, hard-fought litigation
16 over discovery, class certification, and the merits, including preparation for
17 a lengthy trial. Contingent cases that must be tried or prepared for trial are
18 always far riskier than cases that settle earlier in the process. That is why
19 contingent fee agreements in the private marketplace often call for higher
20 percentages in cases that must be tried or prepared for trial; the same
21 principle applies here.

22
23 All of these facts show the extraordinary risk taken by Class Counsel. And, while in most
24 successful common fund cases, prevailing counsel receive a lodestar *enhancement* for this type
25 of risk, often up to 3-4 times, in this Action, a 33% fee will not even compensate counsel for their
26 entire lodestar. This factor alone justifies a significant increase from the 25% benchmark. See ¶
27 35 *infra*.
28

23. **Percentage-Fees Approved in Other Cases.** A fee of 33% also is squarely in line with the range of reasonable attorneys' fees awarded in other cases involving similar funds in California and across the nation. *See, e.g.,*:

- a. *In re Pacific Enter. Sec. Litig.*, 47 F.3d 373 (9th Cir. 1995) (affirming 33-percent fee award in shareholder derivative action) (cited with approval in *Espinosa v. Ahearn (In re Hyundai & Kia Fuel Econ. Litig.)*, 926 F.3d 539, 571 (9th Cir. 2019) (*en banc*));
- b. *In re Vitamins Antitrust Litig.*, MDL 1285, 2001 WL 34312839, at *10 (D.D.C. July 16, 2001) (34.06% of \$359,438,032);
- c. *In Re IPO Secs. Litig.*, 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (33.3% of \$510,253,000);
- d. *In re Combustion, Inc.*, 968 F. Supp. 1116, 1136, 1142 (36% of \$127,396,000);
- e. *In re Apollo Group, Inc. Secs. Litig.*, No. 04-2147, 2012 WL 1378677, at *7 (D. Ariz. Apr. 20, 2012) (33% of \$145 million);
- f. *Allapattah Servs. v. Exxon*, 454 F. Supp. 2d at 1189 (31.33% of \$1.075 billion).

24. Surveys of class action recoveries nationwide also confirm that the fee requested by Class Counsel here is reasonable. According to Professor Fitzpatrick's empirical study, the most common percentages awarded by all federal courts in 2006 and 2007 using the percentage-of-the-fund method were 25%, 30%, and 33%, with nearly two-thirds of awards between 25% and 35%. *See* Fitzpatrick, *Empirical Study, supra*, at 833-34, 838. Professor Fitzpatrick also studied 111 settlements in the Ninth Circuit where the percentage-of-the-fund method was used, and the resulting numbers were quite similar: the most common percentages were also 25%, 30%, and 33%, with the vast majority of awards also between 25% and 35%. *Ibid.* Likewise, a 1999 analysis of 1,349 shareholder class actions conducted by National Economic Research Associates

1 concluded that “[f]ee amounts average approximately 32 percent of the settlement award.” D.
 2 Martin, V. Juneja, T. Foster and F. Dunbar, *Recent Trends IV: What Explains Filings and*
 3 *Settlements in Shareholder Class Actions*, 5 Stan. J. L. Bus. & Fin. 121.

4 25. Surveys of applicable reported fee decisions in California and throughout the
 5 United States, as well as studies of both reported and unreported decisions, also demonstrate that
 6 common fund awards of 30% or more have become frequent if not commonplace. Placed within
 7 this broader context, a fee of 33% of the net fund for this long, heavily contested but highly
 8 successful matter is certainly reasonable. It is all the more reasonable when considering that
 9 should this fee award be granted, the total fee awards will amount to a blended rate of 28.31% of
 10 the overall net settlement funds. All of the foregoing cases and authorities support the idea that
 11 such an overall percentage is eminently fair and reasonable.

12 26. **Percentages Used in Private Fee Arrangements.** One object of a common fund
 13 award is to set a fee that approximates the probable terms of a contingent fee contract negotiated
 14 by sophisticated lawyers and clients in comparable private litigation, as evidenced by the terms
 15 of such contingent fee contracts. *See Silver, A Restitutionary Theory of Attorneys’ Fees in Class*
 16 *Actions* (1991) 76 Cornell L.Rev. 656, 702-703 (goal “is to pay attorneys on terms they would
 17 probably accept in an ex ante bargain, before the outcome of litigation is known”). Private
 18 contingent fee agreements in personal injury and other types of cases usually provide for fees of
 19 33-40%, with the higher percentages applied to cases resolved through litigation rather than early
 20 settlement. *See, e.g.,* Lester Brickman, *ABA Regulation of Contingency Fees: Money Talks, Ethics*
 21 *Walks*, 65 Fordham L. Rev. 247, 248 (1996) (noting that “standard contingency fees” are “usually
 22 thirty-three percent to forty percent of gross recoveries” [emphasis omitted]); Herbert M. Kritzer,
 23 *The Wages of Risk: The Returns of Contingency Fee Legal Practice*, 47 DePaul L. Rev. 267, 286
 24 (1998) (reporting the results of a survey of Wisconsin lawyers, which found that “[o]f the cases
 25 with a [fee calculated as a] fixed percentage [of the recovery], a contingency fee of 33% was by
 26 far the most common, accounting for 92% of those cases”).
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1 27. Class Counsel's fee request is well within that range. Here, it is beyond any
2 reasonable dispute that that if Class Counsel had been able to negotiate a fee directly with the
3 class members, a 33% contingent fee would have been eminently reasonable for this complex
4 Action. Given the prospective risks and difficulties of this Action, as well as the legal obstacles
5 this Action encountered until it was finally settled, for a class member to obtain representation at
6 no cost unless counsel was successful, and then at a cost of only 33% of the net fund recovered,
7 would have been quite reasonable. This is especially true given the willingness of Class Counsel's
8 law firms to advance approximately 109,036.16 hours of time spent on the Action and
9 \$6,341,702.95 in costs, with no hope of recovering anywhere near all of those funds unless the
10 Action was successful.

11 28. Moreover, this settlement has taken longer to achieve than the previous two, not
12 settling until approximately a month before trial and after significant time had been spent on trial
13 preparation. In the private legal marketplace, attorneys reasonably expect and contract for higher
14 percentage fees for cases that do not settle until this late stage; *i.e.*, a standard arrangement is 25%
15 for pre-trial preparation settlements, 30-35% if trial preparation has had to be done, and 40-50%
16 for relief obtained at trial. A 33% fee here is perfectly consistent with this practice.

17 29. I have reviewed extensive evidence of the contingency fee percentages charged by
18 law firms to sophisticated institutional clients in large damage cases. In my experience, when
19 corporate or government clients hire law firms to litigate large claims on a contingent fee basis,
20 the contracts provide for fees that range up to 50 percent of the recovery. *See Fisk, Corporate*
21 *Firms Try Contingency*, National Law Journal (Oct. 27, 1997) p. A-1. Based on that knowledge
22 and my experience in the attorneys' fees field generally, it is my opinion that if competent and
23 experienced attorneys and a sophisticated client were to negotiate a contingency fee agreement
24 under the circumstances of this Action, a sophisticated client would be more than willing to enter
25 into a retainer agreement for a contingent fee under which: a) the client would owe no fees unless
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1 the case was successful; b) the attorneys would pay all litigation expenses; and c) the attorneys
2 would recover, if successful, 33% of the total net fund recovered.

3 30. Other factors also support a percentage-based fee that is higher than the benchmark
4 of 25%:

5 31. **The Continuing Obligations of Counsel to the Classes.** Class Counsel's 33%
6 fee also is supported by the fact that a 33% fee award will compensate not only the work already
7 performed but also for future work as well, *i.e.*, their continuing obligation to the class members
8 to oversee the claims payment process. The hours Class Counsel will spend on the claims
9 administration process are not even factored into their lodestar crosscheck, so the negative
10 multiplier will only become greater once this work is performed. In other words, the current
11 lodestar is actually understated.

12 32. **The Public Service Performed by Class Counsel.** The public interest served by
13 Plaintiffs' lawsuit also supports the fee sought. *See State v. Meyer* (1985) 174 Cal. App. 3d 1061,
14 1073 (the "public service element . . . and motivation to represent consumers and enforce laws"
15 may justify lodestar enhancement). In this Action, Class Counsel have enforced our nation's
16 antitrust and consumer protection laws against some of the world's largest corporations. The
17 fundamental importance of these laws has been repeatedly recognized: An award of the requested
18 fee will encourage other attorneys to take on similar cases and deter the Defendants and other
19 manufacturers from engaging in similar unlawful practices. *See, e.g., Chabner v. United of*
20 *Omaha Life Ins. Co.*, 1999 U.S. Dist. LEXIS 16552 (N.D. Cal. Oct. 12, 1999) at *19-21, *aff'd*,
21 225 F.3d 1042 (9th Cir. 2000).

22 33. Moreover, by settling this Action prior to trial rather than continuing to litigate
23 issues that remain somewhat unsettled, Class Counsel have obtained exceptional results for the
24 class at far less expense to the parties, their counsel, and the Court. They also have obtained those
25 results more quickly and surely than if the matter had been litigated to final resolution through
26 the appellate process. This factor also supports would support a lodestar *enhancement*, and thus
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certainly supports a percentage-based fee that results in a negative multiplier. *See Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 51 (2000).

III. Class Counsel's Lodestar and the Multiplier Cross-Check Confirm That A 33% Fee Is Reasonable

34. In my opinion, based on my extensive experience with attorneys' fee matters and the legal marketplace, the reasonableness of counsel's percentage-based fee is confirmed by cross-checking it against the lodestar they incurred. Moreover, given the type of case this is, where work done at an early stage was still significant to the settlement that resulted with the final settling defendant, when performing the lodestar crosscheck, it is proper to look at the lodestar of the entire case rather than just the lodestar since the last round of settlements. As explained below, it is my opinion that (a) the hourly rates utilized in the lodestar cross-check are in line with those charged by comparably qualified attorneys for comparable work in the legal marketplace; (b) the hours spent are consistent with those that would be expected in a matter of this duration, complexity, and amounts at stake; and (c) regardless of whether historical or current rates are used, the lodestar multipliers applied are consistent with the fees charged in the legal marketplace and therefore reasonable. I base those opinions on the following:

A. Class Counsel's Hourly Rates Are Reasonable

35. I have reviewed a summary of the hourly rates utilized by Class Counsel in their lodestar cross-check. I am familiar with the backgrounds, qualifications, and rates of these firms, and have reviewed the qualifications, background, and rates. I also am aware that this Court has approved the 2018 versions of these rates, and that the 2019 versions reflect only modest increases from those rates. In my opinion, these rates are well in line with the rates charged by comparably qualified attorneys in this District for comparably complex work.

36. Through my writing and practice, I have become familiar with the non-contingent market rates charged by attorneys in California and elsewhere. This familiarity has been obtained in several ways: (a) by handling attorneys' fee litigation; (b) by discussing fees with other attorneys; (c) by obtaining declarations regarding prevailing market rates in cases in which I

1 represent attorneys seeking fees; and (d) by reviewing attorneys' fee applications and awards in
2 other cases, as well as surveys and articles on attorney's fees in the legal newspapers and treatises.
3 I also have testified before trial courts or arbitrators on numerous occasions and have submitted
4 expert testimony by declaration on hundreds of occasions: each of those efforts require me to be
5 aware of the hourly rates being charged. The information I have gathered shows that the rates
6 requested by Class Counsel are in line with the non-contingent market rates charged in this
7 District by attorneys of reasonably comparable experience, skill, and reputation for reasonably
8 comparable services.

9
10 37. Based on my extensive experience regarding attorney fee rates and my research
11 regarding the same, it is my conclusions that the foregoing non-contingent rates requested by
12 Class Counsel's attorneys for their work on behalf of Plaintiffs as part of their lodestar calculation
13 are well within the range of non-contingent rates charged by comparably qualified attorneys for
14 reasonably similar work.

15 **B. The Number of Hours Is Within the Expected Range**

16 38. Based on my review of the materials noted above, and my extensive experience
17 with complex class action cases, the number of hours expended by Class Counsel here appears to
18 be in the ballpark for a case of this broad scope, extreme complexity, and long duration, and
19 therefore reasonable, as this Court's two prior Fee Orders find. I do not purport to have done a
20 time entry by time entry review of counsel's time records or to have reviewed parts of the file not
21 mentioned above. I have, however, reviewed a significant sample of the time allocations for the
22 Class Counsel firms and they appear to be quite reasonable to me. In addition, the vigorous
23 defense tendered by the Defendants, which were represented by numerous high caliber law firms,
24 supports this view, as does the exceptional work performed by all Class Counsel, as set forth in
25 detail in the Joint Declaration in Support of Plaintiffs' Motion for an Award of Attorneys' Fees
26 and Reimbursement of Expenses. And finally, it also is significant to me that if a 33% fee is
27 approved, only 86% of counsel's total lodestar will be compensated: if there is any excessive or
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otherwise non-compensable work included in counsel's lodestar, it will be more than adequately accounted for by this differential.

C. The Fee Requested Results in a Negative Lodestar Multiplier

39. In most percentage of the fund fee awards, the lodestar cross-check involves a significant multiplier. When, as in this Action, the result of the percentage-based fee is *less* than the lodestar, in my opinion, that factor weighs heavily in favor of the proposed fee. *See, e.g., In re Conseco Life Ins. Co. Life Trend Ins. Mktg & sales Practices Litig.*, No. C 10–02124 SI, 2014 WL 186375, at *2 (N.D. Cal. Jan. 16, 2014) (“Counsel’s attorneys’ fees request is substantially less than their revised lodestar amount—the fee request amounts to a negative multiplier of .75, a reduction of \$2,205,992.47 from the lodestar amount.”); *Ross v. Trex Co., Inc.*, No. 09-cv-00670-JSW, 2013 WL 12174133, at *1 (N.D. Cal. Dec. 16, 2013) (stating that, where the fee award was about 74% of lodestar, “Plaintiffs sought no extraordinary award of fees; to the contrary, they sought less than their lodestar, which further supports the reasonableness of the fees requested and awarded.”); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07–1827 SI, 2013 WL 149692, at *1 (N.D. Cal. Jan. 14, 2013) (“The amount of attorney’s fees requested is fair and reasonable under the ‘percentage-of-the-fund’ method. This is confirmed by a lodestar ‘cross-check,’ which reveals a negative multiplier of 0.86, based on 46,763.90 hours of work and a collective lodestar of \$23,688.289.70.”); *Zeisel v. Diamond Foods, Inc.*, No. C 10–01192 JSW, 2012 WL 4902970, at *4 (N.D. Cal. Oct. 16, 2012) (finding a fee award reasonable because, *inter alia*, the lodestar cross-check resulted in a negative multiplier of .54); *accord Roos v Honeywell Int’l, Inc.* 241 Cal. App. 4th 1472, 1494 (2015) (approving 37.5 percent fee based on negotiated cap, noting that lodestar was even greater), disapproved on other grounds in *Hernandez v Restoration Hardware, Inc.*, 4 Cal. 5th 260, 269 (2018).

40. One of the main concerns with percentage-based fees is that they will effectively result in exorbitant hourly rates. That is not the case here, where a 33% fee will result in counsel receiving effective hourly rates that are 86% of what would be billed to fee-paying clients. Given

the factors that justify exceeding the 25% benchmark—*e.g.*, contingent risk, complexity, results—that result should seal the deal, since those factors would all support *higher* effective hourly rates rather than lower ones.

41. **The Lodestar Multipliers Applied in Other Cases.** The negative lodestar multiplier that would result from a fee of 33% is certainly more generous to the class than the lodestar multipliers typically approved in other percentage-based fee awards. *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d at 1050 (looking to multipliers awarded in comparable cases as evidence of reasonableness). Indeed, significantly greater multipliers—4.0 and above—have often been applied in fee awards from common funds. *See also Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 298 (N.D. Cal. 1995) (“multipliers in the 3-4 range are common lodestar awards in lengthy and complex class action litigation”). Numerous other fee awards confirm this point. For example, in *Craft v. County of San Bernardino*, 624 F. Supp. 2d 1113, 1125 (C.D. Cal. 2008), the Central District, citing a multitude of cases, upheld a common fund award that equated to a lodestar multiplier of 5.2. *See also, e.g., Vizcaino*, 290 F.3d at 1052-1054 (Appendix of 34 common fund cases between 1996 and 2001, showing lodestar multipliers ranging from 0.6 to 19.6).

42. **The Overall Fee Percentage for the Entire Case Further Supports the Reasonableness of the 33% Fee Sought.** As noted elsewhere, the settlement Class Counsel were able to obtain was based not just on the work performed since the last fee award. Rather, it is the culmination of the entire 12 years of litigation. It therefore makes sense to analyze the fee petition in light of the entire Action. Using this analysis, and as noted previously, should the Court grant the requested 33% fee of the net settlement fund (\$56,506,306.52), this would amount to a total fee award in the Action of \$38,685,152.66 on total net settlement funds of \$136,658,592.58. As the foregoing demonstrates, given the complexities of this Action and now that all data points are before the Court, an overall percentage of 28.31% is eminently fair and reasonable. This factor further supports an upward departure.

43. **The Court's Practice of Awarding Attorneys' Fees Based on the Net Settlement Fund.** This Court has stated its long-standing practice of awarding attorneys' fees based on the "net settlement fund"—that is, awarding fees as a percentage of the fund *after* a deduction for costs and expenses. This practice is, of course, within the sound discretion of the District Court, and I have adopted that approach, as have Class Counsel. Based on my review of attorney fee awards in class action litigation, however, it is far more common for courts to award attorneys' fees based on a percentage of the *gross* settlement fund. The previously cited cases and their resulting percentages are often based on the gross settlement fund. Thus, those cases do not necessarily constitute an apples-to-apples comparison. Indeed, were the awards based on a net fund, the percentage would be higher than the amounts cited, since many of those cases are awarding attorneys' fees based on the gross settlement fund. This supports awarding 33% off of the net Settlement Fund here. It also is significant to me that for both previous settlement rounds, the Court not only deducted costs and expenses from the gross settlement fund, but also deducted the costs of class notice and claims administration. *See, e.g.*, ECF Nos. 1009; 1252. Most courts, even those courts applying a percentage-based fee to a net settlement fund, do not deduct notice and claims administration costs before applying the fee percentage. *See Staton v. Boeing Co.*, 327 F.3d 938, 975 (9th Cir. 2003) ("[W]here defendant pays the justifiable cost of notice to the class[,] ... it is reasonable (although certainly not required) to include that cost in a putative common fund benefiting the plaintiffs for all purposes, including the calculation of attorneys' fees."); *In re Online DVD-Rental Antitrust Litigation*, 779 F.3d 934, 953 (9th Cir. 2015) ("The district court did not abuse its discretion in calculating the fee award as a percentage of the total settlement fund, including notice and administrative costs, and litigation expenses."); *Huyer v. Buckley*, 849 F.3d 395, 398 (8th Cir. 2017) ("[T]he district court did not abuse its discretion by basing its fee award on the total settlement fund, which included administrative costs."); *In re Life Time Fitness, Inc. Tel. Consumer Prot. Act. (TCPA) Litig.*, 847 F.3d 619, 623 (8th Cir. 2017) ("[T]he district court did not abuse its discretion by including approximately \$750,000 in fund administration

1 costs as part of the ‘benefit’ when calculating the percentage-of-the-benefit fee amount.”). This
2 also supports Class Counsel’s requested 33% fee when compared to fees awarded in common
3 fund cases that are based on the gross settlement amount because it will result in greater recoveries
4 for the class members.

5 44. To summarize, in my opinion, the lodestar cross-check strongly supports the
6 fairness and reasonableness of awarding Class Counsel 33% of the \$58 million settlement fund
7 as their reasonable attorneys’ fees for securing that fund.

8 45. If called as a witness, I could and would competently testify from my personal
9 knowledge to the facts stated herein.

10 I declare under penalty of perjury under the laws of the United States that the foregoing is
11 true and correct. Executed this 9th day of August 2019, in Lake Tahoe, California.

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13 /s/ Richard M. Pearl
14 RICHARD M. PEARL
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