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22 *Interim Co-Lead Counsel for Indirect Purchaser Plaintiffs*

23 UNITED STATES DISTRICT COURT  
24 NORTHERN DISTRICT OF CALIFORNIA  
25 OAKLAND DIVISION

26 **IN RE: LITHIUM ION BATTERIES**  
27 **ANTITRUST LITIGATION**

Case No. 13-MD-02420 YGR (DMR)

**MDL No. 2420**

**CLASS ACTION**

**DECLARATION OF BRENDAN P.  
GLACKIN IN SUPPORT OF PLAINTIFFS'  
MOTION FOR ATTORNEYS' FEES,  
REIMBURSEMENT OF EXPENSES AND  
SERVICE AWARDS**

28 **This Document Relates to:**

**ALL INDIRECT PURCHASER  
ACTIONS**

1 I, Brendan P. Glackin, declare:

2 1. I am an attorney licensed to practice in the Northern District of California. I am a  
3 partner at the firm of Lief Cabraser Heimann & Bernstein, LLP (“LCHB”), Co-Lead Counsel for  
4 the Class Representatives and the Settlement Class. I have personal knowledge of the facts set  
5 forth herein and could competently testify to them if called as a witness.

6 2. I am a member in good standing of the bars of the State of California and the State  
7 of New York; the United States District Courts for the Northern, Central, Southern, and Eastern  
8 Districts of California; the United States District Court for the Southern District of New York; the  
9 United States District Court for the District of Colorado; the United States Courts of Appeals for  
10 the Second, Fourth, and Ninth Circuits; and the United States Supreme Court.

11 **LCHB Staffing in this Case**

12 3. Elizabeth J. Cabraser led our representation of the class and brought her decades of  
13 experience to bear on the complex high-level strategic issues this litigation posed. In that regard  
14 she was supported by a team that included LCHB’s most experienced antitrust lawyers and staff.  
15 As the partner managing the day-to-day of this case at LCHB from approximately late 2013  
16 onward, I paid considerable attention to ensuring that each LCHB attorney on the file had specific  
17 areas of focus; that there was not duplication of efforts, especially among higher billers; and that  
18 projects were assigned to experienced lawyers with depth in the field who could effectively and  
19 efficiently execute the phenomenal amount of work this case demanded. The core team of  
20 personnel litigating this case consisted of the following (complete biographies can be found in the  
21 attached firm Resume, **Exhibit 1**).

22 4. *Elizabeth J. Cabraser*. Ms. Cabraser has 38 years of experience representing  
23 plaintiffs in complex litigation, and has served in court-appointed leadership roles in scores of  
24 MDLs, most recently as Lead Counsel and Chair of the 22-member Plaintiffs Steering Committee  
25 for the *In re Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability*  
26 *Litigation*, MDL No. 2672 (N.D. Cal.). She is recognized as a pioneer and national thought  
27 leader in the field of class actions, and as one of the preeminent lawyers in the country in any  
28 field.

1           5.       *Brendan Glackin.* Brendan Glackin is a senior partner in the firm’s antitrust  
2 group. Mr. Glackin has taken well over twenty cases to trial, including civil antitrust matters with  
3 the firm (*TFT-LCD* and *In re Norvir*) as well as many criminal matters while he served as a  
4 Deputy Public Defender in Contra Costa County. He teaches trial advocacy for both PLI and  
5 NITA. He has played a key role in all of the firm’s major antitrust successes in the last several  
6 years, including *In re TFT-LCD*, *In re High Tech Employees*, and *In re Titanium Dioxide*, three  
7 cases in which the firm collectively recovered over a billion dollars for class members. He  
8 currently serves as lead counsel in two antitrust class actions: *DiCesare, et al v. The Charlotte-*  
9 *Mecklenburg Hospital Authority* (N.C. Bus. Ct.), and *The Hospital Authority of Metropolitan*  
10 *Government of Nashville and Davidson County, Tennessee v. Momenta Pharmaceuticals, Inc.*  
11 *(Generic Enoxaparin)*, (M.D. Tenn.). In this case, Mr. Glackin led the firm’s efforts principally  
12 with respect to developing and responding to expert discovery, as well as overall supervision of  
13 every aspect of the case.

14           6.       *Lin. Y. Chan.* Ms. Chan is a partner in the firm’s antitrust practice group. She led  
15 the firm’s effort in this case with respect to discovery and major brief-writing projects. While  
16 Mr. Glackin focused on expert work, Ms. Chan focused on the merits, driving countless briefing  
17 and discovery projects from meet-and-confers to major fact depositions. Ms. Chan previously  
18 served on the trial teams in *In re Titanium Dioxide Antitrust Litigation*, No. 10-CV-00318 (RDB)  
19 (D. Md.) (total recovery of \$163.5 million) and *Cipro Cases I & II*, J.C.C.P. Nos. 4154 and 4220  
20 (San Diego Super. Ct.) (total recovery of \$399 million). Ms. Chan has been named a “Rising Star  
21 for Northern California” since 2015. She received her J.D. from Stanford Law School in 2007  
22 and served as law clerk to Judge Damon J. Keith of the Sixth Circuit Court of Appeals from 2007  
23 to 2008.

24           7.       *Karen L. Jones.* Karen Jones is a senior Staff Attorney who has been an integral  
25 part of the firm’s antitrust matters for over ten years. Prior to joining LCHB she served as Of  
26 Counsel to The Furth Firm. Since joining LCHB, Ms. Jones has developed a specialized practice  
27 in participating in and helping manage large foreign language document reviews in cases such as  
28 *TFT-LCD* and *Lithium Ion Batteries*. Ms. Jones’s knowledge of antitrust law combined with her

1 ability to read and write Japanese has made her a key part of the firm's work in electronic  
2 component price fixing cases such as this one.

3 8. *Hisun Rim.* Ms. Rim has worked closely with and under Ms. Jones and the other  
4 attorneys in the practice group since 2009. As someone who speaks, reads and writes both  
5 Korean and Japanese fluently, Ms. Rim has filled a crucial need in cases such as *TFT-LCD* and  
6 *Lithium Ion Batteries*. Ms. Rim's duties in this case included assisting the attorneys in  
7 identifying key merits documents in foreign languages, helping oversee foreign language  
8 reviewers, serving as check interpreter at foreign language depositions, and assisting with the  
9 process of obtaining and checking certified translations of foreign language documents. She is a  
10 certified medical interpreter and holds an M.A. in East Asian Languages and Cultures.

11 9. *Brian Troxel.* Mr. Troxel is one of the firm's most senior and experienced  
12 paralegals. Brian has been a key member of the firm's antitrust practice group since 2008.  
13 During that time, Mr. Troxel has been the crucial glue holding together the firm's work in major  
14 matters such as *In re TFT-LCD Antitrust Litigation*, *In re Ciprofloxacin Antitrust Litigation*, and  
15 *In re Lithium Ion Batteries Antitrust Litigation*. In *Batteries*, Mr. Troxel has had day-to-day  
16 responsibility for managing the flow of documents in the case, processing discovery for  
17 uploading to the database or transmission to expert consultants, and for any filings for which  
18 LCHB was the Co-Lead firm principally responsible. Any other LCHB paralegals or case clerks  
19 working on the case did so only to fill urgent needs and did their work under the supervision of  
20 Mr. Troxel. Mr. Troxel is recognized outside the firm as a paralegal of exceptional acumen and  
21 experience. The Bar Association of San Francisco named him "Paralegal of the Year" in 2016.

22 10. In addition to the foregoing, LCHB whenever necessary employed additional  
23 senior lawyers, case clerks, staff attorneys and document reviewers to meet the ongoing needs of  
24 this massive case. However, we were careful to keep personnel targeted to specific areas of  
25 responsibility. For instance, my partner Dean Harvey, a seasoned antitrust litigator, played an  
26 important role in opposing Toshiba's summary judgment motion and in the initial retention of  
27 experts. But he did not attend meetings or calls or do other tangential work relating to projects he  
28 was not assigned, avoiding any duplication of effort with the attorneys who had those tasks.

1           11.     These other key team members included:

2           12.     *Richard M. Heimann*. Mr. Heimann is a senior partner of Lief Cabraser, Chair of  
3 the firm’s Securities and Financial Fraud practice, and possesses more than 30 years of trial  
4 experience. He is one of the nation’s most successful trial lawyers in complex civil litigation.  
5 Mr. Heimann served as co-lead counsel and trial counsel in one of the nation’s largest Sherman  
6 Act antitrust class actions, *In re TFT-LCD (Flat Panel) Antitrust Litigation*, MDL No. 1827 (N.D.  
7 Cal.).

8           13.     *Eric Fastiff*. The Chair of Lief Cabraser’s Antitrust and Intellectual Property  
9 Practice Group, Eric B. Fastiff has practiced antitrust and commercial litigation for the past 18  
10 years, working on numerous cases involving the food, technology, finance, home furnishing,  
11 natural resources, and music industries. He also represents businesses in commercial disputes  
12 with their suppliers and competitors. Mr. Fastiff has played a lead role in countless cases, most  
13 recently *In re Ciprofloxacin*, in which the firm and co-lead counsel recovered \$399 million for a  
14 class of California end-payors.

15           14.     *Dean M. Harvey*. Mr. Harvey is a partner in the firm’s antitrust practice group.  
16 This year, Mr. Harvey was recognized as a “Top 40 Under 40” lawyer in California by the Daily  
17 Journal, explaining that he was “instrumental in the launch of the most significant antitrust  
18 employment case in recent history”—the *High-Tech Employee Antitrust Litigation*—a case  
19 “widely recognized as a legal and public policy breakthrough.” Last year, Mr. Harvey received a  
20 California Lawyer Attorney of the Year Award for *In re Cipro Cases I & II*, 61 Cal. 4th 116  
21 (2015), a landmark ruling by the California Supreme Court on improper patent settlements  
22 between brand and generic drug companies.

23           15.     *Marc Pilotin*. Mr. Pilotin was an associate in the firm’s antitrust practice group  
24 from 2011 to 2015. He was integral to the initial case investigation, drafting of the complaint,  
25 and early discovery efforts, including document review and depositions, as well as brief writing.  
26 Mr. Pilotin received his J.D. from the University of California, Berkeley – School of Law and  
27 clerked for Judge Claudia Wilken of the United States District Court for the Northern District of  
28 California.



1 summary by individual of the hours, billing rate, and lodestar for each biller's work on this matter  
 2 during this period of time. This time excludes timekeepers who billed less than 5 hours to this  
 3 case, thereby excluding work done by senior partners such as Steven Fineman, Robert Nelson,  
 4 Jonathan Selbin, and Joy Kruse. It also excludes time prior to the firm's appointment as Co-Lead  
 5 Counsel.

6 22. The rates set forth in **Exhibit 2** are my firm's current billing rates. Our rate  
 7 structure has been paid to our firm by hourly-paying clients. In addition, our rate structure has  
 8 been approved by numerous courts. *See, e.g., Brazil v. Dell Inc.*, 2012 U.S. Dist. LEXIS 47986  
 9 (N.D. Cal. Apr. 4, 2012); *In re Bank of America Credit Protection Marketing & Sales Practices*  
 10 *Litig.*, No. 11-md-2269 THE (Dkt. 96) (N.D. Cal. Jan. 16, 2013); *Fleming v. Kemper Nat.*  
 11 *Services, Inc.*, 373 F. Supp. 2d 1000, 1012 (N.D. Cal. 2005); *Grays Harbor Adventist Church*  
 12 *Sch. v. Carrier Corp.*, 2008 WL 1901988, at \*3 (W.D. Wash. Apr. 24, 2008); *Pelletz v.*  
 13 *Weyerhaeuser Co.*, 2009 U.S. Dist. LEXIS 1803, at \*7 (W.D. Wash. Jan. 9, 2009); *Berger v.*  
 14 *Property ID Corporation*, CV 05-5373-GHK (Cwx) (C.D. Cal.); *White v. Experian; Information*  
 15 *Solutions, Inc.*, 2011 WL 2971957, \* 3 (C.D. Cal. Jul. 15, 2011); *Lonardo v. Travelers Indem.*  
 16 *Co.*, -- F. Supp. 2d --, 2010 WL 1416698, at \*22-23 (N.D. Ohio Mar. 31, 2010); *In re Diet Drugs*  
 17 *(Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig.*, No. Civ.A. 99-20593, MDL  
 18 No. 1203, 2003 WL 21641958, at \*9 (E.D. Pa. May 15, 2003). The rates for most of the primary  
 19 timekeepers in this matter were recently approved in *In re Cipro Cases I and II*, Order Granting  
 20 Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Costs, & Incentive Awards (San Diego  
 21 Super. Ct. Apr. 21, 2017). The recent past rates for many of these timekeepers were also  
 22 approved by Judge Koh in *In re: High-Tech Employee Antitrust Litigation*, Case No. 11-CV-  
 23 02509-LHK (N.D. Cal.) (Order, Sept. 2, 2015),<sup>2</sup> and Judge Illston in *In re TFT-LCD (Flat Panel)*

24 \_\_\_\_\_  
 25 <sup>2</sup> At p. 16: "Having reviewed the billing rates for the attorneys, paralegals, and litigation support  
 26 staff at each of the firms representing Plaintiffs in this case, the Court finds that these rates are  
 27 reasonably in light of prevailing market rates in this district and that counsel for Plaintiffs have  
 28 submitted adequate documentation justifying those rates." In both *High-Tech* and *Cipro* the  
 courts reviewed and approved the rates of partners Richard M. Heimann, Eric B. Fastiff, Brendan  
 P. Glackin and Dean M. Harvey. In *Cipro* the court reviewed and approved the rate of Ms. Chan  
 as well.

1 *Antitrust Litig.*, No. M 07-1827 SI, Corr. Order Grant'g Direct Purchaser Class Pls.' Mot. for  
2 Att'ys' Fees, Reimbursement of Expenses, & Incentive Awards at 2 (N.D. Cal. Jan. 14, 2013),  
3 ECF No. 7504.

4 23. I have personal knowledge of the hourly rates charged by other attorneys with  
5 comparable experience as well as the attorneys within the firm who worked on this matter. Based  
6 on that information, I believe that these rates are fully consistent with the market rate in the San  
7 Francisco Bay Area for attorneys with comparable expertise, experience and qualifications, and  
8 that they are comparable to rates of attorneys specializing in complex litigation around the  
9 country. Based on the information I have, I believe that the rates charged by LCHB are  
10 reasonable and appropriate fees for those with comparable expertise, experience, and  
11 qualifications.

12 24. In accordance with the Court's pre-trial order, rates for pure document review  
13 were capped at \$450/hour (foreign language) and \$350/hour (English language).

14 25. Calculated at current rates and taking into consideration the foregoing rate caps  
15 and excluded time, for purposes of the cross-check, the total lodestar invested in the case by  
16 LCHB comes to \$8,838,260.50.

17 26. Attached hereto as **Exhibit 3** is the complete time detail for the work performed in  
18 this case.<sup>3</sup> This reflects time recorded contemporaneously for work completed, consistent with  
19 LCHB's *Firm Policy Manual* "Time-Keeping Policy" that requires timekeepers to keep time  
20 sheets on a daily basis, and to submit them by the close of each business week. LCHB's  
21 accounting department runs a regular time report that lists timekeepers without time in the system  
22 for any given week. Kelly M. Dermody, managing partner of the San Francisco office of the  
23 firm, receives that report and personally follows up with tardy attorney timekeepers, and instructs  
24 staff managers to follow up with any tardy staff. The firm does not abide late timekeeping, and  
25 we advise employees, "Failure to comply with the Firm's timekeeping policy may be taken into  
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27 <sup>3</sup> To the extent the total hours in this Exhibit are more than those in our time summary, this  
28 difference reflects LCHB's application of billing judgment to exclude time that was duplicative or  
otherwise inefficient.

1 account in connection with promotions, raises, and bonuses, and may subject the delinquent  
2 timekeeper to discipline, up to and including termination.”

3 27. Redactions have been made where necessary to protect attorney-client privilege,  
4 the names of class members, documents or filings that are confidential and under seal,  
5 confidential settlement matters, or other undisclosed work product (such as consultation with a  
6 non-testifying expert or an internal research project). Lin Y. Chan and I personally audited this  
7 time to comply with the Court’s pre-trial order on timekeeping and to remove duplicative or  
8 otherwise non-compensable entries. Also, each entry lists the historical rate applicable to that  
9 timekeeper at that time, as required by the Court’s pre-trial order.

10 **Litigation Expenses**

11 28. LCHB maintained the litigation fund in this case that paid for the expenses for  
12 which Class Counsel seek reimbursement in this motion. The litigation fund was 100% financed  
13 by the law firms prosecuting this case, with the vast majority of contributions to the fund (80%+)  
14 coming from the three co-lead firms. As set forth below Class Counsel currently only request  
15 reimbursement for three categories of litigation fund expenses: electronic document hosting and  
16 processing through the present; document translation through the present; and expert expenses  
17 through 2016 (i.e. prior to the Court’s recent order on class certification). Class Counsel do not at  
18 the present time seek reimbursement for other litigation fund expenses or for out-of-pocket  
19 expenses paid directly by Class Counsel firms.

20 29. **Reimbursement Requested:** Class Counsel request reimbursement of litigation  
21 costs and expenses in the amount of \$4,159,515.28. Attached hereto as **Exhibit 4** is a summary  
22 of the expenses paid from the litigation fund for which Class Counsel request reimbursement.  
23 These expenses include the following:

24 a. **Document Collection, Review, and Synthesis:** Payments made to the  
25 following document review platform hosting vendors: Catalyst, Omega Discovery Solutions,  
26  
27  
28

1 and iDiscovery Solutions. To date, IPPs have incurred a total of \$660,994.53 in costs for these  
 2 services. Attached hereto as **Exhibit 5** are invoices associated with these expenses.<sup>4</sup>

3           b.       Document Translation: Payments made to Consortra for translating  
 4 documents. To date, IPPs have incurred a total of \$199,193.97 in charges for certified  
 5 translations for nearly 1,400 documents. In order to economize, IPPs shared translation costs  
 6 with Direct Purchaser Plaintiffs. Thus, the amount that IPPs spent on certified translations  
 7 represents only half of the total cost of the certified translations in this case. Attached hereto as  
 8 **Exhibit 6** invoices associated with these expenses.

9           c.       Economic Experts and Analysis: Payments made to expert economists Dr.  
 10 Leamer and Dr. Abrantes-Metz (Global Economics Group), as well as economists at applEcon  
 11 and Econ One, for their work on class certification. This amount also includes amounts paid to  
 12 industry expert Ulrich von Sacken and C&A Economics for additional economic analysis early in  
 13 the case. This amount excludes expert expenses that post-date 2016. Class Counsel incurred a  
 14 total of \$3,299,326.78 in expert expenses through 2016. Attached hereto as **Exhibit 7** invoices  
 15 associated with these expenses.<sup>5</sup>

16           30.       **Expenses Excluded**: These expenses sought are only a subset of the expenses in  
 17 this case, which total (across all firms) over \$4.4 million, when additional litigation fund expenses  
 18 and costs paid directly by the individual firms are included. The expenses excluded from this  
 19 request include: (1) costs for travel, copying, printing, filing fees, legal research and so forth; (2)  
 20 deposition-related expenses; and (3) expert expenses that post-date 2016. Class Counsel believe  
 21 that this request for expenses is reasonable in light of the length of this case and the fact that Class  
 22 Counsel may continue to litigate this case for years before its conclusion.

23  
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 25 \_\_\_\_\_  
 26 <sup>4</sup> To the extent any category of invoices reflects a larger total amount than the amount of  
 27 reimbursement requested, this is due to discounts that Class Counsel negotiated with specific  
 28 vendors. LCHB has, and could provide if necessary, voluminous payment records detailing the  
 wire transfers and checks issued to various vendors.

<sup>5</sup> Class Counsel are not submitting Econ One's time detail due to the fact that this information has  
 not been exchanged in discovery, but can provide it *in camera* as necessary.

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**The Risk and Complexity Involved in the Litigation**

31. Class Counsel prosecuted this action without any assurance of payment for their services, litigating this case on a wholly contingent basis in the face of significant risk. Large-scale antitrust cases of this type are, by their very nature, complicated and time-consuming. Any lawyer representing large numbers of affected consumers in such actions inevitably must be prepared to make a tremendous investment of time, energy, and resources.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct to the best of my knowledge and that this declaration was executed in San Francisco, California on May 26, 2017.

/s/ Brendan P. Glackin  
Brendan P. Glackin