

1 Guido Saveri (22349)
R. Alexander Saveri (173102)
2 Cadio Zirpoli (179108)
SAVERI & SAVERI, INC.
3 706 Sansome Street
San Francisco, CA 94111-1730
4 Telephone: (415) 217-6810
Facsimile: (415) 217-6813
5 guido@saveri.com
rick@saveri.com
6 cadio@saveri.com

7 Anthony D. Shapiro (*pro hac vice*)
George W. Sampson (*pro hac vice*)
8 Ronnie S. Spiegel
HAGENS BERMAN SOBOL SHAPIRO LLP
9 1918 Eighth Avenue, Suite 3300
Seattle, WA 98101
10 Telephone: (206) 623-7292
Facsimile: (206) 623-0594
11 tony@hbsslw.com
george@hbsslw.com
12 ronnie@hbsslw.com

13 Fred Taylor Isquith (*pro hac vice*)
WOLF, HALDENSTEIN, ADLER,
14 FREEMAN & HERZ, LLP
270 Madison Avenue
15 New York, NY 10016
Telephone: (212) 545-4600
16 Facsimile: (212) 545-4653
isquith@whafh.com

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**

19 **IN RE DYNAMIC RANDOM ACCESS**
20 **MEMORY (DRAM) ANTITRUST**
21 **LITIGATION**

Master File No. M-02-1486PJH
MDL No. 1486

22 This Document Relates to:

23 *Preis v. Hitachi, Ltd., et al.,*
24 Case No. CV 10-0346 PHJ

25 **NOTICE OF MOTION, MOTION**
26 **AND MEMORANDUM OF POINTS**
27 **AND AUTHORITIES IN SUPPORT**
28 **OF MOTION FOR AN AWARD OF**
ATTORNEYS' FEES AND
REIMBURSEMENT OF EXPENSES

Date: October 27, 2010
Time: 9:00 a.m.
Judge: Hon. Phyllis J. Hamilton
Ctrm: 3, 3rd Floor

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that at 9:00 a.m. on October 27, 2010, counsel for the direct purchaser class (“Class Counsel”) will, and hereby do move before the Honorable Phyllis J. Hamilton, United States District Judge, at the United States Courthouse, 1301 Clay Street, Third Floor, Courtroom 3, Oakland, California, for an award of attorneys’ fees in the amount of 25% of the settlement monies (“Settlement Fund”) plus interest, and reimbursement of litigation expenses incurred in representing the direct purchaser class in this action. This motion is brought pursuant to Fed. R. Civ. P. 23(h), 54(b) and 54(d)(2).

This motion is made on grounds that (a) such fees are fair and reasonable in light of Class Counsels’ effort in creating the Settlement Fund; (b) the requested fees comport with Ninth Circuit case law in common fund cases; and (c) the expenses for which reimbursement is sought were reasonably and necessarily incurred in connection with the prosecution of this action.

This motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities in Support thereof; the Declaration of Anthony D. Shapiro in Support of Motion for an Award of Attorneys’ Fees and Reimbursement of Expenses; the Declaration of Guido Saveri in Support of Motion for an Award of Attorneys’ Fees and Reimbursement of Expenses; the Declaration of Fred Taylor Isquith in Support of Motion for an Award of Attorneys’ Fees and Reimbursement of Expenses; the Settlement Agreements and Releases; the Order granting preliminary approval of the settlements; the records, pleadings, and papers filed in this action; the records, pleadings, and papers filed in the earlier direct purchaser action; and upon such argument as may be presented to the Court at the hearing on this motion.

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<u>PAGE</u>
I. INTRODUCTION	1
II. FACTUAL BACKGROUND	4
A. Overview	4
B. The Settlements	6
1. The Hitachi Settlement	6
2. The Mitsubishi Settlement.....	6
3. The Toshiba Settlement	7
III. ARGUMENT	7
A. A 25% Award of Attorneys’ Fees is Fair and Reasonable Under Ninth Circuit Law	7
1. The Ninth Circuit recognizes the common fund doctrine	8
2. Ninth Circuit courts have repeatedly endorsed the percentage- of-recovery method in awarding attorneys’ fees	9
3. 25% is the benchmark in the Ninth Circuit, but greater awards are frequent	9
4. The relevant factors justify an award of 25%	11
a. The result achieved.....	11
b. The work performed	12
(1) Tolling agreements	12
(2) Investigation and development of facts	12
(3) Settlement negotiations	13
(4) The complaint	14
(5) Administration of the Settlement Fund	14
c. The skill and experience required.....	15
(1) The experience of Class Counsel	15
(2) The high caliber of opposing counsel.....	16
(3) The complexity and difficulty of the issues	16

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- d. The risks of this litigation..... 17
 - (1) The risk of litigating this case where the DOJ chose not to pursue any action against the Defendants 18
 - (2) The risk of not being able to establish liability 18
 - (3) The risk of not surviving multiple motions to dismiss 19
 - (4) The risk of not achieving class certification..... 19
 - (5) The risk of summary judgment..... 20
 - (6) The risk of trial 20
- e. Contingent nature of the fee 21
- B. Lodestar Comparison Supports the Reasonableness of the Award 22
- C. Reimbursement of Expenses are Reasonable and Necessary 23
- D. The Class’ Reaction Supports the Requested Award 24
- IV. CONCLUSION 25

TABLE OF AUTHORITIES

PAGE(S)

CASES

1

2

3 *Alpine Pharmacy, Inc. v. Charles Pfizer & Co., Inc.*,

4 481 F.2d 1045 (2d Cir. 1973), *cert. denied*, 414 U.S. 1902 (1973) 8

5 *Alyeska Pipeline Serv. Co. v. Wilderness Soc’y*,

6 421 U.S. 240 (1975) 8

7 *Ashcroft v. Iqbal*,

8 129 S. Ct. 1937 (2009) 19

9 *Behrens v. Wometco Enters., Inc.*,

10 118 F.R.D. 534 (S.D. Fla. 1988), *aff’d*, 899 F.2d 21 (11th Cir. 1990)..... 11

11 *Bell Atl. v. Twombly*,

12 550 U.S. 544 (2007) 19

13 *Blum v. Stenson*,

14 465 U.S. 886 (1984) 9

15 *Boeing Co. v. Van Gemert*,

16 444 U.S. 472 (1980) 8

17 *Brown v. Phillips Petroleum Co.*,

18 838 F.2d 451 (10th Cir. 1988) 9

19 *Camden I Condominium Ass’n v. Dunkle*,

20 946 F.2d 768 (11th Cir. 1991) 9

21 *Cicero v. DirectTV, Inc.*,

22 2010 U.S. Dist. LEXIS 86920 (C.D. Cal. July 27, 2010)..... 10

23 *Cosgrove v. Sullivan*,

24 759 F. Supp. 166 (S.D.N.Y. 1991) 23

25 *Craft v. County of San Bernadino*,

26 624 F. Supp. 2d 1113 (C.D. Cal. 2008) 19, 22, 23

27 *Fisher Bros. v. Phelps Dodge Indus., Inc.*,

28 604 F. Supp. 446 (E.D. Pa. 1985)..... 12

Garner v. State Farm Mut. Auto Ins. Co.,

2010 U.S. Dist. LEXIS 49482 (N.D. Cal. Apr. 22, 2010)..... 24

Gaskill v. Gordon,

160 F.3d 361 (7th Cir. 1998) 10

1 *Glass v. UBS Fin. Servs.*,
 2 331 Fed. Appx. 452 (9th Cir. 2009) 9

3 *Hanlon v. Chrysler Corp.*,
 4 150 F.3d 1011 (9th Cir. 1998) 9

5 *Harman v. Lyphomed, Inc.*,
 6 945 F.2d 969 (7th Cir. 1991) 9

7 *Hensley v. Eckerhart*,
 8 461 U.S. 424 (1983) 11

9 *In re Activision Sec. Litig.*,
 10 723 F. Supp 1373 (N.D. Cal. 1989)..... 10

11 *In re Art Materials Antitrust Litig.*,
 12 100 F.R.D. 367 (N.D. Ohio 1983) 17

13 *In re Automotive Refinishing Paint Antitrust Litig.*,
 14 2004 U.S. Dist. LEXIS 29161 (E.D. Pa. Sept. 27, 2004) 12

15 *In re Brand Name Prescription Drugs Antitrust Litig.*,
 16 186 F.3d 781 (7th Cir. 1999) 20

17 *In re Businessland Sec. Litig.*,
 18 1991 U.S. Dist. LEXIS 8962 (N.D. Cal. June 14, 1991)..... 10, 23

19 *In re Buspirone Antitrust Litig.*,
 20 2003 U.S. Dist. LEXIS 26538 (S.D.N.Y. Apr. 11, 2003) 10

21 *In re Cement & Concrete Antitrust Litig.*,
 22 1981 U.S. Dist. LEXIS 11272 (D. Ariz. 1981) 16, 17

23 *In re Cendant Corp. Prides Litig.*,
 24 243 F.3d 722 (3d Cir. 2001) 9

25 *In re Corel Corp. Sec. Litig.*,
 26 293 F. Supp. 2d 484 (E.D. Pa. 2003)..... 11

27 *In Re Crazy Eddie Sec. Litig.*,
 28 824 F. Supp. 320 (E.D.N.Y. 1993) 11

In re Equity Funding Corp. Sec. Litig.,
 438 F. Supp. 1303 (C.D. Cal. 1977) 16

In re General Instruments Sec. Litig.,
 209 F. Supp. 2d 423 (E.D. Pa. 2001)..... 15

1 *In re Heritage Bond Litig.*,
 2 2005 U.S. Dist. LEXIS 13555 (C.D. Cal. June 10, 2005)..... 10, 11, 12, 15

3 *In re King Resources Co. Sec. Litig.*,
 4 420 F. Supp. 610 (D. Colo. 1976) 11, 16

5 *In re Lease Oil Antitrust Litig.*,
 6 186 F.R.D. 403 (S.D. Tex. 1999) 22

7 *In re Linerboard Antitrust Litig.*,
 8 2004 U.S. Dist. LEXIS 10532 (E.D. Pa. June 2, 2004)..... 16, 22

9 *In re Linerboard Antitrust Litig.*,
 10 321 F. Supp. 2d 619 (E.D. Pa. 2004)..... 12

11 *In re Lorazepam & Clorazepate Antitrust Litig.*,
 12 2003 U.S. Dist. LEXIS 12344 (D.D.C. June 16, 2003)..... 10, 11, 21, 22

13 *In re Media Vision Tech. Sec. Litig.*,
 14 913 F. Supp. 1362 (N.D. Cal. 1996)..... 23, 24

15 *In Re Medical X-Ray Film Antitrust Litig.*,
 16 1998 U.S. Dist. LEXIS 14888 (E.D.N.Y. Aug. 7, 1998) 11

17 *In re Mego Fin. Corp. Sec. Litig.*,
 18 213 F.3d 454 (9th Cir. 2000) 9

19 *In re Mercury Interactive Corp. Secs. Litig.*,
 20 2010 U.S. App. LEXIS 17189 (9th Cir. Aug. 18, 2010) 4

21 *In re Merry-Go-Round Enter., Inc.*,
 22 244 B.R. 327 (D. Md. 2000)..... 23

23 *In re NASDAQ Market-Makers Antitrust Litig.*,
 24 187 F.R.D. 465 (S.D.N.Y. 1998)..... 17, 18

25 *In re Pacific Enters. Sec. Litig.*,
 26 47 F.3d 373 (9th Cir. 1995) 10, 17

27 *In re Plastic Tableware Antitrust Litig.*,
 28 1995 U.S. Dist. LEXIS 17014 (E.D. Pa. Oct. 25, 1995) 12

In re Relafen Antitrust Litig.,
 231 F.R.D. 52 (D. Mass. 2005) 10

In re Remeron Direct Purchaser Antitrust Litig.,
 2005 U.S. Dist. LEXIS 27012 (D.N.J. Nov. 9, 2005) 22

1 *In re Remeron Direct Purchaser Antitrust Litig.*,
 2 2005 U.S. Dist. LEXIS 79679 (D.N.J. Nov. 9, 2005) 25

3 *In re Rite Aid Corp. Secs. Litig.*,
 4 146 F. Supp. 2d 706 (E.D. Pa. 2001)..... 23, 24

5 *In re Rubber Chemicals Antitrust Litig.*,
 6 No. C-04-1648 MJJ, Order (N.D. Cal. Jan. 9, 2007)..... 12

7 *In re Shopping Carts Antitrust Litig.*,
 8 1983 U.S. Dist. LEXIS 11555 (S.D.N.Y. Nov. 18, 1983)..... 12

9 *In re Sorbates Direct Purchaser Antitrust Litig.*,
 10 2002 U.S. Dist. LEXIS 23468 (N.D. Cal. Nov. 15, 2002) 22

11 *In re Superior Beverage/Class Container Pretrial*,
 12 133 F.R.D. 119 (N.D. Ill. 1990) 18

13 *In re Vitamins Antitrust Litig.*,
 14 2001 U.S. Dist. LEXIS 25067 (D.D.C. July 13, 2001) 10, 22

15 *In re WPPSS Sec. Litig.*,
 16 19 F.3d 1291 (9th Cir. 1994) 22

17 *J.N. Futia Co. v. Phelps Dodge Indus., Inc.*,
 18 1982 U.S. Dist. LEXIS 15261 (S.D.N.Y. Sept. 17, 1982) 15, 16

19 *Mashburn v. National Healthcare, Inc.*,
 20 684 F. Supp. 679 (M.D. Ala. 1988)..... 8

21 *MCI Commc’ns Corp. v. American Tel. & Tel. Co.*,
 22 708 F.2d 1081 (7th Cir. 1983)..... 20, 21

23 *Paul, Johnson, Alston & Hunt v. Grauldy*,
 24 886 F.2d 268 (9th Cir. 1989) 8, 9

25 *Powers v. Eichen*,
 26 229 F.3d 1249 (9th Cir. 2000) 9

27 *Redding v. Fairman*,
 28 717 F.2d 1105 (9th Cir. 1983)..... 24

Romero v. Producers Dairy Foods, Inc.,
 2007 U.S. Dist. LEXIS 86270 (N.D. Cal. Nov. 14, 2007) 10

Shaw v. Toshiba Am. Info. Sys., Inc.,
 91 F. Supp. 2d 942 (E.D. Tex. 2000) 11

1 *Singer v. Becton Dickinson & Co.*,
 2 2010 U.S. Dist. LEXIS 53416 (S.D. Cal. June 1, 2010) 10

3 *Six Mexican Workers v. Arizona Citrus Growers*,
 4 904 F.2d 1301 (9th Cir. 1990) 9

5 *Spicer v. Chicago Bd. Options Exch., Inc.*,
 6 844 F. Supp. 1226 (N.D. Ill. 1993)..... 24

7 *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*,
 8 2005 U.S. Dist. LEXIS 9705 (E.D. Pa. May 20, 2005)..... 23

9 *Swedish Hosp. Corp. v. Shalala*,
 10 1 F.3d 1261 (D.C. Cir. 1993)..... 9

11 *Thornberry v. Delta Air Lines*,
 12 676 F.2d 1240 (9th Cir. 1982) 24

13 *Torrise v. Tucson Elec. Power Co.*,
 14 8 F.3d 1370 (9th Cir. 1993) 9

15 *United States Football League v. National Football League*,
 16 644 F. Supp. 1040 (S.D.N.Y. 1986), *aff'd*, 842 F.2d 1335 (2d Cir. 1988)..... 21

17 *Vincent v. Hughes Air West, Inc.*,
 18 557 F.2d 759 (9th Cir. 1977) 8

19 *Vizcaino v. Microsoft*,
 20 142 F. Supp. 2d 1299 (W.D. Wash. 2001) 11, 16, 17, 22

21 *Vizcaino v. Microsoft Corp.*,
 22 290 F.3d 1043 (9th Cir. 2002) 9, 21

23 *Weiss v. Mercedes-Benz of N. Am.*,
 24 899 F. Supp. 1297 (D.N.J. 1995), *aff'd*, 66 F.3d 314 (3d Cir. 1995) 23

OTHER AUTHORITIES

25 Thomas E. Willging, *et al.*, *Empirical Study of Class Actions in Four Federal District*
 26 *Courts: Final Report to the Advisory Committee on Civil Rules*
 27 (Federal Judicial Center 1996) 10

28

MEMORANDUM OF POINTS AND AUTHORITIES

Counsel for the direct purchaser class (“Class Counsel”) submit this Memorandum of Points and Authorities in support of their motion for an award of attorneys’ fees and reimbursement of expenses.

I. INTRODUCTION

Since 2007, Class Counsel have dedicated their time and energy to litigating this case on behalf of Plaintiff Alan Preis (“Plaintiff”) and those similarly situated (the “Class”) who purchased Dynamic Random Access Memory (“DRAM”) from Defendants¹ during the period April 1, 1999 through June 30, 2002 (the “Class Period”). As in the earlier DRAM action, captioned *In Re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, Master File No. M:02-cv-01486-PJH (the “Related Action”), Plaintiff alleged that Defendants and their Co-Conspirators² engaged in an over-arching horizontal conspiracy to fix prices for DRAM in the United States during the Class Period. Class Counsel, with no promise of payment of their fees, vigorously prosecuted this case against Defendants from its inception in 2007 until the last settlement was reached in December 2009.

Class Counsel have achieved settlements with Defendants totaling \$37,222,200 (the “Settlement(s)”).³ For their efforts in achieving this exceptional result, Class Counsel are seeking

¹ Unless otherwise noted herein, “Defendants” include: (1) Mitsubishi Electric Corporation and (2) Mitsubishi Electric and Electronics USA, Inc. (collectively, “Mitsubishi”); Hitachi, Ltd. (“Hitachi”); and (3) Toshiba America Electronic Components, Inc. and Toshiba Corporation (collectively “Toshiba”).

² The “Co-Conspirators” were defendants in the earlier DRAM action, including: Elpida Memory, Inc., Elpida Memory (USA), Inc.; Hynix Semiconductor, Inc. and Hynix Semiconductor America, Inc. (collectively “Hynix”); Infineon Technologies AG and Infineon Technologies North America Corporation; Micron Technology, Inc. and Micron Semiconductor Products, Inc. and Crucial Technology Inc. (collectively “Micron”); Mosel Vitelic Corporation and Mosel Vitelic Corporation (USA); Nanya Technology Corporation (“Nanya Taiwan”) and Nanya Technology Corporation America (“Nanya USA”) (collectively “Nanya”); NEC Electronics America, Inc.; Samsung Semiconductor, Inc. and Samsung Electronics Co., Ltd.; and Winbond Electronics Corporation and Winbond Electronics Corporation America.

³ All settlement payments made to date have been placed in an interest-bearing escrow account maintained by Class Counsel. Declaration of Anthony D. Shapiro in Support of Motion for an Award of Attorneys’ Fees and Reimbursement of Expenses at ¶ 7 (“Shapiro Decl.”). As of August 31, 2010, the amount in the Settlement Fund (Settlement plus interest) was \$28,645,288.67. Pursuant to its settlement agreement, on October 14, 2010, Mitsubishi will contribute an additional \$9,372,200 to the Settlement Fund. *See* Shapiro Decl. ¶ 7.

1 an award of attorneys' fees in the amount of 25% of the settlement monies (the "Settlement Fund")
2 plus interest, and reimbursement of their out-of-pocket litigation expenses in the amount of
3 \$20,382.97. This Settlement was achieved in the face of a strong defense, fueled by Defendants
4 and their counsels' extensive resources and experience, lack of any involvement by the U.S.
5 Department of Justice ("DOJ"), the loss of the case against an executive of Hynix, and following
6 prolonged and difficult settlement negotiations. By any measure, the result here is outstanding,
7 particularly considering the task of litigating such a large, complicated case and the enormous risk
8 of non-payment involved in undertaking this litigation.

9 As detailed in this brief and in the accompanying Declaration of Anthony D. Shapiro, the
10 work performed by Class Counsel was extensive. Among other things, Class Counsel:

- 11 • Conducted an initial investigation of this case and developed the theories and facts
12 to support Plaintiff's claims as to each Defendant's participation in the DRAM
price-fixing conspiracy;
- 13 • Negotiated and executed complicated tolling agreements with Defendants;
- 14 • Researched and drafted a detailed complaint;
- 15 • Sought and obtained informal discovery;
- 16 • Reviewed and analyzed tens of thousands of pages of documents produced by
17 Defendants Hitachi and Mitsubishi;
- 18 • Searched, reviewed, and analyzed the over 4.5 million pages of documents and
19 deposition transcripts from the Related Action for evidence of Hitachi, Mitsubishi,
20 and Toshiba's involvement in the conspiracy;
- 21 • Reviewed and analyzed the deposition transcripts from the related opt-out and
22 indirect DRAM actions and transcripts from the Gary Swanson (of Hynix) criminal
23 trial for evidence of Hitachi, Mitsubishi, and Toshiba's participation in the
conspiracy;
- 24 • Created a searchable database of conspiratorial evidence from documents and
25 deposition testimony from Defendants and their Co-Conspirators;
- 26 • Negotiated with Co-Conspirators the ability to utilize documents and deposition
27 testimony from the Related Action;
- 28 • Prepared and presented to Defendants inculpatory evidence;

- 1 • Engaged in difficult and protracted settlement negotiations with Defendants;
- 2
- 3 • Drafted settlement agreements, escrow agreements, motions for preliminary and
- 4 final approval, long and short form notices, claim forms, and claims administration
- 5 guidelines; and
- 6 • Audited the settling sales numbers with opt-outs in accordance with the terms of the
- 7 settlement agreements.

8 Class Counsel faced great risk in litigating this case against Defendants:

- 9 • The risk of litigating a case against Defendants for which the DOJ decided not to
- 10 bring any charges;
- 11 • The risk of not surviving motions to dismiss;
- 12 • The risk of not achieving class certification;
- 13 • The risk of defending against numerous summary judgment motions;
- 14 • The risk of not being able to establish damages. Defendants in the Related Action
- 15 repeatedly argued that plaintiffs suffered no antitrust impact or damages because
- 16 *prices actually declined* during the majority of the Class Period and Defendants
- 17 here would likely have argued the same;
- 18 • The risk that key witnesses would not come to the United States to provide
- 19 testimony or appear for deposition in foreign jurisdictions;
- 20 • The risk of trying a case in which employees of Defendants might invoke their Fifth
- 21 Amendment privilege against self-incrimination, making authentication of critical
- 22 documents nearly impossible and raising the risk that the Court might refuse to
- 23 allow adverse inferences to be drawn from such testimony at trial; and
- 24 • The risk of a prolonged and expensive trial.

25 Despite the many risks faced by Class Counsel and the difficulty in prosecuting such a

26 complex case, Class Counsel nevertheless achieved an outstanding result for the Class. In sum,

27 Class Counsels' request for a fee award of 25% is both fair and reasonable. It is well-earned,

28 supported by controlling case law, and is on the low end of the 25%-33% fee range awarded by

Ninth Circuit courts in similar complex cases. Importantly, Class Counsels' fee request has the

unanimous support of the Class. The fee request was set forth in the settlement notice that was sent

to more than one million Class Members by direct mail or email. *No objections* were received by

1 the August 16, 2010 objection deadline.⁴ It is also fair that Class Counsel be reimbursed for their
2 expenses. All of the expenses incurred were reasonable and necessary to the prosecution of this
3 action and are of the kind that courts routinely approve as proper litigation expenses. Accordingly,
4 Class Counsels' Motion for an Award of Attorneys' Fees and Reimbursement of Expenses should
5 be granted.

6 II. FACTUAL BACKGROUND

7 A. Overview

8 As this Court is aware, there was an earlier phase of this litigation (the Related Action). In
9 the Related Action, direct purchaser plaintiffs alleged the same conspiracy as alleged by Plaintiff
10 here, but against different defendants. All claims against defendants in the Related Action have
11 been resolved. Shapiro Decl. ¶ 4. The Related Action came on the heels of an investigation by the
12 DOJ into price-fixing in the DRAM industry. Shapiro Decl. ¶ 5. The DOJ issued indictments
13 against a number of DRAM manufacturers and ultimately a number of them (and a number of their
14 employees) pled guilty to violating the Sherman Act. *Id.* The DOJ had access to many of the same
15 documents and much of the same deposition testimony as Class Counsel. While the DOJ
16 investigated Hitachi, Mitsubishi, and Toshiba, they were not indicted. As a result, they were not
17 named as defendants in the Related Action. *Id.* In an abundance of caution, however, Class
18 Counsel negotiated agreements with Hitachi, Mitsubishi, and Toshiba on or about June 15, 2006
19 (the "tolling agreements"), to toll the statute of limitations on potential claims until the Related
20 Action was concluded. Plaintiff subsequently brought this action against Defendants. Shapiro
21 Decl. ¶ 6. Class Counsel in this action are the same attorneys that served as Class Counsel in the
22 Related Action. Shapiro Decl. ¶ 4.

23
24 ⁴ On August 18, 2010, the Ninth Circuit issued its opinion in *In re Mercury Interactive Corp.*
25 *Secs. Litig.*, 2010 U.S. App. LEXIS 17189, at *13-15 (9th Cir. Aug. 18, 2010), holding that district
26 courts should set the deadline for objections to a counsel's fee request on a date *after* the motion and
27 documents supporting it have been filed. Because the deadline for objectors in this case (August 16,
28 2010) had already passed when the *Mercury* decision was filed and the fee application due date had
already been set for September 21, 2010, Class Counsel raised this issue with the Court by letter
dated August 26, 2010, Dkt. No. 26, in the *Preis* action. Shapiro Decl. ¶ 13. In response, the Court
issued a minute order on August 31, 2010, advising Class Counsel to post the full fee application on
the case website on September 21, 2010, providing over 30 days notice of the full petition before the
October 27, 2010, date for final hearing. *See* Shapiro Decl. ¶ 13.

1 After the Related Action was concluded in 2007, and pursuant to the tolling agreements,
2 Class Counsel began an investigation as to whether Defendants Hitachi, Mitsubishi, and Toshiba
3 participated in the DRAM conspiracy. Shapiro Decl. ¶ 6. To further their investigation, Class
4 Counsel engaged in protracted negotiations with defense counsel in an effort to informally obtain
5 documents from Defendants. Shapiro Decl. ¶ 9. As a result, Class Counsel obtained, reviewed,
6 and analyzed tens of thousands of pages of documents provided by Hitachi and Mitsubishi. *Id.*
7 This review lasted many months. *Id.*

8 In addition, Class Counsel performed complicated searches to identify evidence involving
9 Hitachi, Mitsubishi, and Toshiba in the millions of pages of documents produced by defendants in
10 the Related Action. *Id.* Class Counsel also obtained waivers from some of the previous settling
11 defendants in the Related Action (pursuant to the terms of the protective order in that action) to
12 allow documents of defendants in that action to be shared with Defendants in this action. Shapiro
13 Decl. ¶ 19. In addition, Class Counsel scoured deposition transcripts from the Related Action for
14 evidence related to Defendants' participation in the conspiracy. Shapiro Decl. ¶ 18. Additionally,
15 Class Counsel reviewed the deposition transcripts in the related DRAM opt-out and indirect actions
16 as well as the transcripts from the criminal trial of Gary Swanson (of Hynix). *Id.* After reviewing
17 these materials and researching and considering the applicable law, Class Counsel began long and
18 protracted settlement negotiations with Defendants, beginning as early as May 2007 and continuing
19 until the last settlement was reached in December 2009. Shapiro Decl. ¶ 22.

20 In late 2009, it appeared as if a settlement with Toshiba was not going to be reached.
21 Shapiro Decl. ¶ 31. In accordance with the provisions of the tolling agreement with Toshiba, Class
22 Counsel provided notice to Toshiba that it was terminating the tolling agreement and would be
23 filing a complaint within days. *Id.* Class Counsel prepared a very thorough and detailed *Twombly*-
24 proof complaint, however, soon thereafter a settlement agreement in principle was reached. *Id.*

25 On January 25, 2010, in connection with Plaintiff's motion for preliminary approval of the
26 Settlements, Plaintiff, after discussion with the Defendants, prepared an additional complaint
27 setting forth the allegations against Defendants. Shapiro Decl. ¶ 21. The complaint alleged an
28 over-arching horizontal conspiracy between Defendants and their Co-Conspirators to fix prices for

1 DRAM and to allocate markets and customers for the sale of DRAM in the United States from
2 April 1, 1999, through June 30, 2002. Shapiro Decl. ¶ 11. Plaintiff sought, among other things,
3 treble damages pursuant to Section 4 of the Clayton Act, 15 U.S.C. §§ 15 and 22. *Id.*

4 **B. The Settlements**

5 The Settlements were the product of very intense and thorough arms-length negotiations by
6 experienced and informed counsel, including Guido Saveri and Anthony Shapiro. Shapiro Decl.
7 ¶¶ 22-25, 27, 31. Negotiations with each Defendant occurred over a span of many months and
8 involved telephone conferences, email and written correspondence, and face-to-face meetings. *Id.*
9 The negotiations were conducted in the utmost good faith. *Id.* Class Counsel negotiated the
10 Settlements based on their review and analysis of Defendants' documents as well as their review of
11 Co-Conspirators' documents produced in the Related Action, deposition testimony in the Related
12 Action, their own investigations, and analysis of expert reports. Shapiro Decl. ¶¶ 16-20. The
13 settlement negotiations with each Defendant are further described below:

14 **1. The Hitachi Settlement**

15 Negotiations with Hitachi were protracted and difficult. Shapiro Decl. ¶ 25. The first
16 settlement meeting occurred in May 2007. *Id.* After numerous face-to-face meetings and many
17 telephone conversations, the parties finally reached settlement and concluded their negotiations in
18 June 2008. Shapiro Decl. ¶¶ 22, 25. Hitachi agreed to pay \$11,500,000, which amounts to
19 approximately 9% of the sales remaining in the Class, in return for a dismissal with prejudice and
20 release of itself and, *inter alia*, all of its respective past and present, direct and indirect, parents
21 subsidiaries, and affiliates. Shapiro Decl. ¶ 26.

22 **2. The Mitsubishi Settlement**

23 Negotiations with Mitsubishi were similarly protracted and difficult. Shapiro Decl. ¶ 27.
24 Settlement negotiations with Mitsubishi began as early as November 2007. *Id.* The negotiations
25 were vigorous and consisted of numerous face-to-face meetings and many telephone conferences
26 and other communications. Shapiro Decl. ¶ 22. The Mitsubishi settlement was finally concluded
27 in October 2008. Shapiro Decl. ¶ 27. Mitsubishi agreed to pay \$7,100,000 plus (1) a maximum of
28 \$400,000 for notice and administration costs, and (2) 5% of Mitsubishi's DRAM sales during the

1 Class Period in excess of \$142,000,000 to Class members who remain in the Class following the
 2 deadline to opt-out and who have not otherwise settled with Mitsubishi. Shapiro Decl. ¶ 28. To
 3 determine what portion of Class members had opted out and, therefore, what portion of sales were
 4 in excess of \$142,000,000, Class Counsel exercised their right to audit Mitsubishi's lists of
 5 exclusions. *Id.* As a result, Mitsubishi has agreed to pay an additional \$9,372,200 million into the
 6 Settlement Fund by October 14, 2010. Shapiro Decl. ¶ 30. The total Mitsubishi Settlement
 7 amounts to \$16,470,200 or approximately 5% of the sales remaining in the case. Shapiro Decl. ¶¶
 8 28-30.

9 **3. The Toshiba Settlement**

10 Settlement with Toshiba was also difficult and prolonged, lasting over two years. Shapiro
 11 Decl. ¶ 31. The first settlement meeting occurred as early as May 2007. *Id.* After numerous face-
 12 to-face meetings and many telephone conversations, the Toshiba settlement was finally concluded
 13 in December 2009. Shapiro Decl. ¶¶ 22, 31. Toshiba agreed to pay \$9,250,000 to the Class,
 14 approximately 5% of the sales remaining in the Class, in return for a dismissal with prejudice and
 15 release of itself and, *inter alia*, all of its respective past and present, direct and indirect, parents,
 16 subsidiaries, and affiliates. Shapiro Decl. ¶ 32. In addition, Toshiba has agreed to pay a maximum
 17 of \$400,000 to be used for notice and administration costs. *Id.*

18 The total recovery amounts to approximately \$37,222,200⁵ or 6.8% of Defendants' DRAM
 19 sales to direct purchasers which remained in the Class during the Class Period. This Settlement
 20 exceeds, as a percentage of sales, those approved in most antitrust cases. The total settlement
 21 amounts to approximately 40% of single damages – an exceptional result. Shapiro Decl. ¶ 33.

22 **III. ARGUMENT**

23 **A. A 25% Award of Attorneys' Fees is Fair and Reasonable Under Ninth Circuit Law**

24 Class Counsel recovered \$37,222,200, or approximately 6.8% of the Defendants' DRAM
 25 sales to direct purchasers which remained in the Class during the Class Period. Class Counsel are
 26

27 ⁵ In fact, the total sum negotiated by Class Counsel for the benefit of the Class is **\$38,022,200**
 28 when you include the \$400,000 that Mitsubishi and \$400,000 Toshiba agreed to pay for notice and
 administrative costs on top of their settlement amounts. Shapiro Decl. ¶¶ 28, 32.

1 seeking an award of attorneys' fees in the amount of 25% of the Settlement Fund, plus interest.
2 For the following reasons, this request is fair and reasonable under Ninth Circuit law and should be
3 approved:

4 **1. The Ninth Circuit recognizes the common fund doctrine**

5 The Supreme Court "has recognized consistently that a litigant or a lawyer who recovers a
6 common fund for the benefit of persons other than himself or his client is entitled to a reasonable
7 attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980);
8 *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240 (1975) (common fund doctrine
9 permits recovery of attorneys' fees and costs from money obtained from defendants).

10 Ninth Circuit courts affirm the importance of the common fund doctrine. *See Paul,*
11 *Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 271 (9th Cir. 1989) (well-settled that lawyer
12 who helps create common fund should be allowed to share in the award); *Vincent v. Hughes Air*
13 *West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977) ("a private plaintiff, or his attorney, whose efforts
14 create, discover, increase or preserve a fund to which others also have a claim is entitled to recover
15 from the fund the costs of his litigation, including attorneys' fees"). Fee awards in successful
16 cases, such as the present action, encourage and support meritorious class actions, and thereby
17 promote private enforcement of, and compliance with, antitrust and consumer protection laws.
18 *See, e.g., Alpine Pharmacy, Inc. v. Charles Pfizer & Co., Inc.*, 481 F.2d 1045, 1050 (2d Cir. 1973),
19 *cert. denied*, 414 U.S. 1902 (1973) ("[i]n the absence of adequate attorneys' fee awards, many
20 antitrust actions would not be commenced...."); *Mashburn v. National Healthcare, Inc.*, 684 F.
21 Supp. 679, 687 (M.D. Ala. 1988) ("[A] financial incentive is necessary to entice capable attorneys,
22 who otherwise could be paid regularly by hourly-rate clients, to devote their time to complex, time-
23 consuming cases for which they may never be paid.").

24 Here, through the efforts of Class Counsel, a common fund (the Settlement Fund) of over
25 \$37 million has been created for the benefit of the Class. It is fair and reasonable that Class
26 Counsel be compensated for their extensive work in creating this fund.

1 **2. Ninth Circuit courts have repeatedly endorsed the percentage-of-recovery**
 2 **method in awarding attorneys' fees**

3 In *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984), the Supreme Court explained that under
 4 the common fund doctrine, a reasonable fee may be based “on a percentage of the fund bestowed
 5 on the class.” The Ninth Circuit has repeatedly endorsed the use of the “percentage-of-recovery”
 6 method in common fund cases. *See, e.g., Paul, Johnson*, 886 F.2d at 272; *Glass v. UBS Fin.*
 7 *Servs.*, 331 Fed. Appx. 452, 457 (9th Cir. 2009) (affirming district court’s use of percentage-of-
 8 recovery method); *Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301 (9th Cir. 1990);
 9 *Torrise v. Tucson Elec. Power Co.*, 8 F.3d 1370 (9th Cir. 1993).⁶

10 In the Related Action, this Court applied the “percentage-of-recovery” method, awarding
 11 Class Counsel the 25% fee award they requested. *See In Re Dynamic Random Access Memory*
 12 *(DRAM) Antitrust Litig.*, Master File No. M:02-cv-01486-PJH, Order Awarding Plaintiffs’ Counsel
 13 Attorneys’ Fees and Reimbursement of Expenses (Aug. 16, 2007) (Dkt. No. 1682), ¶ 2. Just as
 14 they did in the Related Action, Class Counsel put forth an enormous amount of effort to litigate this
 15 case here against three non-indicted defendants and achieved an exceptional result for the Class.
 16 The Court should apply the “percentage-of-recovery” method here too.

17 **3. 25% is the benchmark in the Ninth Circuit, but greater awards are frequent**

18 The Ninth Circuit has adopted a 25 percent benchmark for an award of fees in common
 19 fund cases. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998); *Powers v. Eichen*, 229
 20 F.3d 1249, 1256 (9th Cir. 2000); *see also Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir.
 21 2002) (Ninth Circuit surveyed fee awards from dozens of large common fund settlements, finding
 22 many in which fees of 20-30% were awarded).

23 In fact, a number of Ninth Circuit courts have suggested that the benchmark may be closer
 24 to 30% or higher. *See, e.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 460 (9th Cir. 2000)

25

 26 ⁶ In fact, two circuits have ruled that the percentage method is *mandatory* in common-fund
 27 cases. *See Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261 (D.C. Cir. 1993); *Camden I Condominium*
 28 *Ass’n v. Dunkle*, 946 F.2d 768, 774-75 (11th Cir. 1991). Other circuits and commentators have
 expressly approved the use of the percentage method. *See, e.g., Brown v. Phillips Petroleum Co.*,
 838 F.2d 451, 454 (10th Cir. 1988); *Harman v. Lyphomed, Inc.*, 945 F.2d 969, 975 (7th Cir. 1991);
In re Cendant Corp. Prides Litig., 243 F.3d 722 (3d Cir. 2001).

1 (affirming award of fees equal to one-third of total recovery); *In re Pacific Enters. Sec. Litig.*, 47
 2 F.3d 373, 379 (9th Cir. 1995) (awarding 33% of \$12 million common settlement fund); *In re*
 3 *Businessland Sec. Litig.*, 1991 U.S. Dist. LEXIS 8962, at *8 (N.D. Cal. June 14, 1991) (granting
 4 fee award of 30% of net settlement fund plus expenses of \$90,574.78, citing several cases from this
 5 and other circuits that held similarly); *Romero v. Producers Dairy Foods, Inc.*, 2007 U.S. Dist.
 6 LEXIS 86270 (N.D. Cal. Nov. 14, 2007) (33% fee awarded); *In re Activision Sec. Litig.*, 723 F.
 7 Supp 1373, 1375 (N.D. Cal. 1989) (awarding a 32.8% fee and adopting a “policy of awarding
 8 approximately 30% of the fund as attorneys’ fees in the ordinary case,” as “well-justified in light of
 9 the lengthy line of cases which find such an award appropriate and reasonable....”); *Singer v.*
 10 *Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, at *8 (S.D. Cal. June 1, 2010) (approving
 11 attorney fee award of 33.33% of the common fund and holding that the award was similar to
 12 awards in three other wage and hour class actions where fees ranged from 30.3% to 40%); *In re*
 13 *Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555 (C.D. Cal. June 10, 2005) (33.33% percentage
 14 of common fund fee award approved); *Cicero v. DirectTV, Inc.*, 2010 U.S. Dist. LEXIS 86920
 15 (C.D. Cal. July 27, 2010) (approving 30% fee award as fair and reasonable).⁷

16 Courts in other circuits have also approved fee awards in common fund cases that are
 17 higher than 25%. *See, e.g., Gaskill v. Gordon*, 160 F.3d 361, 363-64 (7th Cir. 1998) (affirming
 18 award of 38% of class action settlement fund); *In re Vitamins Antitrust Litig.*, 2001 U.S. Dist.
 19 LEXIS 25067, at *57 (D.D.C. July 13, 2001) (determining that one-third award was reasonable and
 20 granting fee award of 34% of the total estimated settlement amount in antitrust price fixing
 21 litigation); *In re Relafen Antitrust Litig.*, 231 F.R.D. 52 (D. Mass. 2005) (awarding class counsel
 22 \$22,311,000 in fees or 33% of class fund of \$67,000,000, plus a separate award of litigation
 23 expenses in the amount of \$1,297,301); *In re Buspirone Antitrust Litig.*, 2003 U.S. Dist. LEXIS
 24 26538, at *11 (S.D.N.Y. Apr. 11, 2003) (awarding fees of 33.3% of \$220 million common fund to
 25 class counsel for direct purchasers); *In re Lorazepam & Clorazepate Antitrust Litig.*, 2003 U.S.

26
 27 ⁷ *See also* Thomas E. Willging, *et al.*, *Empirical Study of Class Actions in Four Federal District*
 28 *Courts: Final Report to the Advisory Committee on Civil Rules*, at 69 (Federal Judicial Center 1996)
 (1996 study found that the median percentage for attorneys’ fees “ranged from 27% to 30%”).

1 Dist. LEXIS 12344 (D.D.C. June 16, 2003) (awarding class counsel 30% of the common fund);
 2 *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000) (“[B]ased on the
 3 opinions of other courts and the available studies of class action attorneys’ fees awards ... this
 4 Court concludes that attorneys’ fees in the range from ... (25%) to ... (33.34%) have been
 5 routinely awarded in class actions.”).

6 Here, Class Counsels’ request of a 25% of the recovery fee award is reasonable, falling on
 7 the low end of the fee range in the Ninth Circuit and elsewhere.

8 **4. The relevant factors justify an award of 25%**

9 **a. The result achieved**

10 Courts have consistently recognized that the result achieved is a major factor to be
 11 considered in making a fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (“most critical
 12 factor is the degree of success obtained”); *Vizcaino*, 142 F. Supp. 2d at 1303 (first factor
 13 demonstrating that an award of 28% of fund was reasonable was the “size of the recovery”); *In re*
 14 *King Resources Co. Sec. Litig.*, 420 F. Supp. 610, 630 (D. Colo. 1976) (“the amount of the
 15 recovery, and end result achieved are of primary importance, for these are the true benefit to the
 16 client”); *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 547-48 (S.D. Fla. 1988), *aff’d*, 899
 17 F.2d 21 (11th Cir. 1990) (“[t]he quality of work performed in a case that settles before trial is best
 18 measured by the benefit obtained”).

19 Here, the result achieved – ***a settlement of over \$37 million for the Class and representing***
 20 ***approximately 40% of single damages of DRAM sales that remained in the Class during the***
 21 ***Class Period*** – is exceptional. *See, e.g., Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, at
 22 *62 (36% of class’ total net loss deemed an exceptional result, granting 33.3% of the fund in fees);
 23 *In re Medical X-Ray Film Antitrust Litig.*, 1998 U.S. Dist. LEXIS 14888, at *15-16 (E.D.N.Y. Aug.
 24 7, 1998) (increasing 25% benchmark to 33.3% where counsel recovered 17% of damages); *In re*
 25 *Crazy Eddie Sec. Litig.*, 824 F. Supp. 320, 326 (E.D.N.Y. 1993) (increasing benchmark to 33.8%
 26 where counsel received 10% of damages); *In re Corel Corp. Sec. Litig.*, 293 F. Supp. 2d 484, 489-
 27 90, 498 (E.D. Pa. 2003) (permitting one-third fee award from \$48 million settlement fund which
 28 represented approximately 15% of class’ total net damages).

1 Furthermore, the individual settlements reached with Defendants each represent between
 2 5% and 9% of their remaining sales to the Class during the Class Period. Shapiro Decl. ¶ 33. This
 3 compares very favorably with similar class action settlements finally approved in other price-fixing
 4 cases. For example, in *In re Rubber Chemicals Antitrust Litig.*, No. C-04-1648 MJJ, Order, (N.D.
 5 Cal. Jan. 9, 2007) (a copy of which as attached at Ex. A to the Shapiro Decl.), a similar horizontal
 6 price-fixing case, Judge Jenkins, in the course of granting preliminary approval, characterized a
 7 settlement payment of 4% of a defendant's sales as "an excellent recovery." *See also, e.g., In re*
 8 *Plastic Tableware Antitrust Litig.*, 1995 U.S. Dist. LEXIS 17014, at *4 (E.D. Pa. Oct. 25, 1995)
 9 (3.5% of sales); *In re Linerboard Antitrust Litig.*, 321 F. Supp. 2d 619, 627 (E.D. Pa. 2004) (1.62%
 10 of sales); *In re Shopping Carts Antitrust Litig.*, 1983 U.S. Dist. LEXIS 11555, at *24 (S.D.N.Y.
 11 Nov. 18, 1983) (5.5% of sales); *In re Automotive Refinishing Paint Antitrust Litig.*, 2004 U.S. Dist.
 12 LEXIS 29161, at *22 (E.D. Pa. Sept. 27, 2004) (2% of sales); *Fisher Bros. v. Phelps Dodge Indus.,*
 13 *Inc.*, 604 F. Supp. 446, 451 (E.D. Pa. 1985) (2.4% of sales).

14 **b. The work performed**

15 The work performed by Class Counsel is another factor to be considered. *See, e.g., In re*
 16 *Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, at *64. Here, the work performed by Class
 17 Counsel was extensive and of the highest quality.

18 **(1) Tolling agreements**

19 Defendants were not indicted by the DOJ and, accordingly, were not named as defendants
 20 in the Related Action. Shapiro Decl. ¶ 15. To be prudent, however, Class Counsel negotiated
 21 separate agreements with each Defendant to toll the statute of limitations with regard to any claims
 22 arising from the Related Action. *Id.* After months of negotiation with counsel for each of the
 23 Defendants, tolling agreements were executed on June 15, 2006, with each Defendant. *Id.*

24 **(2) Investigation and development of facts**

25 After the Related Action concluded, and pursuant to the tolling agreements, Class Counsel
 26 began investigating what claims, if any, could be brought against the Defendants. Shapiro Decl.
 27 ¶ 16. Over several months, Class Counsel sought and obtained informal discovery from

28 Defendants Hitachi and Mitsubishi. *Id.* Defendants Hitachi and Mitsubishi produced tens of

1 thousands of pages of documents, which Class Counsel organized, reviewed, and analyzed to
2 formulate Plaintiff's claims against Defendants. *Id.*

3 In addition, Class Counsel designed and performed extensive searches of documents
4 produced by defendants in the Related Action to cull evidence on Hitachi, Mitsubishi, and
5 Toshiba's participation in the conspiracy. Shapiro Decl. ¶ 17. The documents yielded from the
6 searches were voluminous and Class Counsel reviewed and analyzed them carefully. *Id.* To
7 organize and determine the value of certain documents, Class Counsel had to go back to materials
8 in the Related Action to see how Defendants' actions fit into the overall DRAM conspiracy.
9 Shapiro Decl. ¶ 20. For example, each document needed to be compared to the overall chronology
10 of events prepared in the Related Action to see if Defendants participated in meetings or in other
11 conspiratorial communications with Co-Conspirators. *Id.* This review of Defendants' and Co-
12 Conspirators' documents lasted many months. Shapiro Decl. ¶ 16.

13 Furthermore, Class Counsel reviewed many of the deposition transcripts from the Related
14 Action to formulate their case against Defendants and to determine the extent of each Defendant's
15 involvement in the conspiracy. Shapiro Decl. ¶ 17. Additionally, Class Counsel reviewed and
16 analyzed the deposition transcripts from the related DRAM opt-out and indirect actions as well as
17 transcripts from the Gary Swanson (of Hynix) criminal trial. Shapiro Decl. ¶ 18. Class Counsel
18 also had to secure waivers from defendants in the Related Action to allow Class Counsel to share
19 documents with Toshiba, Hitachi, and Mitsubishi. Shapiro Decl. ¶ 19.

20 (3) Settlement negotiations

21 Class Counsels' efforts led to extensive and lengthy settlement negotiations. Shapiro Decl.
22 ¶ 22. In preparation for all settlement negotiations, Class Counsel prepared a detailed analysis of
23 the evidence against each Defendant, damages computations and assessed each Defendant's
24 potential exposure. *Id.*

25 Settlement negotiations with all Defendants were difficult and protracted. *Id.* Class
26 Counsel conducted numerous phone conversations and face-to-face meetings with each of the
27 Defendants through their counsel. *Id.* Settlement negotiations with Hitachi began in May 2007
28 and the parties finally reached a settlement in June 2008. Shapiro Decl. ¶ 25. Settlement

1 negotiations with Mitsubishi began in November 2007, and the parties finally reached settlement in
2 October 2008. Shapiro Decl. ¶ 27. Settlement negotiations with Toshiba began in May 2007 and
3 continued until the parties finally reached a settlement in December 2009. Shapiro Decl. ¶ 31.

4 (4) The complaint

5 With no assurance of settlement, Class Counsel drafted a detailed complaint that set forth
6 with great specificity the involvement of each of the settling defendants in the overall DRAM
7 price-fixing conspiracy. Shapiro Decl. ¶ 31. In late 2009, when it appeared that a settlement with
8 Toshiba might not be reached, Class Counsel finalized that detailed complaint and terminated the
9 tolling agreement with Toshiba. *Id.* Shortly thereafter, a settlement was reached in principle with
10 Toshiba. *Id.* In agreement with Defendants, Class Counsel revised the complaint without the
11 detailed information. *Id.* On January 25, 2010, the Complaint was ultimately filed along with
12 Plaintiff's papers for preliminary approval of the Settlements, but Class Counsel nevertheless
13 expended a great amount of time to develop the facts and set forth allegations that were included.
14 *Id.*

15 (5) Administration of the Settlement Fund

16 In the Related Action, Class Counsel spent approximately 2,000 hours to administer claims,
17 many of which were large and complicated. Shapiro Decl. ¶ 54. Class Counsel had to resolve
18 many disputes that arose in verifying or approving legitimate claims, including: (1) verification of
19 large claims; (2) resolving disputes as to whether claimants had opted out or had settled their
20 claims (many opt outs and claimants which had settled and which involved large claims filed
21 claims); (3) claims that were barred by the Foreign Trade Antitrust Improvements Act ("FTAIA")
22 as being beyond the jurisdiction of the Court; (4) claims that were not supported by adequate
23 documentation; (5) claims that did not involve any products in the action; (6) claims filed by
24 different claimants for the same purchase, each claiming the right to the settlement funds;
25 (7) claims that had been purportedly settled but claimed by other claimants; (8) foreign claims; and
26 (9) disputes between claimants who had purportedly assigned their claims to other parties. Shapiro
27 Decl. ¶ 55.

1 Several of these disputes required motions and appearances before this Court, and Class
 2 Counsel expended great effort to ultimately see these claims resolved. Shapiro Decl. ¶ 56. One
 3 example was a heated dispute as to a \$4 million claim by class member Mega Comm. *Id.* When
 4 Mega Comm filed its claim, it discovered that one of its ex-employees, without any authorization
 5 from Mega Comm, had independently settled Mega Comm's claim with Micron for one dollar. *Id.*
 6 Class Counsel spent many hours investigating and litigating this dispute. *Id.* Class Counsel also
 7 spent many hours researching and drafting motions on the novel issues presented by this dispute
 8 and ultimately litigated it to a resolution through frequent discussions with Micron counsel, the
 9 claims administrator, motion practice, and oral argument. *Id.*

10 Class Counsel was able to resolve all of the disputed claims without a single appeal. This is
 11 unusual in a case of this size and complexity. Any appeal would have prevented the total
 12 settlement fund from being distributed until resolution of the appeal and could have potentially
 13 prevented Class Members from participating in the settlements for years. Shapiro Decl. ¶ 57.

14 In the Related Action, Class Counsel did not request any fees for their work in administering
 15 claims, even though the time and effort spent was significant. Here, there are already more than
 16 8,000 claims filed by class members. Shapiro Decl. ¶ 58. While Class Counsel will not be
 17 requesting any additional fees for their work to administer the claims in this case, they expect that a
 18 comparable number of hours to those expended on claims administration in the Related Action will
 19 be required to administer the Settlement Fund here. This information provides additional support
 20 that Class Counsel's requested fee award is fair and reasonable. *Id.*

21 **c. The skill and experience required**

22 **(1) The experience of Class Counsel**

23 The experience of Class Counsel also justifies a 25% fee award. *See Heritage Bond Fund*
 24 *Litig.*, 2005 U.S. Dist. LEXIS 13555, at *65 (awarding fees of one-third of common fund where
 25 counsel specialized in same type of litigation); *In re General Instruments Sec. Litig.*, 209 F. Supp.
 26 2d 423, 432-33 (E.D. Pa. 2001) (experience of counsel justified one-third fee award of common).
 27 The quality of Class Counsels' work, and the efficacy and dedication with which it was performed,
 28 should be compensated. *See, e.g., J.N. Futia Co. v. Phelps Dodge Indus., Inc.*, 1982 U.S. Dist.

1 LEXIS 15261 (S.D.N.Y. Sept. 17, 1982). Here, the Class Counsel firms and attorneys specialize in
 2 representing plaintiff classes in antitrust actions. Shapiro Decl. ¶ 49. Class Counsel here are the
 3 same people that the Court found to be experienced and extremely well-qualified in the Related
 4 Action. *Id.*

5 One of the hallmarks of the Related Action was the ability of Class Counsel to resolve
 6 disputes and litigate the matter without unnecessary Court intervention. The same is true in this
 7 action. As a result of Class Counsels' experience, from the inception of this litigation in
 8 negotiating the terms of the tolling agreements to final approval of the settlements, Class Counsel
 9 has not burdened the Court with unnecessary motion practice. Shapiro Decl. ¶ 50. Class Counsel
 10 has been able to negotiate what is rare in civil litigation: pre-complaint discovery, tolling
 11 agreements, protective orders, settlement agreements, notice provisions, audits of claims, and
 12 approval papers without unduly burdening the Court. Shapiro Decl. ¶ 49 (citing fee hearing
 13 transcript in the Related Action).

14 (2) The high caliber of opposing counsel

15 The caliber of opposing counsel is another important factor in assessing the quality of Class
 16 Counsels' work. *Vizcaino*, 142 F. Supp. 2d at 1303; *In re Equity Funding Corp. Sec. Litig.*, 438 F.
 17 Supp. 1303, 1337 (C.D. Cal. 1977); *King Resources*, 420 F. Supp. at 634. Here, Class Counsel
 18 were opposed by attorneys from some of the largest firms in the country with near limitless
 19 resources at their disposal.⁸ Despite facing such worthy adversaries, Class Counsel achieved an
 20 extraordinary result for the Class.

21 (3) The complexity and difficulty of the issues

22 Courts have recognized the novelty and difficulty of issues in a case as significant factors to
 23 be considered in making a fee award. *See, e.g., Vizcaino*, 142 F. Supp. 2d at 1306. Antitrust price-
 24 fixing conspiracy cases are notoriously complex and difficult to litigate. *See, e.g., In re Linerboard*
 25 *Antitrust Litig.*, 2004 U.S. Dist. LEXIS 10532, at *34 (E.D. Pa. June 2, 2004) ("antitrust class
 26 action is arguably the most complex action to prosecute") (quotations omitted); *In re Cement &*
 27

28 ⁸ *See* Shapiro Decl. ¶ 51 & n.8 for a list of the firms representing Defendants.

1 *Concrete Antitrust Litig.*, 1981 U.S. Dist. LEXIS 11272 (D. Ariz. 1981) (recognizing “complexity
2 and uncertainty” of legal and factual issues in antitrust cases); *In re Art Materials Antitrust Litig.*,
3 100 F.R.D. 367, 372 (N.D. Ohio 1983) (“plaintiffs would face a very complex, difficult and costly
4 trial on the merits, pursuant to which success could not be guaranteed”).

5 This litigation was no exception. Shapiro Decl. ¶ 52. Class Counsel had to research and
6 analyze the intricacies of each Defendant and the details of its particular organization and DRAM
7 products. *Id.* The Defendants are multibillion dollar companies with countless employees spread
8 throughout the world. *Id.* Each has thousands of customers, large and small, and each with its own
9 systems and procedures. *Id.* Class Counsel had to learn each’s record keeping systems, sales
10 structure, marketing practices, cultural norms for Defendants’ foreign operations, and the
11 conspiratorial language used in the emails that were sent internally by Defendants as well the
12 language used in communications with other Defendants and Co-Conspirators. *Id.* Here, Class
13 Counsel successfully managed the logistics of prosecuting such a complex case against six
14 multibillion dollar Defendant entities (foreign and domestic) and tackled many difficult legal and
15 factual issues presented by this case despite the fact that the DOJ had reviewed the same material
16 as Class Counsel and decided not to proceed. *Id.*

17 **d. The risks of this litigation**

18 Risk is an important factor in determining a fair fee award. *Vizcaino*, 142 F. Supp. 2d at
19 1303-04. In fact, Ninth Circuit courts have recognized that a high risk factor is one reason for
20 increasing attorneys’ fee awards above the 25% benchmark fee. *Id.*; *see also In re Pacific Enters.*
21 *Sec. Litig.*, 47 F.3d at 379 (33% of the common fund as attorneys fees was justified because of the
22 complexity of the issues and the risks). In *Vizcaino*, the Court explained that the case was
23 extremely risky for class counsel to pursue because of negative facts, the lack of controlling law,
24 and the vigorous defense of the case. *Vizcaino*, 142 F. Supp. 2d at 1303. The *Vizcaino* Court
25 further noted that class counsel’s risk in that case was even greater and their work made more
26 difficult, because the defendant, Microsoft, was one of the nation’s largest and most formidable
27 companies. *Id.* In addition, antitrust litigation is particularly unpredictable. *See In re NASDAQ*

28 *Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 475 (S.D.N.Y. 1998) (“Indeed, the history of

1 antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability,
 2 but recovered no damages, or only negligible damages, at trial or on appeal.”); *see also In re*
 3 *Superior Beverage/Class Container Pretrial*, 133 F.R.D. 119, 127 (N.D. Ill. 1990) (“The ‘best’
 4 case can be lost and the ‘worst’ case can be won, and juries may find liability but no damages.
 5 None of these risks should be underestimated.”).

6 Here, Class Counsel faced many risks, including:

7 **(1) The risk of litigating this case where the DOJ chose not to pursue**
 8 **any action against the Defendants**

9 While it is true that the DOJ has a higher burden of proof in a criminal matter, the DOJ
 10 looked at much of the same material as Class Counsel and decided not to pursue charges against
 11 the Defendants. Additionally, the DOJ sought a shorter class period in their indictments and guilty
 12 pleas involving Defendants’ Co-Conspirators and only required the admission of criminal conduct
 13 for certain large OEMs, these facts all worked against Class Counsel in obtaining the settlements
 14 that were ultimately achieved. Shapiro Decl. ¶ 40.

15 **(2) The risk of not being able to establish liability**

16 Price-fixing conspiracies are notoriously among the hardest cases to prove. Conspiracies
 17 by their very nature are “secret,” making direct and circumstantial evidence difficult to find. While
 18 plaintiffs in the Related Action could rely on the DOJ’s indictments and guilty pleas entered by
 19 defendants and their employees to support their case, Defendants Hitachi, Mitsubishi, and Toshiba
 20 were never indicted by the DOJ. Shapiro Decl. ¶¶ 39-40. In addition, in the Related Action,
 21 numerous key witnesses from defendants refused to testify at deposition and invoked their Fifth
 22 Amendment right against self-incrimination. Shapiro Decl. ¶ 41. Several of those individuals were
 23 thought to be ringleaders of the conspiracy and faced individual indictments for their participation
 24 in the conspiracy. *Id.* In the Related Action, the testimony of those individuals held the most
 25 promise for plaintiffs to uncover the important facts of the conspiracy and their silence created
 26 problems for plaintiffs to establish liability. *Id.*

27 Plaintiffs in the Related Action also faced the risk that the Court would instruct the jury that
 28 no adverse inferences could be taken from the Fifth Amendment depositions against defendants,

1 making it even harder for plaintiffs in the Related Action to tell the conspiracy story to a jury at
2 trial. In addition, in the Related Action, there were issues related to tracking down former
3 employees and foreign nationals who refused to come to the United States and provide testimony.
4 The same would only be compounded here by the passage of additional time. *Id.*

5 Here, to establish liability, Class Counsel would have needed to establish the same overall
6 conspiracy as alleged in the Related Action and would have needed to show each Defendant's
7 participation therein. Further, Class Counsel would have faced the same challenges as in the
8 Related Action without the benefit of any indictments or guilty pleas. Class Counsel also faced the
9 added risk that Defendants' employees might have invoked *their* privilege against self-
10 incrimination, making liability even harder to prove. In sum, Class Counsel faced a significant risk
11 of not being able to establish liability as to each Defendant at trial.

12 (3) The risk of not surviving multiple motions to dismiss

13 The complaints filed and challenged in the Related Action were filed before the Supreme
14 Court's decisions in *Bell Atl. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 129 S. Ct. 1937
15 (2009). The question of whether *Twombly* and *Iqbal* imposed a new pleading standard is still being
16 clarified by the appellate courts. Furthermore, Defendants in recent antitrust cases have increasingly
17 challenged antitrust plaintiffs' standing to sue foreign defendants under the FTAIA. The foreign
18 Defendants here would likely assert the same argument and this posed a great risk as to whether
19 Plaintiff's claims could survive motions to dismiss.

20 (4) The risk of not achieving class certification

21 Whether to certify a class rests within the sound discretion of the Court. *See Craft v.*
22 *County of San Bernadino*, 624 F. Supp. 2d 1113, 1119 (C.D. Cal. 2008) (citing *Staton v. Boeing*
23 *Co.*, 327 F.3d 938, 953 (9th Cir. 2003) (string cite omitted). In the Related Action, Defendants
24 argued that named plaintiffs were not typical of other class members and that they could not
25 represent the interests of many larger, corporate buyers that were in the Class. Shapiro Decl. ¶ 35.
26 Defendants in the Related Action also challenged plaintiffs' experts, assailing the viability of their
27 methodologies and contending that the complexity of the DRAM market and the diversity of
28 DRAM products and prices, made common proof of impact impossible. *Id.* Defendants' expert in

1 the Related Action bolstered defendants' arguments with a detailed and comprehensive rebuttal
2 report. *Id.* While Class Counsel did succeed in having the class certified, the Court's opinion left
3 open the future question of whether the damages methodologies used by plaintiffs' experts would
4 be allowed at trial. *Id.* In all likelihood, similar motions would have been filed in this action.

5 **(5) The risk of summary judgment**

6 In the Related Action, defendants filed five separate summary judgment motions. Shapiro
7 Decl. ¶ 37. The issues raised by defendants were not easily disputed and required intense attention
8 by Class Counsel and plaintiffs' experts. These challenges not only required legal analysis, but in
9 many cases demanded fact-intensive responses that required Class Counsel to effectively marshal
10 information from millions of pages of documents and deposition testimony. *Id.*

11 In addition, in the Related Action, defendant Nanya filed two separate summary judgment
12 motions, one on behalf of Nanya Taiwan (the foreign parent corporation that produced the DRAM
13 at issue) and the other on behalf of Nanya USA (the American subsidiary which sold the DRAM at
14 issue). Shapiro Decl. ¶ 38. After extensive briefing and oral argument, the Court granted summary
15 judgment for Nanya Taiwan and dismissed it from the case, causing a serious risk for plaintiffs in
16 proving their case at trial because some of the key documents in the case regarding DRAM
17 production and the alleged agreement between defendants were attributable to Nanya Taiwan, the
18 foreign parent. *Id.* Here, Defendants each have a foreign parent that produces DRAM and an
19 American subsidiary that sells DRAM in the United States. The foreign parent Defendants here
20 would likely have made the same argument as made by Nanya Taiwan in the Related Action and
21 summary judgment may have been granted based on the precedent of the Related Action. In sum,
22 Class Counsel faced a great risk that Plaintiff's claims could be dismissed at summary judgment.

23 **(6) The risk of trial**

24 Going to trial in any case is a risk. In fact, the records of federal courts are filled with
25 complex cases such as this one that have been unsuccessful. *See, e.g., In re Brand Name*
26 *Prescription Drugs Antitrust Litig.*, 186 F.3d 781, 785-87 (7th Cir. 1999) (affirming, in large part, a
27 directed verdict during a trial held after plaintiffs obtained a reversal of summary judgments in
28 favor of defendant pharmaceutical manufacturers); *MCI Commc'ns Corp. v. American Tel. & Tel.*

1 Co., 708 F.2d 1081, 1166-69 (7th Cir. 1983) (remanding massive antitrust judgment for a new trial
2 and damages); *United States Football League v. National Football League*, 644 F. Supp. 1040,
3 1042 (S.D.N.Y. 1986), *aff'd*, 842 F.2d 1335, 1377 (2d Cir. 1988) (culminating in a verdict of \$1
4 before trebling after a lengthy trial). This case is no different. In fact, the only related DRAM trial
5 to proceed, that of a former Hynix executive, Gary Swanson, ended in an hung jury and ultimate
6 dismissal by the DOJ. Shapiro Decl. ¶ 23.

7 Class Counsel also faced the significant risk of not being able to convince a jury that the
8 Class suffered any damages during the Class Period. As defendants in the Related Action
9 vigorously argued, between April 1, 1999 and June 30, 2002, **DRAM prices actually declined** and,
10 therefore, there was no injury to plaintiffs during that time period. Shapiro Decl. ¶ 43. During the
11 Class Period, DRAM prices dropped and defendants argued that this was the result of intense price
12 wars among Defendants and their Co-Conspirators. *Id.* Moreover, several defendants in the
13 Related Action pled guilty to charges brought against them by the DOJ only with respect to six,
14 non-class member OEMs and not with respect to any other DRAM purchasers. Based on these
15 guilty pleas, defendants in the Related Action consistently argued, both as to liability and damages,
16 that the conspiracy had no connection to the Class as a whole. In the Related Action, Class
17 Counsel had to contend with this argument at class certification, summary judgment, during
18 settlement negotiations, and in preparing for trial. *See* Shapiro Decl. ¶ 44. Defendants would have
19 made the same challenges to damages here.

20 **e. Contingent nature of the fee**

21 As described above, Class Counsel faced a great risk of non-payment for their time and
22 effort in litigating this case. The Ninth Circuit has confirmed that a fair fee award must include
23 consideration of the contingent nature of the fee, where there is no assurance of attorneys' fees or
24 reimbursement of expenses. *See, e.g., Vizcaino*, 290 F.3d at 1049-50 (approving an award of 28%
25 of the recovery based on contingent nature of fee). Fee awards must be sufficient to encourage the
26 most skilled and determined counsel to take on difficult cases and see them through to completion,
27 which could take years. *See In re Lorazepam & Clorazepate Antitrust Litig.*, 2003 U.S. Dist.

1 LEXIS 12344, at *28. As noted by the court in *In re WPPSS Sec. Litig.*, it is an established
2 practice to reward attorneys who take on the added risk of a contingency case:

3 It is an established practice in the private legal market to reward
4 attorneys for taking the risk of non-payment by paying them a
5 premium over their normal hourly rates for winning contingency
6 cases. See Richard Posner, *Economic Analysis of Law* §21.9, at 534-
7 35 (3d ed. 1986). Contingent fees that may far exceed the market
8 value of the services if rendered on a non-contingent basis are
9 accepted in the legal profession as a legitimate way of assuring
10 competent representation for plaintiffs who could not afford to pay
11 on an hourly basis regardless whether they win or lose.

12 *In re WPPSS Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994).

13 The commencement of a class action is no guarantee of success. Shapiro Decl. ¶ 45. Class
14 Counsel have received no compensation during the three year course of this litigation and have
15 incurred \$1,711,853.75 in time and \$20,382.97 in expenses in litigating for the benefit of the
16 Class. *Id.* Here, despite the many risks faced, Class Counsel committed their financial and human
17 resources to litigating this case and achieved an outstanding result for the benefit of the Class. For
18 this they should be fairly compensated and reimbursed.

19 In sum, given the excellent result achieved, the significant amount of work performed, and
20 the high degree of risk in this case, Class Counsel's fee request is fair and reasonable and compares
21 very favorably with fees awarded in similar antitrust class actions.⁹

22 **B. Lodestar Comparison Supports the Reasonableness of the Award**

23 Ninth Circuit courts often use a lodestar-times-multiplier analysis to "cross-check" the
24 reasonableness of the percentage-of-the-recovery award. See *Vizcaino v. Microsoft*, 142 F. Supp.
25 2d 1299, 1302 (W.D. Wash. 2001); see also *Craft*, 624 F. Supp. at 1122 (citing *Glass v. UBS Fin.*
26 *Servs., Inc.*, 2007 U.S. Dist. LEXIS 8476, at *16 (N.D. Cal. 2007) ("A lodestar cross-check is not
27 required in this circuit ...").

28 ⁹ See, e.g., *In re Sorbates Direct Purchaser Antitrust Litig.*, 2002 U.S. Dist. LEXIS 23468, at
*10 (N.D. Cal. Nov. 15, 2002) (Judge Legg, awarding 25% of \$80 million settlement); *In re*
Remeron Direct Purchaser Antitrust Litig., 2005 U.S. Dist. LEXIS 27012, at *10 (D.N.J. Nov. 9,
2005) (awarding fee of 33-1/3% of a \$75 million settlement); *In re Linerboard Antitrust Litig.*,
2004 U.S. Dist. LEXIS 10532 (awarding fee of 30% of \$202 million settlement); *In re Vitamins*
Antitrust Litig., 2001 U.S. Dist. LEXIS 25067 (34.6% of \$365 million settlement); *In re Lease Oil*
Antitrust Litig., 186 F.R.D. 403 (S.D. Tex. 1999) (25% of \$190 million settlement).

1 Courts have noted that multipliers between 3 and 6.0 are common and there are many
2 instances of courts finding higher multipliers to be reasonable when performing a lodestar cross-
3 check. *See, e.g., Craft*, 624 F. Supp. at 1127 (C.D. Cal. 2008) (25% percentage of common fund
4 awarded with cross-check multiplier of 5.2; court noted there was ample authority supporting
5 multiplier in this range and much higher); *In re IDB Comm. Group, Inc.*, No. 94-3618 (C.D. Cal.
6 Jan. 17, 1997) (Hupp, J.) (6.2 multiplier found to be acceptable); *In re Rite Aid Corp. Secs. Litig.*,
7 146 F. Supp. 2d 706, 736 (E.D. Pa. 2001) (recognizing that a “lodestar multiple in the range of 4.5
8 to 8.5” is “unquestionably reasonable” under the cross-check approach); *In re Merry-Go-Round*
9 *Enter., Inc.*, 244 B.R. 327 (D. Md. 2000) (40% award for \$71 million fund awarded, resulting in a
10 cross-check multiplier of 19.6); *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, 2005
11 U.S. Dist. LEXIS 9705 (E.D. Pa. May 20, 2005) (\$100 million class fund in antitrust case had
12 cross-check multiplier of 15.6); *Weiss v. Mercedes-Benz of N. Am.*, 899 F. Supp. 1297, 1304
13 (D.N.J. 1995) (awarding fee that resulted in a multiplier of 9.3 times hourly rate), *aff’d*, 66 F.3d
14 314 (3d Cir. 1995); *Cosgrove v. Sullivan*, 759 F. Supp. 166 (S.D.N.Y. 1991) (awarding fee equal to
15 a multiplier of 8.84).

16 Here, Class Counsel’s lodestar was \$1,711,853.75. This amounts to a 5.44 multiplier when
17 compared against the 25% fee award requested. This 5.44 multiplier falls squarely within the
18 range of multipliers deemed to be reasonable in this district and is comparable to the range of
19 implied multipliers that have been found to be reasonable in other similar class actions.

20 **C. Reimbursement of Expenses are Reasonable and Necessary**

21 Attorneys in a common fund case may be reimbursed for reasonable out-of-pocket
22 expenses. In common fund cases, Ninth Circuit courts frequently award litigation costs and
23 expenses in addition to a percentage-of-the recovery award of attorneys’ fees. *See, e.g., In re*
24 *Businessland Sec. Litig.*, 1991 U.S. Dist. LEXIS 8962, at *8 (granting fee award of 30% of net
25 settlement fund plus expenses of \$90,574.78, citing several cases from this and other circuits that
26 held similarly); *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996)
27 (“An attorney who has created a common fund has the right to reimbursement ...”). Here, Class
28

1 Counsel are seeking reimbursement for \$20,382.97 in expenses.¹⁰ The time, personnel, and out-of-
 2 pocket expenses devoted to this case by Class Counsel are the kind of expenses that courts
 3 routinely have deemed to be compensable. *See, e.g., Media Vision*, 913 F. Supp. at 1371 (court
 4 fees); *id.* at 1367-68 (photocopying, telephone, and postage charges); *Thornberry v. Delta Air*
 5 *Lines*, 676 F.2d 1240, 1244 (9th Cir. 1982), *remanded on other grounds*, 461 U.S. 952 (1983) and
 6 *Redding v. Fairman*, 717 F.2d 1105, 1119 (9th Cir. 1983) (travel); *Spicer v. Chicago Bd. Options*
 7 *Exch., Inc.*, 844 F. Supp. 1226, 1264 (N.D. Ill. 1993) (technology services).

8 Class Counsel has reviewed this Court's standing order with respect to fee applications and
 9 reimbursement of costs for securities cases and has followed it here. No counsel is seeking
 10 reimbursement of anything other than coach airfare or reasonable meals and accommodations in
 11 connection with the litigation of this case. Shapiro Decl. ¶ 47.

12 **D. The Class' Reaction Supports the Requested Award**

13 The absence of objections to the Settlement also demonstrates the fairness and
 14 reasonableness of Class Counsels' request for fees. *See Garner v. State Farm Mut. Auto Ins. Co.*,
 15 2010 U.S. Dist. LEXIS 49482, at *5 (N.D. Cal. Apr. 22, 2010) ("a single objection out of a sizeable
 16 class, after notice, further demonstrates the reasonableness and fairness of Class Counsels' request");
 17 *Rite Aid*, 396 F.3d at 305 (low level of objections is a "rare phenomenon"). Here, notices of the
 18 Settlement were mailed and emailed to over one million Class Members, published in the *Wall Street*
 19 *Journal* and posted on the website established for this litigation. Shapiro Decl. ¶ 53. Class
 20 Members were informed in the settlement notice that Class Counsel would apply for attorneys' fees
 21 of up to 25% of the Settlement Fund and reimbursement of expenses and were advised of their right
 22 to object to such requests. *Id.*

23 In this case, out of the over one million notices sent by direct mail or email to Class Members
 24 and thousands of claims having already been filed to participate in the Settlement, it is remarkable
 25

26 _____
 27 ¹⁰ *See* the Declaration of Guido Saveri in Support of Motion for an Award of Attorneys' Fees
 28 and Reimbursement of Expenses, the Declaration of Fred Taylor Isquith in Support of Motion for
 an Award of Attorneys' Fees and Reimbursement of Expenses, and the Shapiro Decl. filed
 herewith.

1 that no objections were received by the August 16, 2010 deadline.¹¹ The absence of objections is
2 especially significant where, as here, the Class included many large, sophisticated business entities.
3 “When a class is comprised of sophisticated business entities that can be expected to oppose any
4 request for attorney fees they find unreasonable, the lack of objections ‘indicates the appropriateness
5 of the [fee] request.’” *In re Remeron Direct Purchaser Antitrust Litig.*, 2005 U.S. Dist. LEXIS
6 79679, at *36 n.1 (D.N.J. Nov. 9, 2005) (awarding fee of 33-1/3% of a \$75 million settlement).

7 **IV. CONCLUSION**

8 For the reasons set forth above, Class Counsel respectfully request that the Court approve
9 an award of attorneys’ fees in the amount of \$9,305,550.00 or 25% of the common fund of
10 \$37,222,200 and reimburse Class Counsels’ expenses in the amount of \$20,382.97.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

¹¹ See footnote 4, *supra*.

1
2 Dated: September 21, 2010

3 Respectfully submitted,

4 By: /s/ Anthony D. Shapiro
5 Anthony D. Shapiro (*pro hac vice*)
6 George W. Sampson (*pro hac vice*)
7 Ronnie S. Spiegel
8 HAGENS BERMAN SOBOL SHAPIRO LLP
9 1918 Eighth Avenue, Suite 3300
10 Seattle, WA 98101
11 Telephone: (206) 623-7292
12 Facsimile No.: (206) 623-0594
13 tony@hbsslw.com
14 george@hbsslw.com
15 ronnie@hbsslw.com

16 Guido Saveri (22349)
17 R. Alexander Saveri (173102)
18 Cadio Zirpoli (179108)
19 SAVERI & SAVERI, INC.
20 706 Sansome Street
21 San Francisco, CA 94111-1730
22 Telephone: (415) 217-6810
23 Facsimile: (415) 217-6813
24 guido@saveri.com
25 rick@saveri.com
26 cadio@saveri.com

27 Fred Taylor Isquith (*pro hac vice*)
28 Mary Jane Fait (*pro hac vice*)
 WOLF, HALDENSTEIN, ADLER,
 FREEMAN & HERZ
 270 Madison Avenue
 New York, NY 10016
 Telephone: (212) 545-4600
 Facsimile: (212) 545-4653

Co-Lead Counsel for Plaintiffs

1 Guido Saveri (22349)
R. Alexander Saveri (173102)
2 Cadio Zirpoli (179108)
SAVERI & SAVERI, INC.
3 706 Sansome Street
San Francisco, CA 94111
4 Telephone: (415) 217-6810
Facsimile: (415) 217-6813
5 guido@saveri.com
rick@saveri.com
6 cadio@saveri.com

7 Anthony D. Shapiro (*pro hac vice*)
George W. Sampson (*pro hac vice*)
8 Ronnie S. Spiegel
HAGENS BERMAN SOBOL SHAPIRO LLP
9 1301 Fifth Avenue, Suite 2900
Seattle, WA 98101
10 Telephone: (206) 623-7292
Facsimile: (206) 623-0594
11 tony@hbsslaw.com
george@hbsslaw.com

12 Fred Taylor Isquith (*pro hac vice*)
13 WOLF, HALDENSTEIN, ADLER,
FREEMAN & HERZ, LLP
14 270 Madison Avenue
New York, NY 10016
15 Telephone: (212) 545-4600
Facsimile: (212) 545-4653
16 isquith@whafh.com

17 *Attorneys for Plaintiff Alan Preis*

18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**

20 IN RE DYNAMIC RANDOM ACCESS
21 MEMORY (DRAM) ANTITRUST
22 LITIGATION

Master File No. M-02-1486PJH
MDL No. 1486

**[PROPOSED] ORDER AWARDING CLASS
COUNSEL ATTORNEYS' FEES AND
REIMBURSEMENT OF EXPENSES**

23
24 This Document Relates to:

25 *Preis v. Hitachi, Ltd., et al.,*
26 Case No. CV 10-0346 PHJ

1 The Court, having considered the Motion for an Award of Attorneys' Fees and
2 Reimbursement of Expenses and the memorandum and declarations in support thereof, and after
3 hearing, hereby finds that:

4 1. The Motion for Attorneys' Fees and Reimbursement of Expenses requests an award
5 of attorneys' fees of 25% of Settlement Fund, which is comprised of the Settling Defendants'
6 settlement payments together with interest earned thereon. Further, Plaintiff's counsel ("Class
7 Counsel") request reimbursement of out-of-pocket litigation costs and expenses.

8 2. The Court finds that the amount of fees requested is fair and reasonable under the
9 "percentage-of-recovery" method.

10 3. The attorneys' fees requested were entirely contingent upon success. Class Counsel
11 risked time and effort and advanced costs and expenses with no ultimate guarantee of
12 compensation.

13 4. In excess of one million notices outlining Class Counsels' requests were provided to
14 Class Members. No objections were received.

15 5. Upon consideration of the Motion and accompanying Declarations and based upon
16 all matters of record including the pleadings and papers filed in this action, the Court hereby finds
17 that the fee requested is reasonable and proper, and that the costs and expenses incurred by Class
18 Counsel were necessary, reasonable and proper.

19 Accordingly, it is hereby ORDERED and DECREED that:

20 A. Class Counsel are awarded attorneys' fees of twenty five percent (25%) of the
21 Settlement Fund, together with interest earned on the Settlement Fund for the same time period and
22 at the same rate as that earned on the Settlement Fund until dispersed to Class Counsel.

23 B. Class Counsel are awarded reimbursement of their litigation costs and expenses in
24 the amount of \$20,382.97.

25 C. The attorneys' fees awarded and reimbursement of litigation costs and expenses
26 shall be paid from the Settlement Fund and the interest earned thereon.

