

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

IN RE: CAPACITORS ANTITRUST
LITIGATION

Master File No. 3:17-md-02801-JD
Civil Action No. 3:14-cv-03264-JD

**Report and Recommendations of Special Master
on the
Direct Purchaser Plaintiff Class Counsel's Request for Attorneys' Fees and
Reimbursement of Expenses**

July 25, 2022

I. Assignment

I was appointed as Special Master by the Court on May 26, 2022 to review Direct Purchaser Plaintiffs' (DPPs') class counsel's request for fees and costs as documented in MDL ECF No. 1714-9. In their submission, DPPs' class counsel reported fees of \$13,649,094.85 and individual firm expenses of \$4,261,429.21 since January 1, 2020 (See Exhibits 1 and 2). In addition, DPPs' class counsel reported Litigation Fund expenses of \$3,057,571.26 from July 25, 2020 through June 23, 2022.¹

II. Analysis of Fees

1. According to the declarations in MDL ECF No. 1714-9, class counsel firms incurred fees of \$13,649,094.85. Lead Counsel, Joseph Saveri Law Firm, Inc. ("JSLF") reported fees incurred from January 1, 2020 through April 30, 2022. All other class counsel firms reported fees incurred from January 1, 2020 through March 31, 2022 (See Exhibit 1).
2. For each class counsel firm, Lead Counsel provided us an Excel file containing detailed time entries by date and by person. For each time entry, the Excel file includes the amount of time charged, the billing rate, a description of the task performed, the work category, and the fee amount. For each time entry, we recalculated the fee amount based on the amount of time charged and the billing rate. Based on our analysis, two class counsel firms' fees should be adjusted. For one class counsel firm, the underlying Excel file had several typos/math errors. For the other class counsel firm, there was a very small difference between the hours stated in the declaration versus hours in the Excel file, as well as a typo in the declaration. In total, reported fees should be reduced by \$41,764.25 (See Exhibit 1).
3. Based on our review of the detailed time entries, for 6 of the 10 class counsel firms with reported fees, the billing rate used by each timekeeper was consistent for the entire period. For the other 4 firms, some of the timekeepers had a rate

¹ MDL ECF No. 1714-12, Exhibit 3.

In connection with the prior Report of Special Master dated 9/14/20, Lead Counsel reported Litigation Fund expenses incurred through 7/24/20. As such, the current reporting period for Litigation Fund expenses should have started from 7/25/20. Lead Counsel's declaration misstated the starting date as 7/24/20. The underlying data provided by Lead Counsel indicates that it did not include expenses paid on 7/24/20 in the current reporting period.

increase during the reporting period. Of these 4 firms, Lead Counsel did not state its timekeepers' billing rates in its declaration.²

4. Of the 10 class counsel firms that incurred fees during the reporting period, 2 firms did not report time or fees by work category in the declaration, even though work categories are stated in the Excel file containing the detailed time entries. For 4 of the 8 firms that reported time and fees by work category in the declaration, we noted that the work category for some time entries in the Excel file had been changed when reported in the declaration. I understand that the categorization was reviewed by Lead Counsel. To the extent Lead Counsel determined that a time entry was better suited to a different category, the dollar amount was relocated to another category for the same person. These types of adjustments were also observed in the previous reporting periods.
5. For 8 of the 10 class counsel firms that incurred fees during the reporting period, the fees reported in ECF No. 1714-9 were less than the total of the time entries in the Excel file. I understand that Lead Counsel reviewed time entries and removed those that were deemed not billable. As such, it is reasonable that the fees reported in ECF No. 1714-9 would be less than the total of the time entries in the Excel file.
6. Based on our analysis, the reported fees of \$13,649,094.85 for the current reporting period should be reduced by \$41,764.25 to \$13,607,330.60.

III. Analysis of Individual Firm Expenses

1. As seen in Exhibit 2, class counsel reported individual firm expenses of \$4,261,429.21 during the current reporting period, of which \$2,995,750 represented assessments paid by co-counsel firms into the Litigation Fund maintained by Lead Counsel. Assessments paid by co-counsel firms into the Litigation Fund are not actual expenses. Actual expenses paid by the Litigation Fund are separately reported in MDL ECF No. 1714-12, Exhibit 3, and tested in Section IV.
2. Excluding the assessments resulted in actual expenses of \$1,265,679.21 claimed

² MDL ECF No. 1714-10, Exhibit 1.

by 10 individual firms. Lead Counsel reported expenses from January 1, 2020 through June 23, 2022. The other 9 class counsel firms reported expenses from January 1, 2020 through March 31, 2022 .

3. For each individual firm, Lead Counsel provided us an Excel file containing a detailed listing of expenses claimed. We verified claimed expenses with receipts provided by Lead Counsel. Our testing covered 89.1% of the actual expenses claimed.
4. Based on our review, the claimed expenses are primarily related to travel, meals, in-house copying, and on-line legal research. Except for an insignificant amount for some firms, the total amount of expenses claimed is supported by receipts or documents indicating that each individual expense was incurred during the subject period and was of a reasonable nature.
5. In addition, for out-of-town meals, we reviewed to ensure that they were not in excess of the \$75 per diem. We noted some meals that were in excess of the \$75 per diem.
6. Based on our analysis, the \$1,265,679.21 of actual individual firm expenses claimed by class counsel during the current reporting period should be reduced by \$386.73 to \$1,265,292.48. The adjustments are summarized in Exhibit 2.

IV. Analysis of Litigation Fund Expenses

1. As seen in MDL ECF No. 1714-12, Exhibit 3, Lead Counsel reported Litigation Fund expenses of \$3,057,571.26 from July 25, 2020 through June 23, 2022.³
2. In order to test the expenses paid by the Litigation Fund, Lead Counsel provided us an accounting register of the Litigation Fund from January 1, 2020 through June 23, 2022 to show cash disbursements from the Litigation Fund. According to the register, from July 25, 2020 through June 23, 2022, the Litigation Fund paid expenses, net of credits, totaling \$3,063,843.89. The amount from the register is higher than the amount stated in the declaration by \$6,272.66 due to an incorrect entry in a separate report that was used for the declaration.

³ Lead Counsel's declaration misstated the starting date as 7/24/20. The starting date should be 7/25/20. The underlying data provided by Lead Counsel indicates that it did not include expenses paid on 7/24/20 in the current reporting period.

3. Lead Counsel provided us invoices or supporting documents for the disbursements reflected in the accounting register. Using materials provided by Lead Counsel, we were able to verify each payment made by the Litigation Fund from July 25, 2020 through June 23, 2022, noting that each related invoice or supporting document: i) is addressed to Lead Counsel or co-counsel and ii) referenced "Capacitors," a class plaintiff, or contained information that allowed us to corroborate that the expenditure related to the subject litigation.
4. As noted in my prior report dated September 14, 2020, Lead Counsel had reported expenses paid by the Litigation Fund through July 24, 2020, as well as incurred but unpaid expenses of \$1,861,599.80 as of July 24, 2020. These reported Litigation Fund expenses have since been reimbursed.
5. Based on our analysis, the incurred but unpaid expenses of \$1,861,599.80 as of July 24, 2020 were all paid by the Litigation Fund during the period from July 25, 2020 through June 23, 2022. As such, Litigation Fund expenses of \$3,057,571.26 reported by Lead Counsel for the current reporting period included again the unpaid expenses of \$1,861,599.80 as of July 24, 2020 which had already been previously claimed.
6. Based on our analysis, Litigation Fund expenses should be adjusted as follows:

| | 7/25/20 - 6/23/22 |
|---|--------------------------|
| Total expenses paid by the Litigation Fund per Declaration ⁴ | \$ 3,057,571.26 |
| Expenses already claimed in the prior Special Master Report as "Incurred but Unpaid as of 7/24/20." ⁵ | (1,861,599.80) |
| A check issued to a vendor in 2019 and claimed as an expense in the prior Special Master Report was subsequently cancelled. Adjustment made in the current period to account for the non-payment. | (7,958.70) |
| Adjustment to account for an incorrect entry in a report used for the Declaration. | 6,272.66 |
| Adjusted Litigation Fund Expenses | \$ 1,194,285.42 |

⁴ MDL ECF No. 1714-12, Exhibit 3.

⁵ Report and Recommendations of Special Master, September 14, 2020, page 6.

V. Conclusion

1. Fees Claimed

Due primarily to typos and math errors, fees of \$13,649,094.85 reported by class counsel for the current reporting period should be reduced by \$41,764.25 to \$13,607,330.60.⁶

2. Expenses Covered by the Current Request for Reimbursement

Based on our analysis, Litigation Fund and individual firm expenses for the current reporting period should be adjusted as follows:

| | Reported | Adjustments | Adjusted |
|--|-----------------------|-------------------------|------------------------------|
| JSLF, 1/1/20 - 6/23/22 ⁷ | \$1,189,903.22 | \$ - | \$1,189,903.22 |
| Other Firms, 1/1/20 - 3/31/22 ⁸ | 75,775.99 | (386.73) | 75,389.26 |
| Individual Firm Expenses (Excluding Assessments) | 1,265,679.21 | (386.73) | 1,265,292.48 |
| Litigation Fund Expenses | 3,057,571.26 | \$(1,863,285.84) | 1,194,285.42 |
| Total | <u>\$4,323,250.47</u> | <u>\$(1,863,672.57)</u> | <u>\$2,459,577.90</u> |

It should be noted that class counsel reported individual firm expenses of \$4,261,429.21 during the current reporting period, of which \$2,995,750 were assessments paid by co-counsel firms into the Litigation Fund. Net of assessments, actual expenses totaled \$1,265,679.21. (See Exhibit 2)

⁶ See Exhibit 1.

⁷ See Exhibit 2.

⁸ See Exhibit 2.

3. Total Expenses Incurred Since Inception

The following is a summary of adjusted expenses incurred since inception:

| | Adjusted | | |
|---|----------------------------|----------------------------|------------------------|
| | Litigation Fund | Individual Firm | Total |
| Paid from inception through 12/31/18 ⁹ | \$12,977,639.91 | \$ 1,314,949.52 | \$14,292,589.43 |
| Paid in 2019 ¹⁰ | 2,205,777.72 | 911,639.13 | 3,117,416.85 |
| Paid YTD 7/24/20 ¹¹ | 2,967,158.33 | | 2,967,158.33 |
| Incurred but Unpaid as of 7/24/20 ¹² | 1,861,599.80 | | 1,861,599.80 |
| Paid from 7/24/20 through 6/23/22 ¹³ | 1,194,285.42 | | 1,194,285.42 |
| JSLF, 1/1/20 - 6/23/22 ¹⁴ | | 1,189,903.22 | 1,189,903.22 |
| Other Firms, 1/1/20 - 3/31/22 ¹⁵ | | 75,389.26 | 75,389.26 |
| Total Incurred | \$21,206,461.18 | \$ 3,491,881.13 | \$24,698,342.31 |

4. Total Expense Reimbursement Received Since Inception

I understand that class counsel has received the following expense reimbursements totaling \$22,238,765:¹⁶

| | |
|-------------------------|-------------------------|
| 1st round | \$ 3,000,000.00 |
| 2nd round | 6,690,000.00 |
| 3rd round, 1st payment | 1,997,809.74 |
| 3rd round, 2nd payment | 1,002,190.62 |
| 4th round | 9,548,764.41 |
| Total Reimbursed | \$ 22,238,764.77 |

⁹ Per Report and Recommendations of Special Master (Monica Ip) on the Direct Purchaser Plaintiff Class Counsel's Request for Attorneys' Fees and Reimbursement of Expenses, 11/22/19. These amounts were tested in connection with the 11/22/19 report.

¹⁰ Report and Recommendations of Special Master, September 14, 2020, page 6.

¹¹ Report and Recommendations of Special Master, September 14, 2020, page 6.

¹² Report and Recommendations of Special Master, September 14, 2020, page 6.

¹³ See Section III. Analysis of Litigation Fund Expenses.


¹⁴ Exhibit 2.

¹⁵ Exhibit 2.

¹⁶ MDL ECF No. 1714-9, 6:14-16.

5. Unreimbursed Expenses

Based on the above, unreimbursed expenses totaled \$2,459,577.54.¹⁷ Class counsel had previously requested an expense reimbursement of \$3,636,429.21.¹⁸ Class counsel's reimbursement request should be limited to the unreimbursed expenses of \$2,459,577.54. I understand that class counsel has updated its request for reimbursement to \$2,459,577.54.¹⁹



M. Monica Ip, CPA/CFF, CVA, CMA

¹⁷ \$24,698,342.31 (total incurred) - \$22,238,764.77 (total reimbursement) = \$2,459,577.54 (unreimbursed expenses)

¹⁸ MDL ECF No. 1714-9, 6:17-18.

¹⁹ MDL ECF No. 1728-1.

Exhibit 1**DPPs' Counsel's Fees****Reported v. Adjusted Fees**

| Firm | | Reported Fees | | | | Adjustment | Adjusted Fees | |
|-------------|--|-------------------------------|----------|---|----------|-------------------------|-----------------------|-------------------------|
| 1 | Berger & Montague PC | MDL ECF No. 1714-13 Exhibit A | 01/01/20 | - | 03/31/22 | \$2,132,843.25 | \$ (41,668.00) | \$2,091,175.25 |
| 2 | Cera, LLP | MDL ECF No. 1714-14 Exhibit A | 01/01/20 | - | 03/31/22 | 251,860.00 | | 251,860.00 |
| 3 | Labaton Sucharow | MDL ECF No. 1714-15 | 01/01/20 | - | 03/31/22 | - | | - |
| 4 | Fine, Kaplan, and Black, R.P.C. | MDL ECF No. 1714-16 Exhibit A | 01/01/20 | - | 03/31/22 | 184,885.50 | | 184,885.50 |
| 5 | Freed Kanner London & Millen LLC | MDL ECF No. 1714-17 Exhibit A | 01/01/20 | - | 03/31/22 | 281,923.75 | (96.25) | 281,827.50 |
| 6 | Girard Sharp LLP | MDL ECF No. 1714-18 Exhibit A | 01/01/20 | - | 03/31/22 | 98,832.00 | | 98,832.00 |
| 7 | Gross & Klein LLP | MDL ECF No. 1714-19 Exhibit A | 01/01/20 | - | 03/31/22 | 43,287.10 | | 43,287.10 |
| 8 | Hartley LLP | MDL ECF No. 1714-20 Exhibit A | 01/01/20 | - | 03/31/22 | 424,893.00 | | 424,893.00 |
| 9 | Heins Mills & Olson, P.L.C. | MDL ECF No. 1714-21 | 01/01/20 | - | 03/31/22 | - | | - |
| 10 | Joseph Saveri Law Firm, LLP | MDL ECF No. 1714-10 Exhibit 1 | 01/01/20 | - | 04/30/22 | 9,395,583.75 | | 9,395,583.75 |
| 11 | Karon LLC | MDL ECF No. 1714-22 | 01/01/20 | - | 03/31/22 | - | | - |
| 12 | Levin Sedran & Berman LLP | MDL ECF No. 1714-23 Exhibit A | 01/01/20 | - | 03/31/22 | 829,726.50 | | 829,726.50 |
| 13 | Lite DePalma Greenberg & Afanador, LLC | MDL ECF No. 1714-24 Exhibit A | 01/01/20 | - | 03/31/22 | 5,260.00 | | 5,260.00 |
| 14 | Radice Law Firm, P.C. | MDL ECF No. 1714-25 | 01/01/20 | - | 03/31/22 | - | | - |
| 15 | Spector Roseman & Kodroff, P.C. | MDL ECF No. 1714-26 | 01/01/20 | - | 03/31/22 | - | | - |
| | | | | | | <u>\$ 13,649,094.85</u> | <u>\$ (41,764.25)</u> | <u>\$ 13,607,330.60</u> |

Exhibit 2

DPPs' Counsel's Expenses

Reported v. Adjusted Individual Firm Expenses

| Firm | Reported Expenses | | | | | | Adjustment | | | Adjusted Firm Expenses |
|---|-------------------|----------|----------|------------------------|---|------------------------|---|-------------------|--|------------------------|
| | Reference | From | To | Per Declaration | Assessments Included in Reported Expenses | Actual Firm Expenses | Claimed Amount in Excess of Itemized Detail | Lack of Support | Out-Of-Town Meals in Excess of \$75 Per Diem | |
| 1 Berger & Montague PC | 1714-13 Exhibit B | 01/01/20 | 03/31/22 | \$123,421.57 | \$ (75,750.00) | \$ 47,671.57 | \$ - | \$ (13.02) | \$ (28.97) | \$ 47,629.58 |
| 2 Cera, LLP | 1714-14 Exhibit B | 01/01/20 | 03/31/22 | 107,847.27 | (100,000.00) | 7,847.27 | - | - | - | 7,847.27 |
| 3 Labaton Sucharow | 1714-15 | 01/01/20 | 03/31/22 | - | - | - | - | - | - | - |
| 4 Fine, Kaplan, and Black, R.P.C. | 1714-16 Exhibit B | 01/01/20 | 03/31/22 | 400,605.81 | (400,000.00) | 605.81 | - | - | - | 605.81 |
| 5 Freed Kanner London & Millen LLC | 1714-17 Exhibit B | 01/01/20 | 03/31/22 | 76,995.77 | (75,000.00) | 1,995.77 | - | - | - | 1,995.77 |
| 6 Girard Sharp LLP | 1714-18 Exhibit B | 01/01/20 | 03/31/22 | 75,937.13 | (75,000.00) | 937.13 | (16.95) | - | - | 920.18 |
| 7 Gross & Klein LLP | 1714-19 Exhibit B | 01/01/20 | 03/31/22 | 150,075.80 | (150,000.00) | 75.80 | - | - | - | 75.80 |
| 8 Hartley LLP | 1714-20 Exhibit B | 01/01/20 | 03/31/22 | 174,707.50 | (170,000.00) | 4,707.50 | (89.98) | - | (11.05) | 4,606.47 |
| 9 Heins Mills & Olson, P.L.C. | 1714-21 Exhibit B | 01/01/20 | 03/31/22 | 250,000.00 | (250,000.00) | - | - | - | - | - |
| 10 Joseph Saveri Law Firm, LLP | 1714-11 Exhibit 2 | 01/01/20 | 06/23/22 | 2,189,903.22 | (1,000,000.00) | 1,189,903.22 | - | - | - | 1,189,903.22 |
| 11 Karon LLC | 1714-22 | 01/01/20 | 03/31/22 | - | - | - | - | - | - | - |
| 12 Levin Sedran & Berman LLP | 1714-23 Exhibit B | 01/01/20 | 03/31/22 | 86,932.04 | (75,000.00) | 11,932.04 | - | - | (226.76) | 11,705.28 |
| 13 Lite DePalma Greenberg & Afanador, LLC | 1714-24 Exhibit B | 01/01/20 | 03/31/22 | 75,000.00 | (75,000.00) | - | - | - | - | - |
| 14 Radice Law Firm, P.C. | 1714-25 Exhibit B | 01/01/20 | 03/31/22 | 250,000.00 | (250,000.00) | - | - | - | - | - |
| 15 Spector Roseman & Kodroff, P.C. | 1714-26 Exhibit B | 01/01/20 | 03/31/22 | 300,003.10 | (300,000.00) | 3.10 | - | - | - | 3.10 |
| | | | | \$ 4,261,429.21 | \$ (2,995,750.00) | \$ 1,265,679.21 | \$ (106.93) | \$ (13.02) | \$ (266.78) | \$ 1,265,292.48 |