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# [***In re Lithium Ion Batteries Antitrust Litig.***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5N9G-JG91-F04C-T0J9-00000-00&context=)

United States District Court for the Northern District of California

April 12, 2017, Decided; April 12, 2017, Filed

Case No.: 13-MD-2420 YGR

**Reporter**

2017 U.S. Dist. LEXIS 57340 \*

IN RE: LITHIUM ION BATTERIES ***ANTITRUST*** LITIGATION. This Order Relates to: All Indirect Purchaser and Direct Purchaser Actions

**Subsequent History:** Motion denied by [*In re Lithium Ion Batteries* ***Antitrust*** *Litig., 2017 U.S. Dist. LEXIS 57339 (N.D. Cal., Apr. 12, 2017)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5N9G-JG91-F04C-T0J8-00000-00&context=)

**Prior History:** [*In re Lithium Ion Batteries* ***Antitrust*** *Litig., 2017 U.S. Dist. LEXIS 45690 (N.D. Cal., Mar. 20, 2017)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5N63-FDH1-F04C-T51P-00000-00&context=)

**Core Terms**

***Antitrust***, cells, battery, purchasers, class certification, prices, class member, class-wide, products, Lithium, Ion, typicality, packs, conspiracy, defendants', regression, price-fixing, requirements, collusion, damages, grounds, indirect, manufacturers, analyses, court finds, predominate, certification, pass-through, cylindrical, admissibility

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For Thomas R. Tuohy, Plaintiff: NICOLE M. ACCHIONE, LEAD ATTORNEY, TRUJILLO RODRIGUEZ & RICHARDS, LLP, HADDONFIELD, NJ; Christopher D. Jennings, Emerson Poynter LLP, Little Rock, AR; Corey D. McGaha, CROWDER MCGAHA LLP, Little Rock, AR; John G. Emerson, Emerson Scott LLP, Houston, TX; Lisa J. Rodriguez, Trujillo Rodriguez & Richards LLC, Haddonfield, NJ; Scott E. Poynter, Steel, Wright & Collier, PLLC, Little Rock, AR; William T. Crowder, Emerson Poynter LLP, Little Rock, AR.

For Beverlee Sclar, Plaintiff: Christopher M. Burke, LEAD ATTORNEY, Scott Scott LLP, San Diego, CA; James E. Cecchi, LEAD ATTORNEY, Carella Byrne, Roseland, NJ; John T Jasnoch, Scott + Scott Attorneys at Law LLP, Sam Diego, CA; Joseph P. Guglielmo, Scott+Scott, Attorneys at Law, LLP, New York, NY; Lindsey H. Taylor, Carella Byrne, Roseland, NJ; Todd Michael Schneider, Schneider Wallace Cottrell Konecky Wotkyns LLP, Emeryville, CA; Walter W. Noss, ScottScott LLP, San Diego, CA.

For David Petree, Plaintiff: James Lawrence Kauffman, Levin Papantonio Thomas Mitchell Rafferty and Proctor,**[\*21]** Pensacola, FL; Jennie Lee Anderson, Andrus Anderson LLP, San Francisco, CA; Peter James Mougey, Levin Papantonio Thomas Mitchell Rafferty and Proctor P.A., Pensacola, FL.

For Mike Katz-Lacabe, Plaintiff: Eric B. Fastiff, LEAD ATTORNEY, Lieff Cabraser Heimann & Bernstein LLP, San Francisco, CA; Brendan Patrick Glackin, Lieff, Cabraser, Heimann & Bernstein LLP, San Francisco, CA; Eduardo E. Santacana, Keker & Van Nest LLP, San Francisco, CA; Elizabeth Joan Cabraser, Lieff Cabraser Heimann & Bernstein, LLP, San Francisco, CA; Joy Ann Kruse, Lieff Cabraser Heimann & Bernstein, LLP, San Francisco, CA; Marc Anthony Pilotin, U.S. Department of Labor, Office of the Solicitor, San Francisco, CA; Richard Martin Heimann, Lieff Cabraser Heimann & Bernstein, San Francisco, CA.

For James O'Neil, Plaintiff: Danielle A. Stoumbos, LEAD ATTORNEY, Finkelstein Thompson LLP, San Francisco, CA; Douglas Graham Thompson, Jr., Finkelstein Thompson LLP, Washington, DC; Eugene Joseph Benick, III, Finkelstein Thompson LLP, Washington, DC; L. Kendall Satterfield, Finkelstein Thompson LLP, Washington, DC; Michael Glenn McLellan, Finkelstein Thompson LLP, Washington, DC; Rosemary M. Rivas, Finkelstein Thompson LLP,**[\*22]** San Francisco, CA; Todd Anthony Seaver, Berman DeValerio, San Francisco, CA.

For Lloyd Ranola, Plaintiff: Elizabeth Cheryl Pritzker, LEAD ATTORNEY, Pritzker Levine LLP, Oakland, CA; Eric H. Gibbs, Gibbs Law Group LLP, Oakland, CA; Janice Seyoung Yi, Law Offices of Ronald B. Bass, Walnut Creek, CA; Jonathan Krasne Levine, Pritzker Levine, LLP, Oakland, CA; Scott M. Grzenczyk, Girard Gibbs LLP, San Francisco, CA; Todd Anthony Seaver, Berman DeValerio, San Francisco, CA.

For Alfred H. Siegel, Plaintiff: Bruce Lee Simon, LEAD ATTORNEY, Pearson Simon & Warshaw, LLP, San Francisco, CA; Aaron M. Sheanin, Pearson, Simon & Warshaw, LLP, San Francisco, CA; Alexander Robert Safyan, Pearson, Simon & Warshaw, LLP, Sherman Oaks, CA; Bobby Pouya, Pearson Simon & Warshaw, LLP, Sherman Oaks, CA; Clifford H. Pearson, Pearson, Simon & Warshaw LLP, Sherman Oaks, CA; Daniel L. Warshaw, Pearson, Simon & Warshaw, LLP, Sherman Oaks, CA; Robert George Retana, Pearson Simon & Warshaw, LLP, San Francisco, CA; Steven Todd Gubner, Brutzkus Gubner, Woodland Hills, CA; Todd Anthony Seaver, Berman DeValerio, San Francisco, CA; William James Newsom, Pearson, Simon & Warshaw, LLP, San Francisco, CA.

For Tom Pham, Plaintiff:**[\*23]** Alan Roth Plutzik, LEAD ATTORNEY, Bramson Plutzik Mahler & Birkhaeuser, LLP, Walnut Creek, CA; Christopher Le, Straus & Boies, LLP, Fairfax, VA; Daniel Edward Birkhaeuser, Bramson, Plutzik, Mahler & Birkhaeuser, Walnut Creek, CA; James Wyatt, Wyatt & Blake LLP, Charlotte, NC; Marc Gene Reich, Reich Radcliffe and Kuttler LLP, Newport Beach, CA; Susan LaCava, Lacava & Lief, S.C., Madison, WI; Timothy D. Battin, Straus & Boies LLP, Fairfax, VA; William Straus, Law Offices of William Straus, New Bedford, MA.

For Kathleen Tawney, Plaintiff: Alan Roth Plutzik, LEAD ATTORNEY, Bramson Plutzik Mahler & Birkhaeuser, LLP, Walnut Creek, CA; Christopher Le, Straus & Boies, LLP, Fairfax, VA; Daniel Edward Birkhaeuser, Bramson, Plutzik, Mahler & Birkhaeuser, Walnut Creek, CA; James Wyatt, Wyatt & Blake LLP, Charlotte, NC; Marc Gene Reich, Reich Radcliffe and Kuttler LLP, Newport Beach, CA; Susan LaCava, Lacava & Lief, S.C., Madison, WI; Timothy D. Battin, Straus & Boies LLP, Fairfax, VA; William Straus, Law Offices of William Straus, New Bedford, MA.

For Calvin Calkins, Plaintiff: Alan Roth Plutzik, LEAD ATTORNEY, Bramson Plutzik Mahler & Birkhaeuser, LLP, Walnut Creek, CA; Christopher Le, Straus &**[\*24]** Boies, LLP, Fairfax, VA; Daniel Edward Birkhaeuser, Bramson, Plutzik, Mahler & Birkhaeuser, Walnut Creek, CA; James Wyatt, Wyatt & Blake LLP, Charlotte, NC; Marc Gene Reich, Reich Radcliffe and Kuttler LLP, Newport Beach, CA; Susan LaCava, Lacava & Lief, S.C., Madison, WI; Timothy D. Battin, Straus & Boies LLP, Fairfax, VA; William Straus, Law Offices of William Straus, New Bedford, MA.

For Automation Engineering, LLC, Plaintiff: Allan Steyer, Steyer Lowenthal Boodrookas Alvarez & Smith LLP, San Francisco, CA; Amy Dawn Fitts, Kansas City, MO; Brian D Clark, Lockridge Grindal Nauen P.L.L.P., Minneapolis, MN; Daniel D. Owen, PRO HAC VICE, Shughart Thomson & Kilroy, P.C., Kansas City, MO; Elizabeth R. Odette, Lockridge Grindal Nauen P.L.L.P., Minneapolis, MN; G. Gabriel Zorogastua, Polsinelli Shughart PC, Kansas City, MO; Gabriel Dash Zeldin, Steyer Lowenthal Boodrookas Alvarez Smith LLP, San Francisco, CA; Heidi M Silton, Lockridge Grindal Nauen P.L.L.P., Minneapolis, MN; Jack Brady, Polsinelli Shughart PC, Kansas City, MO; Jill Michelle Manning, Steyer Lowenthal, San Francisco, CA; Todd Anthony Seaver, Berman DeValerio, San Francisco, CA; W. Joseph Bruckner, Lockridge Grindal Nauen P.L.L.P,**[\*25]** Minneapolis, MN.

For Edward Klugman, Plaintiff: Allan Steyer, Steyer Lowenthal Boodrookas Alvarez & Smith LLP, San Francisco, CA; Brian D Clark, Lockridge Grindal Nauen P.L.L.P., Minneapolis, MN; Daniel D. Owen, PRO HAC VICE, Shughart Thomson & Kilroy, P.C., Kansas City, MO; Elizabeth R. Odette, Lockridge Grindal Nauen P.L.L.P., Minneapolis, MN; G. Gabriel Zorogastua, Polsinelli Shughart PC, Kansas City, MO; Gabriel Dash Zeldin, Steyer Lowenthal Boodrookas Alvarez Smith LLP, San Francisco, CA; Heidi M Silton, Lockridge Grindal Nauen P.L.L.P., Minneapolis, MN; Jack Brady, Polsinelli Shughart PC, Kansas City, MO; Jill Michelle Manning, Steyer Lowenthal, San Francisco, CA; Todd Anthony Seaver, Berman DeValerio, San Francisco, CA; W. Joseph Bruckner, Lockridge Grindal Nauen P.L.L.P, Minneapolis, MN.

For Gene Powers, Plaintiff: Alan Mayer Caplan, Bushnell & Caplan LLP, San Francisco, CA; Alexandra Senya Bernay, Robbins Geller Rudman and Dowd LLP, San Diego, CA; Bonny E. Sweeney, Hausfeld LLP, San Francisco, CA; Roderick P. Bushnell, Bushnell & Caplan LLP, San Francisco, CA; Samuel H. Rudman, Robbins Geller Rudman & Dowd LLP, Melville, NY; Thomas Robert Merrick, Robbins Geller Rudman & Dowd**[\*26]** LLP, San Diego, CA.

For Richard S.E. Johns, Plaintiff: Jeffrey Farley Keller, LEAD ATTORNEY, Keller Grover LLP, San Francisco, CA; Eric A. Grover, Keller Grover LLP, San Francisco, CA; Kathleen R. Scanlan, Keller Grover LLP, San Francisco, CA.

For Brandon Martinez, Plaintiff: Lesley Elizabeth Weaver, LEAD ATTORNEY, Bleichmar Fonti & Auld LLP, Oakland, CA; James Robert Noblin, Green and Noblin, P.C., Long Beach, CA; Jeffrey C. Block, Block & Leviton LLP, Boston, MA; Mark A. Delaney, Block & Leviton LLP, Boston, MA; Robert S. Green, Green & Noblin, P.C., Larkspur, CA; Whitney E. Street, Block & Leviton LLP, Oakland, CA.

For Angelo Michael D'Orazio, Plaintiff: Lesley Elizabeth Weaver, LEAD ATTORNEY, Bleichmar Fonti & Auld LLP, Oakland, CA; Domenico Minerva, New York, NY; James Robert Noblin, Green and Noblin, P.C., Long Beach, CA; Peter G.A. Safirstein, Morgan & Morgan P.C., New York, NY; Robert S. Green, Green & Noblin, P.C., Larkspur, CA.

For Ron Nelson, Jr., Plaintiff: Guido Saveri, LEAD ATTORNEY, Saveri & Saveri, Inc., San Francisco, CA; R Alexander Saveri, LEAD ATTORNEY, Saveri and Saveri Inc, San Francisco, CA; Cadio R. Zirpoli, Saveri & Saveri, Inc., San Francisco, CA; Carl Nils Hammarskjold,**[\*27]** Saveri and Saveri, San Francisco, CA; David Yau-Tian Hwu, Saveri and Saveri Inc., San Francisco, CA; Douglas A. Millen, Freed Kanner London & Millen LLC, Bannockburn, IL; Geoffrey Conrad Rushing, Saveri & Saveri Inc., San Francisco, CA; Harry Shulman, Shulman Law Firm, San Francisco, CA; Lisa Maria Saveri, Saveri & Saveri Inc., San Francsico, CA; Michael Jerry Freed,, Freed Kanner London Millen LLC, Bannockburn, IL; Richard Alexander Saveri, Saveri & Saveri, Inc., San Francisco, CA; Steven A. Kanner, Freed Kanner London & Millen LLC, Bannockburn, IL; Thomas H. Johnson, The Law Firm of Thomas H. Johnson, P.A., Texarkana, AR; Todd Anthony Seaver, Berman DeValerio, San Francisco, CA.

For Univision-Crimson Holding, Inc., Plaintiff: Todd Anthony Seaver, LEAD ATTORNEY, Berman DeValerio, San Francisco, CA; Joseph J. Tabacco, Jr., Berman DeValerio, San Francisco, CA; Patrick Howard, Saltz Mongeluzzi Barrett & Bendesky, Philadelphia, PA; Sarah Khorasanee McGrath, Berman Devalerio, San Francisco, CA; Simon Bahne Paris, Saltz Mongeluzzi Barrett and Bendesky, Philadelphia, PA; Victor Santiago Elias, Berman DeValerio, San Francisco, CA.

For Piya Robert Rojanasathit, Plaintiff: Joseph M. Breall, LEAD**[\*28]** ATTORNEY, Breall & Breall, LLP, San Francisco, CA; Jill L. Diamond, Breall & Breall LLP, San Francisco, CA.

For Michael S. Wilson, Plaintiff: Adam C. Belsky, LEAD ATTORNEY, Gross Belsky Alonso LLP, San Francisco, CA; Terry Gross, LEAD ATTORNEY, Gross Belsky Alonso LLP, San Francisco, CA; Ari Yale Basser, MARKUN ZUSMAN FRENIERE AND COMPTON, LLP, Pacific Palisades, CA; Carl Nils Hammarskjold, Saveri and Saveri, San Francisco, CA; Cornelia Dai, Hadsell Stormer & Renick LLP, Pasadena, CA; Daniel J Mogin, The Mogin Law Firm, San Diego, CA; Guido Saveri, Saveri & Saveri, Inc., San Francisco, CA; Lisa Maria Saveri, Saveri & Saveri Inc., San Francsico, CA; Monique Alonso, Gross Belsky Alonso LLP, San Francisco, CA; R. Alexander Saveri, Saveri & Saveri, Inc., San Francisco, CA; Randy R. Renick, Hadsell Stormer & Renick LLP, Los Angeles, CA; Richard Alexander Saveri, Saveri & Saveri, Inc., San Francisco, CA; Sarah Crowley, Gross Belsky Alonso LLP, San Francisco, CA; Todd Anthony Seaver, Berman DeValerio, San Francisco, CA.

For Ritz Camera & Image, LLC, Plaintiff: R. Alexander Saveri, LEAD ATTORNEY, Saveri & Saveri, Inc., San Francisco, CA; Cadio R. Zirpoli, Saveri & Saveri, Inc., San Francisco,**[\*29]** CA; Carl Nils Hammarskjold, Saveri and Saveri, San Francisco, CA; Guido Saveri, Saveri & Saveri, Inc., San Francisco, CA; Jessica C Collins, NW, Washington DC, DC; Lisa Maria Saveri, Saveri & Saveri Inc., San Francsico, CA; Matthew A. Seligman, Kellogg Huber Hansen Todd Evans and Figel PLLC, Washington, DC; Richard Kirchner, Bonsignore & Brewer, Belmont, NH; Richard Alexander Saveri, Saveri & Saveri, Inc., San Francisco, CA; Robert Stephen Berry, Berry Law PLLC, Washington, DC; Robert J. Bonsignore, Bonsignore Trial Lawyers, PLLC, Las Vegas, NV; Steven F. Benz, Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C., Washington, DC; Todd Anthony Seaver, Berman DeValerio, San Francisco, CA.

For Steven Bugge, Plaintiff: Ralph B. Kalfayan, LEAD ATTORNEY, Krause Kalfayan Benink & Slavens, San Diego, CA; David E. Azar, Milberg LLP, Los Angeles, CA; Elizabeth Anne McKenna, Milberg LLP, NY, NY; Merjanian A. Vic, Krause Kalfayan Benink and Slavens LLP, San Diego, CA; Paul F. Novak, PRO HAC VICE, Milberg LLP, Detroit, MI; Peggy Wedgworth, Milberg LLP, New York, NY; Vic A. Merjanian, Krause Kalfayan Benink & Slavens LLP, San Diego, CA.

For A. Keith Thrower, Plaintiff: Reginald Von Terrell, The Terrell**[\*30]** Law Group, Oakland, CA; Sydney Jay Hall, Law Offices of Sydney Jay Hall, Burlingame, Ca; Todd Anthony Seaver, Berman DeValerio, San Francisco, CA.

For Kristina Yee, Plaintiff: Nanci Eiko Nishimura, LEAD ATTORNEY, Cotchett Pitre & McCarthy LLP, Burlingame, CA; Adam John Zapala, Cotchett, Pitre & McCarthy LLP, Burlingame, CA; Elizabeth Tran, Cotchett, Pitre and McCarthy, Burlingame, CA; Joanna Weil LiCalsi, Cotchett Pitre McCarthy LLP, Burlingame, CA; Joseph W. Cotchett, Cotchett Pitre & McCarthy LLP, Burlingame, CA; Nancy L. Fineman, Cotchett, Pitre & McCarthy LLP, Burlingame, CA; Steven N. Williams, Cotchett Pietre & McCarthy LLP, Burlingame, CA; Steven Noel Williams, Cotchett Pitre & McCarthy LLP, Burlingame, CA.

For Joseph G. O'Daniel, Plaintiff: Gregory P. Forney, LEAD ATTORNEY, Shaffer Lombardo Shurin, Kansas City, MO; Thomas J.H. Brill,, Law Office of Thomas H. Brill, Leawood, KS.

For William Cabral, Plaintiff: Daniel Edward Birkhaeuser, Bramson, Plutzik, Mahler & Birkhaeuser, Walnut Creek, CA.

For Jason Ames, Plaintiff: Christopher M. Burke, LEAD ATTORNEY, Scott Scott LLP, San Diego, CA; John T Jasnoch, Scott + Scott Attorneys at Law LLP, Sam Diego, CA; Joseph P. Guglielmo, Scott+Scott,**[\*31]** Attorneys at Law, LLP, New York, NY; Walter W. Noss, ScottScott LLP, San Diego, CA.

For Wilbur Franklin, Plaintiff: Christopher M. Burke, LEAD ATTORNEY, Scott Scott LLP, San Diego, CA; John T Jasnoch, Scott + Scott Attorneys at Law LLP, Sam Diego, CA; Joseph P. Guglielmo, Scott+Scott, Attorneys at Law, LLP, New York, NY; Walter W. Noss, ScottScott LLP, San Diego, CA.

For Beatriz Hernandez, Plaintiff: Christopher M. Burke, LEAD ATTORNEY, Scott Scott LLP, San Diego, CA; John T Jasnoch, Scott + Scott Attorneys at Law LLP, Sam Diego, CA; Joseph P. Guglielmo, Scott+Scott, Attorneys at Law, LLP, New York, NY; Walter W. Noss, ScottScott LLP, San Diego, CA.

For Linda Lincoln, Plaintiff: Christopher M. Burke, LEAD ATTORNEY, Scott Scott LLP, San Diego, CA; John T Jasnoch, Scott + Scott Attorneys at Law LLP, Sam Diego, CA; Joseph P. Guglielmo, Scott+Scott, Attorneys at Law, LLP, New York, NY; Walter W. Noss, ScottScott LLP, San Diego, CA.

For Kristin Starr Barnes, Plaintiff: Daniel E. Becnel, LEAD ATTORNEY, Jr., Becnel Law Firm, L.L.C., Reserve, LA; Kevin Partick Klibert, Law Offices of Daniel E. Becnel, Jr., Reserve, LA; Sandra Watson Cuneo, Cuneo Gilbert and LaDuca, LLP, Los Angeles, CA; Toni Becnel,**[\*32]** Becnel Law Firm LLC, Reserve, LA.

For Mark Bergeron, Plaintiff: Daniel E. Becnel, LEAD ATTORNEY, Jr., Becnel Law Firm, L.L.C., Reserve, LA; Kevin Partick Klibert, Law Offices of Daniel E. Becnel, Jr., Reserve, LA; Sandra Watson Cuneo, Cuneo Gilbert and LaDuca, LLP, Los Angeles, CA; Toni Becnel, Becnel Law Firm LLC, Reserve, LA.

For Michael Janusa, Plaintiff: Daniel E. Becnel, LEAD ATTORNEY, Jr., Becnel Law Firm, L.L.C., Reserve, LA; Kevin Partick Klibert, Law Offices of Daniel E. Becnel, Jr., Reserve, LA; Sandra Watson Cuneo, Cuneo Gilbert and LaDuca, LLP, Los Angeles, CA; Toni Becnel, Becnel Law Firm LLC, Reserve, LA.

For Adam Ronquillo, Plaintiff: Daniel E. Becnel, LEAD ATTORNEY, Jr., Becnel Law Firm, L.L.C., Reserve, LA; Kevin Partick Klibert, Law Offices of Daniel E. Becnel, Jr., Reserve, LA; Sandra Watson Cuneo, Cuneo Gilbert and LaDuca, LLP, Los Angeles, CA; Toni Becnel, Becnel Law Firm LLC, Reserve, LA.

For Terri Walner, Plaintiff: Carl Nils Hammarskjold, Saveri and Saveri, San Francisco, CA; Gary Laurence Specks, Kaplan Fox & Kilsheimer LLP, Highland Park, IL; Gregory K Arenson,, Kaplan Fox and Kilsheimer LLP, New York, NY; Guido Saveri, Saveri & Saveri, Inc., San Francisco, CA;**[\*33]** Lisa Maria Saveri, Saveri & Saveri Inc., San Francsico, CA; Richard Jo Kilsheimer, Kaplan Fox And Kilsheimer LLP, New York, NY; Richard Alexander Saveri, Saveri & Saveri, Inc., San Francisco, CA; Robert N. Kaplan, Kaplan Kilsheimer & Fox LLP, New York, NY; Todd Anthony Seaver, Berman DeValerio, San Francisco, CA.

For Anna Jawor, Plaintiff: Kalpana Srinivasan, Susman Godfrey, Los Angeles, CA; Kathryn Parsons Hoek, Susman Godfrey LLP, Los Angeles, CA; Lindsey Godfrey Eccles, Susman Godfrey L.L.P., Seattle, WA; Marc M. Seltzer, Susman Godfrey LLP, Los Angeles, CA; Steven Gerald Sklaver, Susman Godfrey LLP, Los Angeles, CA.

For Krista Lepore, Plaintiff: Bryan L. Clobes, LEAD ATTORNEY, Cafferty Clobes Meriwether & Sprengel LLP, Philadelphia, PA; Shana E. Scarlett, Hagens Berman Sobol Shapiro LLP, Berkeley, CA.

For The Nationwide Group, Plaintiff: Christopher M. Burke, Scott Scott LLP, San Diego, CA.

For Matt Bryant, Plaintiff: Michael J. Flannery, LEAD ATTORNEY, Cuneo Gilbert & LaDuca, LLP, St. Louis, MO; Jonathan W. Cuneo, Cuneo Gilbert & LaDuca, LLP, Washington, DC; Katherine Van Dyck, Cuneo Gilbert & LaDuca, LLP, Washington, DC; Sandra Watson Cuneo, Cuneo Gilbert and LaDuca, LLP, Los Angeles,**[\*34]** CA; Victoria Romanenko, Cuneo Gilbert & LaDuca, LLP, Washington, DC.

For Laura Gallardo, Plaintiff: Michael J. Flannery, LEAD ATTORNEY, Cuneo Gilbert & LaDuca, LLP, St. Louis, MO; Jon A Tostrud, Tostrud Law Group, P.C., Los Angeles, CA; Jonathan W. Cuneo, Cuneo Gilbert & LaDuca, LLP, Washington, DC; Katherine Van Dyck, Cuneo Gilbert & LaDuca, LLP, Washington, DC; Sandra Watson Cuneo, Cuneo Gilbert and LaDuca, LLP, Los Angeles, CA; Victoria Romanenko, Cuneo Gilbert & LaDuca, LLP, Washington, DC.

For Spencer Hathaway, Plaintiff: Michael J. Flannery, LEAD ATTORNEY, Cuneo Gilbert & LaDuca, LLP, St. Louis, MO; Joel Davidow, Cuneo Gilbert LaDuca, Washington, DC; Jonathan W. Cuneo, Cuneo Gilbert & LaDuca, LLP, Washington, DC; Katherine Van Dyck, Cuneo Gilbert & LaDuca, LLP, Washington, DC; Sandra Watson Cuneo, Cuneo Gilbert and LaDuca, LLP, Los Angeles, CA; Victoria Romanenko, Cuneo Gilbert & LaDuca, LLP, Washington, DC.

For Alexandra Le, Plaintiff: Michael J. Flannery, LEAD ATTORNEY, Cuneo Gilbert & LaDuca, LLP, St. Louis, MO; Jonathan W. Cuneo, Cuneo Gilbert & LaDuca, LLP, Washington, DC; Katherine Van Dyck, Cuneo Gilbert & LaDuca, LLP, Washington, DC; Sandra Watson Cuneo, Cuneo Gilbert and**[\*35]** LaDuca, LLP, Los Angeles, CA; Victoria Romanenko, Cuneo Gilbert & LaDuca, LLP, Washington, DC.

For Robert McGranahan, Plaintiff: Michael J. Flannery, LEAD ATTORNEY, Cuneo Gilbert & LaDuca, LLP, St. Louis, MO; Jonathan W. Cuneo, Cuneo Gilbert & LaDuca, LLP, Washington, DC; Katherine Van Dyck, Cuneo Gilbert & LaDuca, LLP, Washington, DC; Sandra Watson Cuneo, Cuneo Gilbert and LaDuca, LLP, Los Angeles, CA; Victoria Romanenko, Cuneo Gilbert & LaDuca, LLP, Washington, DC.

For Patrick McGuinness, Plaintiff: Michael J. Flannery, LEAD ATTORNEY, Cuneo Gilbert & LaDuca, LLP, St. Louis, MO; Daniel Cohen, Cuneo Gilbert & LaDuca, LLP, Washington, DC; Jonathan W. Cuneo, Cuneo Gilbert & LaDuca, LLP, Washington, DC; Katherine Van Dyck, Cuneo Gilbert & LaDuca, LLP, Washington, DC; Sandra Watson Cuneo, Cuneo Gilbert and LaDuca, LLP, Los Angeles, CA; Victoria Romanenko, Cuneo Gilbert & LaDuca, LLP, Washington, DC.

For Erinn Tozer, Plaintiff: Daniel Hume, Kirby McInerney LLP, New York, NY; Joseph Mario Patane, Trump, Alioto, Trump & Prescott, LLP, San Francisco, CA; Lauren Clare Capurro, Trump, Alioto, Trump & Prescott, LLP, San Francisco, CA; Mario Nunzio Alioto, Trump Alioto Trump & Prescott LLP, San Francisco,**[\*36]** CA; Robert J. Gralewski, Jr., Gergosian & Gralewski LLP, San Diego, CA.

For David Gibbons, Plaintiff: Daniel R. Shulman, Gray, Plant, Mooty, Mooty & Bennett, P.A., Minneapolis, MN; Joseph R. Saveri, Joseph Saveri Law Firm, Inc., San Francisco, CA.

For Valentina Juncaj, Plaintiff: Ralph B. Kalfayan, LEAD ATTORNEY, Krause Kalfayan Benink & Slavens, San Diego, CA; David E. Azar, Milberg LLP, Los Angeles, CA; Elizabeth Anne McKenna, Milberg LLP, NY, NY; Paul F. Novak, PRO HAC VICE, Milberg LLP, Detroit, MI; Peggy Wedgworth, Milberg LLP, New York, NY; Vic A. Merjanian, Krause Kalfayan Benink & Slavens LLP, San Diego, CA.

For Violet Selca, Plaintiff: Ralph B. Kalfayan, LEAD ATTORNEY, Krause Kalfayan Benink & Slavens, San Diego, CA; David E. Azar, Milberg LLP, Los Angeles, CA; Elizabeth Anne McKenna, Milberg LLP, NY, NY; Paul F. Novak, PRO HAC VICE, Milberg LLP, Detroit, MI; Peggy Wedgworth, Milberg LLP, New York, NY; Vic A. Merjanian, Krause Kalfayan Benink & Slavens LLP, San Diego, CA.

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For Scott Beall, Plaintiff: Daniel Edward Birkhaeuser, LEAD ATTORNEY, Bramson,**[\*37]** Plutzik, Mahler & Birkhaeuser, Walnut Creek, CA; Alan R. Plutzik, Bramson Plutzik Mahler & Birkhaeuser, LLP, Walnut Creek, CA; Christopher Le, Straus & Boies, LLP, Fairfax, VA; Timothy D. Battin, Straus & Boies LLP, Fairfax, VA.

For Theodore Wolfendale, Plaintiff: Alan Roth Plutzik, LEAD ATTORNEY, Bramson Plutzik Mahler & Birkhaeuser, LLP, Walnut Creek, CA; Daniel Edward Birkhaeuser, LEAD ATTORNEY, Bramson, Plutzik, Mahler & Birkhaeuser, Walnut Creek, CA; Christopher Le, Straus & Boies, LLP, Fairfax, VA; Timothy D. Battin, Straus & Boies LLP, Fairfax, VA.

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For Alexander C. Eide, Plaintiff: Daniel R. Shulman, Gray, Plant, Mooty, Mooty & Bennett, P.A., Minneapolis, MN; Joseph R. Saveri, Joseph Saveri Law Firm, Inc., San Francisco, CA.

For Polly Cohen, Plaintiff: James Robert Noblin, Green and Noblin, P.C., Long Beach, CA; Jeffrey C. Block, Block & Leviton LLP,**[\*38]** Boston, MA; Lesley Elizabeth Weaver, Bleichmar Fonti & Auld LLP, Oakland, CA; Louise Hornbeck Renne, Renne Sloan Holtzman & Sakai, LLP, San Francisco, CA; Mark A. Delaney, Block & Leviton LLP, Boston, MA; Robert S. Green, Green & Noblin, P.C., Larkspur, CA; Steve Cikes, Renne Sloan Holtzman & Sakai LLP, San Francisco, CA; Steven Patrick Shaw, Renne Sloan Holtzman Sakai LLP, San Francisco, CA; Whitney E. Street, Block & Leviton LLP, Boston, MA.

For San Francisco Community College District, Plaintiff: James Robert Noblin, Green and Noblin, P.C., Long Beach, CA; Lesley Elizabeth Weaver, Bleichmar Fonti & Auld LLP, Oakland, CA; Louise Hornbeck Renne, Renne Sloan Holtzman & Sakai, LLP, San Francisco, CA; Robert S. Green, Green & Noblin, P.C., Larkspur, CA; Steve Cikes, Renne Sloan Holtzman & Sakai LLP, San Francisco, CA; Steven Patrick Shaw, Renne Sloan Holtzman Sakai LLP, San Francisco, CA.

For Indirect Purchaser Plaintiffs, Plaintiff: Demetrius Xavier Lambrinos, LEAD ATTORNEY, Zelle Hofmann Voelbel Mason, and Gette LLP, San Francisco, CA; Joanna Weil LiCalsi, LEAD ATTORNEY, Cotchett Pitre McCarthy LLP, Burlingame, CA; Steven Noel Williams, LEAD ATTORNEY, Cotchett Pitre & McCarthy LLP, Burlingame,**[\*39]** CA; Alexandra Senya Bernay, Robbins Geller Rudman and Dowd LLP, San Diego, CA; Brendan Patrick Glackin, Lieff, Cabraser, Heimann & Bernstein LLP, San Francisco, CA; Carl Nils Hammarskjold, Saveri and Saveri, San Francisco, CA; Dean Michael Harvey, Lieff, Cabraser, Heimann & Bernstein, LLP, San Francisco, CA; Eric B. Fastiff, Lieff Cabraser Heimann & Bernstein LLP, San Francisco, CA; Gabriel Dash Zeldin, Steyer Lowenthal Boodrookas Alvarez Smith LLP, San Francisco, CA; Ivy Arai Tabbara, Hagens Berman Sobol Shapiro LLP, Seattle, WA; Jeff D Friedman, Hagens Berman Sobol Shapiro LLP, Berkeley, CA; Jennie Lee Anderson, Andrus Anderson LLP, San Francisco, CA; Jerrod C. Patterson, Hagens Berman Sobol Shapiro, Seattle, WA; Jon T. King, Hagens Berman Sobol Shapiro LLP, Berkeley, CA; Lin Yee Chan, Lieff Cabraser Heimann & Bernstein, LLP, San Francisco, CA; Marc Anthony Pilotin, U.S. Department of Labor, Office of the Solicitor, San Francisco, CA; Matthew Alexander Smith, Cohen Milstein Sellers and Toll PLLC, Washington, DC; Shana E. Scarlett, Hagens Berman Sobol Shapiro LLP, Berkeley, CA; Steve W. Berman, PRO HAC VICE, Hagens Berman Sobol Shapiro LLP, Seattle, WA; Sylvia M. Sokol, Scott+Scott,**[\*40]** Attorneys at Law, LLP, New York, NY; Thomas Kay Boardman, SCOTT+SCOTT, ATTORNEYS AT LAW, LLP, New York, NY; Willem F. Jonckheer, Schubert Jonckheer & Kolbe LLP, San Francisco, CA.

For Direct Purchaser Plaintiffs, Plaintiff: Joseph J. Tabacco, LEAD ATTORNEY, Jr., Berman DeValerio, San Francisco, CA; Todd Anthony Seaver, LEAD ATTORNEY, Berman DeValerio, San Francisco, CA; Aaron M. Sheanin, Pearson, Simon & Warshaw, LLP, San Francisco, CA; Benjamin Ernest Shiftan, Pearson, Simon & Warshaw, LLP, San Francisco, CA; Bruce Lee Simon, Pearson Simon & Warshaw, LLP, San Francisco, CA; Cadio R. Zirpoli, Saveri & Saveri, Inc., San Francisco, CA; Francis Onofrei Scarpulla, Law Offices of Francis O. Scarpulla, San Francisco, CA; Gabriel Dash Zeldin, Steyer Lowenthal Boodrookas Alvarez Smith LLP, San Francisco, CA; Jessica Moy, Berman DeValerio, San Francisco, CA; Judith A. Zahid, Zelle LLP, San Francisco, CA; Linda Phyllis Nussbaum, Nussbaum Law Group, P.C., New York, NY; Mindee Jill Reuben, Lite DePalma Greenberg, LLC, Philadelphia, PA; Richard Alexander Saveri, Saveri & Saveri, Inc., San Francisco, CA; Robert George Retana, Pearson Simon & Warshaw, LLP, San Francisco, CA; Travis Luke Manfredi,**[\*41]** Saveri and Saveri Inc, San Francisco, CA; William Olin Bass, Berman DeValerio, San Francisco, CA; Carl Nils Hammarskjold, Saveri and Saveri, San Francisco, CA.

For Eric McGuire, Plaintiff: Lesley Elizabeth Weaver, LEAD ATTORNEY, Bleichmar Fonti & Auld LLP, Oakland, CA; James Robert Noblin, Green and Noblin, P.C., Long Beach, CA; Jeffrey C. Block, PRO HAC VICE, Block & Leviton LLP, Boston, MA; Mark A. Delaney, PRO HAC VICE, Block & Leviton LLP, Boston, MA; Robert S. Green, Green & Noblin, P.C., Larkspur, CA; Whitney E. Street, PRO HAC VICE, Block & Leviton LLP, Oakland, CA.

For KCN Services LLC, Plaintiff: Jason H. Kim,,LEAD ATTORNEY, Schneider Wallace Cottrell Konecky Wotkyns, Emeryville, CA; Todd Michael Schneider, LEAD ATTORNEY, Schneider Wallace Cottrell Konecky Wotkyns LLP, Emeryville, CA; Bruce H. Wakuzawa, Honolulu, HI; Christopher M. Burke, Scott Scott LLP, San Diego, CA; Garrett W Wotkyns, Schneider Wallace Cottrell Konecky Wotkyns LLP, Scottsdale, AZ.

For Brad Marcus, Plaintiff: Robert S. Green, Green & Noblin, P.C., Larkspur, CA.

For Basil Bourque, Plaintiff: Gregory Weston, San Diego, CA; Jack Fitzgerald, The Law Office of Jack Fitzgerald, PC, San Diego, CA; Melanie Rae Persinger,**[\*42]** The Weston Firm, San Diego, CA.

For Kevin Litwin, Plaintiff: Lesley Elizabeth Weaver, LEAD ATTORNEY, Bleichmar Fonti & Auld LLP, Oakland, CA; James Robert Noblin, Green and Noblin, P.C., Long Beach, CA; Robert S. Green, Green & Noblin, P.C., Larkspur, CA.

For Melinda Lawson, Plaintiff: James Robert Noblin, Green and Noblin, P.C., Long Beach, CA; Lesley Elizabeth Weaver, Bleichmar Fonti & Auld LLP, Oakland, CA; Robert S. Green, Green & Noblin, P.C., Larkspur, CA.

For David Tolchin, Plaintiff: Michael David Liberty, LEAD ATTORNEY, Law Office of Michael D. Liberty, Burlingame, CA.

For UNITED STATES OF AMERICA, Plaintiff: Alexandra Jill Shepard, LEAD ATTORNEY, U.S. Department of Justice, ***Antitrust*** Division, San Francisco, CA.

For Karen Stromberg, Plaintiff: Dean Noburu Kawamoto, LEAD ATTORNEY, Keller Rohrback LLP, Seattle, WA; Amy N.L. Hanson, PRO HAC VICE, Keller Rohrback LLP, Seattle, WA; Juli E. Farris, Keller Rohrback LLP, Seattle, WA; Mark A. Griffin, PRO HAC VICE, Keller Rohback LLP, Seattle, WA; Raymond John Farrow, PRO HAC VICE, KELLER ROHRBACK, SEATTLE, WA.

For City of Palo Alto, Plaintiff: Lesley Elizabeth Weaver, LEAD ATTORNEY, Bleichmar Fonti & Auld LLP, Oakland, CA; James Robert**[\*43]** Noblin, Green and Noblin, P.C., Larkspurt, CA; Louise Hornbeck Renne, Renne Sloan Holtzman & Sakai, LLP, San Francisco, CA; Robert S. Green, Green & Noblin, P.C., Larkspur, CA; Steve Cikes, Renne Sloan Holtzman & Sakai LLP, San Francisco, CA; Steven Patrick Shaw, Renne Sloan Holtzman Sakai LLP, San Francisco, CA.

For City of Richmond, on behalf of themselves and all others similary situtated, Plaintiff: Lesley Elizabeth Weaver, LEAD ATTORNEY, Bleichmar Fonti & Auld LLP, Oakland, CA; James Robert Noblin, Green and Noblin, P.C., Long Beach, CA; Louise Hornbeck Renne, Renne Sloan Holtzman & Sakai, LLP, San Francisco, CA; Robert S. Green, Green & Noblin, P.C., Larkspur, CA; Steve Cikes, Renne Sloan Holtzman & Sakai LLP, San Francisco, CA; Steven Patrick Shaw, Renne Sloan Holtzman Sakai LLP, San Francisco, CA.

For Matthew Saba, Plaintiff: Manfred Patrick Muecke, LEAD ATTORNEY, Bonnett, Fairbourn, Friedman, & Balint, P.C., San Diego, CA.

For Shawn Sellers, Plaintiff: Manfred Patrick Muecke, LEAD ATTORNEY, Bonnett, Fairbourn, Friedman, & Balint, P.C., San Diego, CA.

For TracFone Wireless Inc, Plaintiff: James Blaker Bladinger, LEAD ATTORNEY, Carlton Fields PA, West Palm Beach, FL; David Bedford**[\*44]** Esau, Carlton Fields, P.A., West Palm Beach, FL.

For Acer Inc., Plaintiff: Hsiang James H Lin, LEAD ATTORNEY, TechKnowledge Law Group LLP, Redwood Shores, CA; David Victor Sack, TechKnowledge Law Group LLP, Redwood City, CA; Michael C. Ting, TechKnowledge Law Group LLP, Redwood Shores, CA.

For Acer America Corporation, Plaintiff: Hsiang James H Lin, LEAD ATTORNEY, TechKnowledge Law Group LLP, Redwood Shores, CA; David Victor Sack, TechKnowledge Law Group LLP, Redwood City, CA; Michael C. Ting, TechKnowledge Law Group LLP, Redwood Shores, CA.

For Gateway, Inc., Plaintiff: Hsiang James H Lin, LEAD ATTORNEY, TechKnowledge Law Group LLP, Redwood Shores, CA; David Victor Sack, TechKnowledge Law Group LLP, Redwood City, CA; Michael C. Ting, TechKnowledge Law Group LLP, Redwood Shores, CA.

For Gateway U.S. Retail, Inc., Plaintiff: Hsiang James H Lin, LEAD ATTORNEY, TechKnowledge Law Group LLP, Redwood Shores, CA; David Victor Sack, TechKnowledge Law Group LLP, Redwood City, CA; Michael C. Ting, TechKnowledge Law Group LLP, Redwood Shores, CA.

For Microsoft Mobile Inc., Plaintiff: Lance A Termes, LEAD ATTORNEY, ALSTON & BIRD, East Palo Alto, CA; Alexander Gerard Brown, Alston and Bird LLP, Atlanta,**[\*45]** GA; Brian Parker Miller, Alston & Bird LLP, Atlanta, GA; Edward Paul Bonapfel, Alston and Bird LLP, Atlanta, GA; James Charles Grant, Alston and Bird, Atlanta, GA; Max Paul Marks, Alston and Bird LLP, Atlanta, GA; Nicolas Ward Steenland, Alston & Bird LLP, New York, NY; Ryan W. Koppelman, Alston & Bird LLP, East Palo Alto, CA; Valarie Cecile Williams, PRO HAC VICE, Alston & Bird LLP, Atlanta, GA.

For Microsoft Mobile Oy, Plaintiff: Lance A Termes, LEAD ATTORNEY, ALSTON & BIRD, East Palo Alto, CA; Alexander Gerard Brown, Alston and Bird LLP, Atlanta, GA; Brian Parker Miller, Alston & Bird LLP, Atlanta, GA; Edward Paul Bonapfel, Alston and Bird LLP, Atlanta, GA; James Charles Grant, Alston and Bird, Atlanta, GA; Max Paul Marks, Alston and Bird LLP, Atlanta, GA; Nicolas Ward Steenland, Alston & Bird LLP, New York, NY; Ryan W. Koppelman, Alston & Bird LLP, East Palo Alto, CA; Valarie Cecile Williams, PRO HAC VICE, Alston & Bird LLP, Atlanta, GA.

For Dell Inc., Plaintiff: Michael P. Kenny, LEAD ATTORNEY, Alston & Bird LLP, Atlanta, GA; Debra Dawn Bernstein, Alston & Bird LLP, Atlanta, GA; Donald MacKaye Houser, Alston & Bird LLP, Atlanta, GA; Douglas R. Young, Farella Braun & Martel LLP,**[\*46]** San Francisco, CA; Kelley Connolly Barnaby, PRO HAC VICE, Alston and Bird LLP, Washington, DC; Matthew David Kent, Alston + Bird LLP, Atlanta, GA; Micah Dean Moon, Alston Bird LLP, ATLANTA, GA; Rodney J Ganske, Alston & Bird LLP, Atlanta, GA.

For Dell Products L.P., Plaintiff: Michael P. Kenny, LEAD ATTORNEY, Alston & Bird LLP, Atlanta, GA; Debra Dawn Bernstein, Alston & Bird LLP, Atlanta, GA; Donald MacKaye Houser, Alston & Bird LLP, Atlanta, GA; Douglas R. Young, Farella Braun & Martel LLP, San Francisco, CA; Kelley Connolly Barnaby, PRO HAC VICE, Alston and Bird LLP, Washington, DC; Matthew David Kent, Alston + Bird LLP, Atlanta, GA; Micah Dean Moon, Alston Bird LLP, ATLANTA, GA; Rodney J Ganske, Alston & Bird LLP, Atlanta, GA.

For LG Chem Ltd., Defendant: Reginald David Steer, LEAD ATTORNEY, Akin Gump Strauss Hauer & Feld LLP, San Francisco, CA; Andrew Joongbae Lee, Steptoe and Johnson LLP, Washington, DC; Andrew Joseph Sloniewsky, Steptoe and Johnson LLP, Washington, DC; Arin Charles Aragona, Eimer Stahl LLP, Chicago, IL; Benjamin Edward Waldin, Eimer Stahl LLP, Chicago, IL; Brian Yanlang Chang, Eimer Stahl LLP, Chicago, IL; C. Fairley Spillman, Akin Gump Strauss Hauer and Feld**[\*47]** LLP, Washington, DC; Catherine E Creely, Akin Gump Strauss Hauer and Feld LLP, Washington, DC; Hyongsoon Kim, Akin Gump Strauss Hauer & Feld LLP, Los Angeles, CA; Jillie B. Richards, Akin Gump Strauss Hauer & Feld LLP, Washington, DC; Kenneth P. Ewing, Steptoe & Johnson LLP, Washington, DC; Mollie McGowan Lemberg, Akin Gump Strauss Hauer Feld LLP, San Francisco, CA; Nathan P. Eimer, Eimer Stahl LLP, Chicago, IL; Robert Wallace Fleishman, Steptoe and Johnson LLP, Washington, DC; Vanessa Greenwood Jacobsen, Eimer Stahl LLP, Chicago, IL.

For LG Chem America, Inc, Defendant: Reginald David Steer, LEAD ATTORNEY, Akin Gump Strauss Hauer & Feld LLP, San Francisco, CA; Andrew Joongbae Lee, Steptoe and Johnson LLP, Washington, DC; Andrew Joseph Sloniewsky, Steptoe and Johnson LLP, Washington, DC; Arin Charles Aragona, Eimer Stahl LLP, Chicago, IL; Benjamin Edward Waldin, Eimer Stahl LLP, Chicago, IL; Brian Yanlang Chang, Eimer Stahl LLP, Chicago, IL; C. Fairley Spillman, Akin Gump Strauss Hauer and Feld LLP, Washington, DC; Catherine E Creely, Akin Gump Strauss Hauer and Feld LLP, Washington, DC; Hyongsoon Kim, Akin Gump Strauss Hauer & Feld LLP, Los Angeles, CA; Jillie B. Richards, Akin Gump**[\*48]** Strauss Hauer & Feld LLP, Washington, DC; Kenneth P. Ewing, Steptoe & Johnson LLP, Washington, DC; Mollie McGowan Lemberg, Akin Gump Strauss Hauer Feld LLP, San Francisco, CA; Nathan P. Eimer, Eimer Stahl LLP, Chicago, IL; Robert Wallace Fleishman, Steptoe and Johnson LLP, Washington, DC; Vanessa Greenwood Jacobsen, Eimer Stahl LLP, Chicago, IL.

For Panasonic Corporation, Defendant: Jeffrey L. Kessler, LEAD ATTORNEY, Winston & Strawn LLP, New York, NY; Roxann E Henry, LEAD ATTORNEY, Morrison and Foerster LLP, Washington, DC; A. Paul Victor, Winston & Strawn LLP, New York, NY; Aldo A. Badini, Winston & Strawn LLP, Menlo Park, CA; Amy Lee Stewart, Rose Law Firm, Little Rock, AR; Cristina M Fernandez, Winston and Strawn LLP, New York, NY; Diana L. Leiden, Winston & Strawn LLP, Los Angeles, CA; Erica Carolyn Smilevski, Winston and Strawn LLP, New York, NY; Eva W. Cole, Winston & Strawn LLP, New York, NY; Ian L Papendick, Winston & Strawn LLP, San Francisco, CA; Jeffrey J. Amato, Winston Strawn LLP, New York, NY; Jennifer Stewart, Winston and Strawn LLP, New York, NY; Kyle James Bonacum, Winston Strawn, San Francisco, CA; Marissa P. Harris, Morrison & Foerster LLP, Washington, DC; Mark Edward**[\*49]** Rizik, Jr., Winston and Strawn LLP, New York, NY; Mikaela Elizabeth Evans-Aziz, Winston and Strawn LLP, New York, NY; Timothy Patrick Gallivan, Morrison Foerster LLP, Washington, DC; William Owen Cooper, Winston & Strawn, San Francisco, CA; Yonatan Ezra Braude, Morrison & Foerster LLP, SF, CA.

For Panasonic Corporation of North America, Defendant: Aldo A. Badini, LEAD ATTORNEY, Winston & Strawn LLP, Menlo Park, CA; Jeffrey L. Kessler, LEAD ATTORNEY, Winston & Strawn LLP, New York, NY; Matthew McDonnell Walsh, LEAD ATTORNEY, Winston & Strawn LLP, Los Angeles, CA; Roxann E Henry, LEAD ATTORNEY, Morrison and Foerster LLP, Washington, DC; A. Paul Victor, Winston & Strawn LLP, New York, NY; Amy Lee Stewart, Rose Law Firm, Little Rock, AR; Cristina M Fernandez, Winston and Strawn LLP, New York, NY; Diana L. Leiden, Winston & Strawn LLP, Los Angeles, CA; Erica Carolyn Smilevski, Winston and Strawn LLP, New York, NY; Eva W. Cole, Winston & Strawn LLP, New York, NY; Ian L Papendick, PRO HAC VICE, Winston & Strawn LLP, San Francisco, CA; Jeffrey J. Amato, Winston Strawn LLP, New York, NY; Jennifer Stewart, Winston and Strawn LLP, New York, NY; Kyle James Bonacum, Winston Strawn, San Francisco,**[\*50]** CA; Marissa P. Harris, Morrison & Foerster LLP, Washington, DC; Mark Edward Rizik, Jr., Winston and Strawn LLP, New York, NY; Mikaela Elizabeth Evans-Aziz, Winston and Strawn LLP, New York, NY; Sarah Brooke Abshear, Buchanan Ingersoll and Rooney LLP, San Diego, CA; Timothy Patrick Gallivan, Morrison Foerster LLP, Washington, DC; William Owen Cooper, Winston & Strawn, San Francisco, CA; Yonatan Ezra Braude, Morrison & Foerster LLP, SF, CA.

For Sanyo Electric Co, Ltd, Defendant: Jeffrey L. Kessler, LEAD ATTORNEY, Winston & Strawn LLP, New York, NY; Roxann E Henry, LEAD ATTORNEY, Morrison and Foerster LLP, Washington, DC; A. Paul Victor, Winston & Strawn LLP, New York, NY; Aldo A. Badini, Winston & Strawn LLP, Menlo Park, CA; Amy Lee Stewart, Rose Law Firm, Little Rock, AR; Cristina M Fernandez, Winston and Strawn LLP, New York, NY; Diana L. Leiden, Winston & Strawn LLP, Los Angeles, CA; Erica Carolyn Smilevski, Winston and Strawn LLP, New York, NY; Eva W. Cole, Winston & Strawn LLP, New York, NY; Ian L Papendick, Winston & Strawn LLP, San Francisco, CA; Jeffrey J. Amato, Winston Strawn LLP, New York, NY; Jennifer Stewart, Winston and Strawn LLP, New York, NY; Kyle James Bonacum, Winston**[\*51]** Strawn, San Francisco, CA; Marissa P. Harris, Morrison & Foerster LLP, Washington, DC; Mark Edward Rizik, Jr., Winston and Strawn LLP, New York, NY; Mikaela Elizabeth Evans-Aziz, Winston and Strawn LLP, New York, NY; Timothy Patrick Gallivan, Morrison Foerster LLP, Washington, DC; William Owen Cooper, Winston & Strawn, San Francisco, CA; Yonatan Ezra Braude, Morrison & Foerster LLP, SF, CA.

For Sanyo North America Corporation, Defendant: Aldo A. Badini, LEAD ATTORNEY, Winston & Strawn LLP, Menlo Park, CA; Jeffrey L. Kessler, LEAD ATTORNEY, Winston & Strawn LLP, New York, NY; Matthew McDonnell Walsh, LEAD ATTORNEY, Winston & Strawn LLP, Los Angeles, CA; Roxann E Henry, LEAD ATTORNEY, Morrison and Foerster LLP, Washington, DC; A. Paul Victor, Winston & Strawn LLP, New York, NY; Amy Lee Stewart, Rose Law Firm, Little Rock, AR; Cristina M Fernandez, Winston and Strawn LLP, New York, NY; Diana L. Leiden, Winston & Strawn LLP, Los Angeles, CA; Erica Carolyn Smilevski, Winston and Strawn LLP, New York, NY; Eva W. Cole, Winston & Strawn LLP, New York, NY; Ian L Papendick, PRO HAC VICE, Winston & Strawn LLP, San Francisco, CA; Jeffrey J. Amato, Winston Strawn LLP, New York, NY; Jennifer Stewart,**[\*52]** Winston and Strawn LLP, New York, NY; Kyle James Bonacum, Winston Strawn, San Francisco, CA; Marissa P. Harris, Morrison & Foerster LLP, Washington, DC; Mark Edward Rizik, Jr., Winston and Strawn LLP, New York, NY; Mikaela Elizabeth Evans-Aziz, Winston and Strawn LLP, New York, NY; Sarah Brooke Abshear, Buchanan Ingersoll and Rooney LLP, San Diego, CA; Timothy Patrick Gallivan, Morrison Foerster LLP, Washington, DC; William Owen Cooper, Winston & Strawn, San Francisco, CA; Yonatan Ezra Braude, Morrison & Foerster LLP, SF, CA.

For Sony Corporation, Defendant: John C. Dwyer, LEAD ATTORNEY, Cooley LLP, Palo Alto, CA; Reginald David Steer, LEAD ATTORNEY, Akin Gump Strauss Hauer & Feld LLP, San Francisco, CA; Beatriz Mejia, Cooley LLP, San Francisco, CA; Bennett S Miller, COOLEY LLP, Palo Alto, CA; Matthew Michael Brown, Cooley LLP, San Francisco, CA; Scott D. Joiner, COOLEY LLP, San Francisco, CA; Stephen Cassidy Neal, Cooley LLP, Palo Alto, CA.

For Sony Electronics Inc, Defendant: John C. Dwyer, LEAD ATTORNEY, Cooley LLP, Palo Alto, CA; Beatriz Mejia, Cooley LLP, San Francisco, CA; Bennett S Miller, COOLEY LLP, Palo Alto, CA; DANA SICHEL KATZ, COOLEY LLP, New York, NY; Matthew Michael Brown,**[\*53]** Cooley LLP, San Francisco, CA; Scott D. Joiner, COOLEY LLP, San Francisco, CA; Stephen Cassidy Neal, Cooley LLP, Palo Alto, CA.

For Samsung SDI America Inc, Defendant: Michael W. Scarborough, LEAD ATTORNEY, Sheppard Mullin Richter & Hampton LLP, San Francisco, CA; Amar Shrinivas Naik, Sheppard, Mullin, Richter and Hampton LLP, San Francisco, CA; Dylan Ian Ballard, San Francisco, CA; James Landon McGinnis, Sheppard Mullin Richter & Hampton LLP, San Francisco, CA; Nadezhda Nikonova, Sheppard Mullin, San Francisco, CA; Tyler Mark Cunningham, Sheppard Mullin Richter & Hampton, San Francisco, CA.

For Hitachi Ltd., Defendant: Craig P. Seebald, Vinson & Elkins LLP, Washington, DC; Elliott J Joh, Vinson and Elkins LLP, San Francisco, CA; Matthew J. Jacobs, Vinson & Elkins LLP, San Francisco, CA.

For Hitachi Maxell, Ltd, Defendant: Christopher Walter James, Vinson and Elkins LLP, San Francisco, CA; Craig P. Seebald, Vinson & Elkins LLP, Washington, DC; Elliott J Joh, Vinson and Elkins LLP, San Francisco, CA; Hannah Carrigg Wilson, Vinson and Elkins LLP, Washington, DC; Jason Alan Levine, Vinson Elkins LLP, Wasington, DC; Jeremy C. Keeney, Vinson and Elkins L.L.P., Washington, DC; Jessica Rae Spradling**[\*54]** Russell, San Francisco, CA; Lindsey Robinson Vaala, Washington, DC; Matthew J. Jacobs, Vinson & Elkins LLP, San Francisco, CA; Thomas William Bohnett, Vinson and Elkins L.L.P., Washington, DC.

For Maxell Corporation of America, Defendant: Christopher Walter James, Vinson and Elkins LLP, San Francisco, CA; Craig P. Seebald, Vinson & Elkins LLP, Washington, DC; Dennis Solomon Schmelzer, Vinson and Elkins LLP, Washington, DC; Elliott J Joh, Vinson and Elkins LLP, San Francisco, CA; Hannah Carrigg Wilson, Vinson and Elkins LLP, Washington, DC; Jason Alan Levine, Vinson Elkins LLP, Wasington, DC; Jeremy C. Keeney, Vinson and Elkins L.L.P., Washington, DC; Jessica Rae Spradling Russell, San Francisco, CA; Lindsey Robinson Vaala, Washington, DC; Matthew J. Jacobs, Vinson & Elkins LLP, San Francisco, CA; Michael V. Rella, Vinson & Elkins LLP, New York, NY; Thomas William Bohnett, Vinson and Elkins L.L.P., Washington, DC; Vincent C. van Panhuys, Vinson & Elkins, Washington, DC.

For Sony Energy Devices Corporation, Defendant: John C. Dwyer, LEAD ATTORNEY, Cooley LLP, Palo Alto, CA; Beatriz Mejia, Cooley LLP, San Francisco, CA; Bennett S Miller, COOLEY LLP, Palo Alto, CA; Matthew Michael Brown,**[\*55]** Cooley LLP, San Francisco, CA; Scott D. Joiner, COOLEY LLP, San Francisco, CA; Stephen Cassidy Neal, Cooley LLP, Palo Alto, CA.

For Samsung SDI Co Ltd, Defendant: Amar Shrinivas Naik, Sheppard, Mullin, Richter and Hampton LLP, San Francisco, CA; Dylan Ian Ballard, San Francisco, CA; James Landon McGinnis, Sheppard Mullin Richter & Hampton LLP, San Francisco, CA; Michael W. Scarborough, Sheppard Mullin Richter & Hampton LLP, San Francisco, CA; Nadezhda Nikonova, Sheppard Mullin, San Francisco, CA; Tyler Mark Cunningham, Sheppard Mullin Richter & Hampton, San Francisco, CA.

For Maxwell Corporation of America, Defendant: Thomas William Bohnett, Vinson and Elkins L.L.P., Washington, DC.

For Hitachi Maxell Corporation of America, Defendant: Lindsey Robinson Vaala, Washington, DC.

For Toshiba America Electronic Components Inc, Defendant: Christopher M. Curran, LEAD ATTORNEY, White & Case, Washington, DC; J. Frank Hogue, White Case LLP, Washington, DC.

For Toshiba Corporation, Defendant: Christopher M. Curran, LEAD ATTORNEY, White & Case, Washington, DC; Andrew L Black, White and Case LLP, Washington, DC; Aya Kobori, White and Case LLP, New York, NY; Heather Marie Burke, White and Case LLP, Palo**[\*56]** Alto, CA; J. Frank Hogue, White Case LLP, Washington, DC; Kristen Jentsch McAhren, White and Case LLP, Washington, DC; Martin M Toto, White and Case LLP, New York, NY; Michael E. Hamburger, White & Case LLP, New York, NY.

LG Chem America, Defendant, Pro se.

For LG Chem America, Defendant: Reginald David Steer, LEAD ATTORNEY, Akin Gump Strauss Hauer & Feld LLP, San Francisco, CA; Mollie McGowan Lemberg, Akin Gump Strauss Hauer Feld LLP, San Francisco, CA.

LG Corporation, Defendant, Pro se.

For LG Corporation, Defendant: Reginald David Steer, LEAD ATTORNEY, Akin Gump Strauss Hauer & Feld LLP, San Francisco, CA; Mollie McGowan Lemberg, Akin Gump Strauss Hauer Feld LLP, San Francisco, CA.

For Sony Corporation of America, Defendant: John C. Dwyer, LEAD ATTORNEY, Cooley LLP, Palo Alto, CA.

For Sanyo Electric Co., Inc, Defendant: Jeffrey L. Kessler, LEAD ATTORNEY, Winston & Strawn LLP, New York, NY.

For GS Yuasa Corporation, Defendant: Ann Marie Mortimer, Hunton & Williams, Los Angeles, CA; Djordje Petkoski, PRO HAC VICE, Hunton and Williams LLP, Washington, DC; Douglas M. Garrou, PRO HAC VICE, Hunton and Williams LLP, Washington, DC; Michael Brett Burns, Hunton and Williams, LLP, San Francisco,**[\*57]** CA; Ray V. Hartwell, III, PRO HAC VICE, Hunton and Williams LLP, Washington, DC; Robert A. Caplen, Hunton and Williams LLP, Washington, DC; Yeongyo Anna Suh, Hunton and Williams LLP, San Francisco, CA.

For NEC Tokin Corporation, Defendant: George Arnold Nicoud, III, LEAD ATTORNEY, Gibson, Dunn & Crutcher LLP, San Francisco, CA; Alvina Wong, Winston Strawn LLP, San Francisco, CA; Angela Yue-Man Poon, Gibson, Dunn and Crutcher LLP, San Francisco, CA; George Charles Nierlich, III, Gibson Dunn & Crutcher LLP, San Francisco, CA; Katherine C Warren, Gibson, Dunn and Crutcher LLP, San Francisco, CA; Matthew Robert DalSanto, Winston and Strawn LLP, San Francisco, CA; Paul R. Griffin, Winston & Strawn LLP, San Francisco, CA; Rebecca Furman, Lewis & Llewellyn LLP, San Francisco, Ca; Robert E Kim, Gibson, Dunn and Crutcher LLP, San Francisco, CA; Robert Bernard Pringle, Winston & Strawn LLP, San Francisco, CA; Rupal M. Doshi, Gibson Dunn and Crutcher LLP, San Francisco, CA; Sean D. Meenan, Winston and Strawn, San Francisco, CA.

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LG Chemical Ltd., Defendant, Pro se.

For LG Chemical Ltd., Defendant: Reginald David Steer, LEAD ATTORNEY, Akin Gump Strauss Hauer & Feld LLP, San Francisco, CA; Jillie B. Richards, Akin Gump Strauss Hauer & Feld LLP, Washington, DC; Mollie McGowan Lemberg, Akin Gump Strauss Hauer Feld LLP, San Francisco, CA.

LG Chemical America Inc, Defendant, Pro se.

For LG Chemical America Inc, Defendant: Reginald David Steer, LEAD ATTORNEY, Akin Gump Strauss Hauer & Feld LLP, San Francisco, CA; Jillie B. Richards, Akin Gump Strauss Hauer & Feld LLP, Washington, DC; Mollie McGowan Lemberg, Akin Gump Strauss Hauer Feld LLP, San Francisco, CA.

For Hitachi Maxell Ltd, Defendant: Craig P. Seebald, LEAD ATTORNEY, Vinson & Elkins LLP, Washington, DC; Lindsey Robinson Vaala, Washington, DC.

For PCM, Defendant: Jennifer Lee Taylor, Morrison & Foerster LLP, San Francisco, CA.**[\*59]**

For Flextronics International USA, Inc., Interested Party: Patrick Martin Ryan, LEAD ATTORNEY, Bartko, Zankel, Bunzel & Miller, San Francisco, CA; Benjamin Kneeland Riley, Bartko, Zankel, Bunzel & Miller, San Francisco, CA.

For Amazon.com, Inc., Interested Party: Edward Charles Duckers, LEAD ATTORNEY, Stoel Rives LLP, Sacramento, CA.

For Martin A Blumenthal, Objector: Martin Allen Blumenthal, LEAD ATTORNEY, Northfield, IL.

For Gordon Morgan, Objector: Timothy Ricardo Hanigan, LEAD ATTORNEY, Lang Hanigan & Carvalho, LLP, Woodland Hills, CA.

For Kenya Brading, Objector: Bradley David Salter, LEAD ATTORNEY, Attorney at Law, Lahaina, HI.

For BlackBerry Corporation (Non-Party BlackBerry Corporation), Miscellaneous: Alexander Howard Cote, LEAD ATTORNEY, Scheper Kim & Harris LLP, Los Angeles, CA.

For PCM, Inc., Miscellaneous: Jennifer Lee Taylor, Morrison & Foerster LLP, San Francisco, CA.

For Robert Bosch Tool Corporation, Miscellaneous: Daniel Allen Sasse, LEAD ATTORNEY, Crowell & Moring LLP, Irvine, CA; Angela Julie Yu, Crowell and Moring LLP, Irvine, CA.

**Judges:** YVONNE GONZALEZ ROGERS, UNITED STATES DISTRICT JUDGE.

**Opinion by:** YVONNE GONZALEZ ROGERS

**Opinion**

**Order Denying Without Prejudice Motions For Class Certification; Granting [\*60]  In Part And Denying In Part Motions To Strike Expert Reports Or Portions Thereof**

**Dkt. Nos. 1036, 1553, 1554, 1565, 1569, 1582**

This ***antitrust*** action concerns two putative plaintiff classes, indirect and direct purchasers, who allege a multi-year, international price-fixing conspiracy among Japanese and Korean manufacturers of lithium ion battery cells, as well as their American subsidiaries.[[1]](#footnote-0)1 The putative class representatives are denominated the Indirect Purchaser Plaintiffs ("IPPs") and the Direct Purchaser Plaintiffs ("DPPs," and collectively with the IPPs, "Plaintiffs"). Both putative classes have filed motions for class certification. (Dkt. Nos. 1036, 1582.) In connection with those motions, defendants have moved to strike or exclude certain expert reports. (Dkt. Nos. 1553, 1554, 1565, 1569.)

The Court, having considered the admissible evidence, the papers in support and in opposition to the motion, the pleadings, and the oral arguments of the parties, and for the reasons stated herein, **Orders** as follows:

1. The IPP Plaintiffs' Motion for Class Certification (Dkt No. 1036) is **Denied without Prejudice** on the grounds that they have failed to establish typicality and**[\*61]** their ability to prove ***antitrust*** impact on a class-wide basis;

2. The DPP Plaintiffs' Motion for Class Certification (Dkt. No. 1582 is **Denied without Prejudice** on the grounds that they have failed to establish typicality, adequacy, and their ability to prove ***antitrust*** impact on a class-wide basis;

3. The Motion of Panasonic and Sanyo to Strike the Proposed Expert Testimony of Dr. Edward E. Leamer (Dkt. No. 1553) is **Granted In Part** on the grounds that his analyses rely on too narrow a range of data;

4. The Motion of Panasonic and Sanyo to Strike the Proposed Expert Testimony of Dr. Rosa M. Abrantes-Metz (Dkt. No. 1554) is **Denied** on the grounds identified in the motion;

5. The Motion of Toshiba to Strike Certain Testimony of DPP Expert Dr. Roger Noll (Dkt. No. 1565) is **Denied** on the grounds identified in the motion; and

6. The Motion of Toshiba to Strike Certain Proposed Testimony of DPP Expert Mr. James L. Kaschmitter (Dkt. No. 1569) is **Granted In Part** as stated herein.

**I. Background**

These actions arise out of an alleged price-fixing conspiracy for lithium ion battery (LIB) cells. The Court has previously outlined the allegations but summarizes the essential background, based on the allegations**[\*62]** of the operative complaints, here.

LIBs serve as the predominant form of rechargeable batteries used in portable consumer electronics today, powering devices ranging from smartphones to laptop computers to cameras to cordless power tools. An LIB cell stores and releases electricity through chemical means. The cell consists of four basic components: a cathode, an anode, electrolyte, and separators. After manufacture, one or more cells are "packed" inside a casing, sometimes with protective circuitry. The casing makes the cell usable as a battery, or, in the case of multiple cells in a single casing, as a battery pack. Batteries and their cells exist in one of three general formats: (i) cylindrical, (ii) prismatic, and (iii) polymer.

In 1991, defendant Sony Corporation invented lithium ion batteries and dominated the market until 1999 and 2000, when Korean manufacturers LG and Samsung entered the scene. Both the DPPs and IPPs allege that, sometime in 2000, defendants here stopped competing and began sharing information through high-level executive meetings in Asia. These meetings began no later than March 2002 and continued in rough, semi-annual intervals for approximately two years. Beginning**[\*63]** in 2004 and continuing through 2006, defendants are alleged to have met with increased frequency. Both complaints allege that, in this period, defendants determined that price competition would diminish the "health" of the entire lithium ion battery industry and agreed to refrain from such competition. Plaintiffs further allege that in February 2007, the price of cobalt, an important component for manufacture of lithium ion battery cells, increased sharply. Defendants allegedly agreed on a formula for collectively raising the price of lithium ion batteries in response, allegedly using the cobalt price increase as a pretext for this coordinated price increase. Thereafter, in mid-to-late 2008, despite a drop in cobalt prices and a global economic downturn and reduction in demand for lithium ion batteries, defendants allegedly collaborated on strategies for stabilizing and maintaining artificially high prices. Plaintiffs allege that from 2009 to 2011, defendants continued to exchange sensitive, non-public information to coordinate prices.[[2]](#footnote-1)2

**II. Applicable Standards**

**A. Class Certification**

*Federal Rule of Civil Procedure 23*, which governs class certification, has two distinct sets of requirements that plaintiffs must meet before**[\*64]** the Court may certify a class. Plaintiffs must meet all of the requirements of *Rule 23(a)* and must satisfy at least one of the prongs of *Rule 23(b)*, depending upon the nature of the class they seek to certify. *See also* [*Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co., 559 U.S. 393, 394, 130 S. Ct. 1431, 176 L. Ed. 2d 311 (2010)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7Y4J-8F10-YB0V-9153-00000-00&context=) (setting forth requirements of *Rule 23*). Under *Rule 23(a)*, the Court may certify a class only where:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

*Fed. R. Civ. P. 23(a)*. Courts refer to these four requirements as "numerosity, commonality, typicality[,] and adequacy of representation." [*Mazza v. Am. Honda Motor Co., 666 F.3d 581, 588 (9th Cir. 2012)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:54PJ-XDC1-F04K-V02F-00000-00&context=).[[3]](#footnote-2)3

While some inquiry into the substance of a case may be necessary to determine whether these requirements are satisfied, the court must not advance a decision on the merits to the class certification stage. As the United States Supreme Court has stated:

Although we have cautioned that a court's class-certification analysis must be "rigorous" and may "entail some overlap with the merits of the plaintiff's underlying claim," *Rule 23* grants courts no license to engage**[\*65]** in free-ranging merits inquiries at the certification stage. Merits questions may be considered to the extent — but only to the extent —that they are relevant to determining whether the *Rule 23* prerequisites for class certification are satisfied.

[*Amgen Inc. v. Connecticut Ret. Plans & Trust Funds, 568 U.S. 455, 133 S. Ct. 1184, 1194-95, 185 L. Ed. 2d 308 (2013)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:57VD-FT61-F04K-F11C-00000-00&context=). Within the framework of *Rule 23*, the Court ultimately has broad discretion over whether to certify a class. [*Zinser v. Accufix Research Inst., Inc., 253 F.3d 1180, 1186 (9th Cir.)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:439G-6XJ0-0038-X3KJ-00000-00&context=) *opinion amended on denial of reh'g*, [*273 F.3d 1266 (9th Cir. 2001)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:44NN-1MC0-0038-X41N-00000-00&context=).

*Rule 23(a)(1)*'s numerosity requirement means that a class be so numerous that joinder of all class members is "impracticable." *Fed. R. Civ. P. 23(a)(1)*. Where the precise size of the class is unknown, but "'general knowledge and common sense indicate that it is large, the numerosity requirement is satisfied.'" [*In re Static Random Access Memory (SRAM)* ***Antitrust*** *Litig., No. C 07-01819 CW, 2008 U.S. Dist. LEXIS 107523, 2008 WL 4447592, at \*7 (N.D. Cal., Sept. 29, 2008)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4VPC-GDB0-TXFP-C1XC-00000-00&context=) (quoting 1 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 3:3 (4th ed. 2002)).

*Rule 23(a)(2)* requires the party seeking certification to show that "there are questions of law or fact common to the class." *Fed. R. Civ. P. 23(a)(2)*. To satisfy this requirement, the common question "must be of such a nature that it is capable of class[-]wide resolution — which means that the determination of its truth or falsity will resolve an issue that is central to the validity of each of the claims in one stroke." [*Dukes, 564 U.S. at 350*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:534M-F5W1-F04K-F4CT-00000-00&context=)**[\*66]**. "[F]or purposes of *Rule 23(a)(2)*, even a single common question will do." [*Id. at 359*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:534M-F5W1-F04K-F4CT-00000-00&context=). "'[T]he very nature of a conspiracy ***antitrust*** action compels a finding that common questions of law and fact exist.'" [*In re Dynamic Random Access Memory (DRAM)* ***Antitrust*** *Litig., No. M 02-1486 PJH, 2006 U.S. Dist. LEXIS 39841, 2006 WL 1530166, at \*3 (N.D. Cal. June 5, 2006)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4K6D-5600-TVSH-32YC-00000-00&context=); *see also* [*In re Online DVD Rental* ***Antitrust*** *Litig., No. 09-2029 PJH, 2010 U.S. Dist. LEXIS 138558, 2010 WL 5396064, at \*3 (N.D. Cal. Dec. 23, 2010) ("Online DVD")*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:51W7-GPR1-652H-700R-00000-00&context=).

Typicality, as defined in *Rule 23(a)(3)*, requires that the "claims or defenses of the representative parties are typical of the claims or defenses of the class." *Fed. R. Civ. P. 23(a)(3)*. That is, the named plaintiffs must "suffer the same injury as the class members." [*Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 348, 131 S. Ct. 2541, 180 L. Ed. 2d 374 (2011)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:534M-F5W1-F04K-F4CT-00000-00&context=). "The purpose of the typicality requirement is to assure that the interest of the named representative aligns with the interests of the class." [*Wolin v. Jaguar Land Rover N. Am., LLC, 617 F.3d 1168, 1175 (9th Cir. 2010)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:50T5-T5P1-652R-802K-00000-00&context=) (*quoting* [*Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir.1992))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-0VD0-008H-V1HF-00000-00&context=). "The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Id.* (internal quotation marks omitted). Class representatives' claims "need not be substantially identical" to those of absent class members, as "[s]ome degree of individuality is to be expected in all cases." [*Cifuentes v. Red Robin Int'l, Inc., No. C-11-5635-EMC, 2012 U.S. Dist. LEXIS 27211, 2012 WL 693930, at \*5 (N.D. Cal. Mar. 1, 2012)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5535-0CN1-F04C-T1DV-00000-00&context=).

Adequacy of representation under *Rule 23(a)(4)* requires the Court to consider: "(1) [whether] the representative plaintiffs and**[\*67]** their counsel have any conflicts of interest with other class members, and (2) will the representative plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Staton v. Boeing Co., 327 F.3d 938, 957 (9th Cir. 2003)*.

Once the threshold requirements for certification are met, a plaintiff must establish that the class is appropriate for certification under one of the provisions in *Rule 23(b)*. Here, the plaintiff classes seek certification under *Rule 23(b)(3)*. *Rule 23(b)(3)* requires plaintiffs to establish "that the questions of law or fact common to class members *predominate* over any questions affecting only individual members, and that a class action is *superior* to other available methods for fairly and efficiently adjudicating the controversy." *Fed. R. Civ. P. 23(b)(3)* (emphasis supplied). Predominance "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation," and is similar to, but more demanding than the commonality analysis under *Rule 23(a)*. [*Amchem Prod., Inc. v. Windsor, 521 U.S. 591, 623, 117 S. Ct. 2231, 138 L. Ed. 2d 689 (1997)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RV9-HGW0-003B-R17N-00000-00&context=). Superiority, on the other hand, tests whether the class action mechanism would be preferable to individual actions or would "unnecessarily burden the judiciary . . . [and] prove uneconomic for potential plaintiffs." [*Hanlon, 150 F.3d at 1023*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3T7M-D1S0-0038-X3SM-00000-00&context=). Courts consider such factors as: the interest of members of the class in controlling**[\*68]** their individual claims or defenses; the extent of any litigation already commenced by or against the class members; the desirability of concentrating the litigation in a particular forum; and the difficulties likely to be encountered in management of the class action, such as difficulty identifying who is bound by the judgment or individualized issues among the class members. [*Amchem, 521 U.S. at 615-16*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RV9-HGW0-003B-R17N-00000-00&context=).

**B. Standards Applicable to Expert Testimony**

Defendants have moved to strike or exclude certain expert reports, or portions thereof, offered in support of the motions for class certification. Defendants rely on [*Rules 104(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-2991-FG36-11WJ-00000-00&context=) and [*702 of the Federal Rules of Evidence*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-2991-FG36-120S-00000-00&context=), as well as the principles set forth in [*Daubertv. Merrell Dow Pharms., Inc., 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4W-XDR0-003B-R3R6-00000-00&context=).

[*Federal Rule of Evidence 702*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-2991-FG36-120S-00000-00&context=) controls expert witness testimony. The admissibility of an expert opinion requires a three-step analysis:

The admissibility of expert testimony, [*Rule 702*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-2991-FG36-120S-00000-00&context=), requires that the trial court make several preliminary determinations, [*Rule 104(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-2991-FG36-11WJ-00000-00&context=). [1] The trial court must decide whether the witness called is properly qualified to give the testimony sought. A witness may be qualified as an expert on the basis of either knowledge, skill, experience, training, or education or a combination thereof, [*Rule 702*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-2991-FG36-120S-00000-00&context=). [2] The trial court must further determine that the testimony of the expert witness, in**[\*69]** the form of an opinion or otherwise, will assist the trier of fact, i.e., be helpful, to understand the evidence or to determine a fact in issue, [*Rule 702(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-2991-FG36-120S-00000-00&context=). [3] Finally the trial court must determine that as actually applied in the matter at hand, [*Rule 702(d)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-2991-FG36-120S-00000-00&context=), to facts, data, or opinions sufficiently established to exist, [*Rule 702(b)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-2991-FG36-120S-00000-00&context=), including facts, data, or opinions reasonably relied upon under [*Rule 703*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-2991-FG36-120V-00000-00&context=), sufficient assurances of trustworthiness are present that the expert witness' explanative theory produced a correct result to warrant jury acceptance, i.e., a product of reliable principles and methods, [*Rule 702(c)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-2991-FG36-120S-00000-00&context=).

Michael H. Graham, 5 Handbook of Fed. Evid. [*§ 702:1*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-2991-FG36-120S-00000-00&context=) (7th ed.) (footnotes omitted). Under [*Rule 703*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-2991-FG36-120V-00000-00&context=), expert opinion may be based on three possible sources: firsthand knowledge; admitted evidence; and facts or data not otherwise admitted, if they are the kind of information on which experts in the particular field reasonably would rely in forming opinions on the subject. *See* 29 Fed. Prac. & Proc. Evid. (2d ed.) §6274. In the analysis under [*Rule 701*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-2991-FG36-120P-00000-00&context=) and [*Daubert*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4W-XDR0-003B-R3R6-00000-00&context=), the court is tasked with determining that the opinion has the objective earmarks of scientific or technical reliability, not making a conclusive determination about whether the opinions ultimately**[\*70]** are reliable or correct. *Id.* Thus, for instance, the Ninth Circuit has held that the district courts should, in the first instance, determine whether statistics offered are sufficiently probative of the ultimate fact in issue, regardless of the statistical significance levels associated with them. *See* [*Contreras v. City of Los Angeles, 656 F.2d 1267, 1273 (9th Cir. 1981)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3FC0-0039-W4K8-00000-00&context=) (citing [*Dothard v. Rawlinson, 433 U.S. 321, 338, 97 S. Ct. 2720, 53 L. Ed. 2d 786*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-9B30-003B-S1D0-00000-00&context=) (Rehnquist, J., concurring)); *see also* [*In re High-Tech Employee* ***Antitrust*** *Litig.., No. 11-CV-02509-LHK, 2014 U.S. Dist. LEXIS 47181, 2014 WL 1351040, at \*15 (N.D. Cal. Apr. 4, 2014)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5BX3-1F31-F04C-T18F-00000-00&context=) (fact that variables were not statistically significant at the 1%, 5%, and 10% levels goes to the weight, not the admissibility of expert's model, even if those are the "conventional" levels statisticians typically use); [*Kadas v. MCI Systemhouse Corp., 255 F.3d 359, 362 (7th Cir.2001)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:439V-M2T0-0038-X3VP-00000-00&context=) (use of five percent test is arbitrary and does not govern admissibility).

An expert is generally not permitted to opine on an ultimate issue of fact except in limited circumstances, since such opinions may "invade the province of" the jury. *See* [*Nationwide Transport Finance v. Cass Information Systems, Inc., 523 F.3d 1051, 1060 (9th Cir. 2008)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4SCY-C0T0-TXFX-D2DK-00000-00&context=) ("evidence that merely tells the jury what result to reach is not sufficiently helpful to the trier of fact to be admissible"). Nor may an expert opine on questions which are matters of law for the court. *See* [*id. at 1058*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4SCY-C0T0-TXFX-D2DK-00000-00&context=) (deciding questions of law is the exclusive province of the trial judge); [*McHugh v. United Service Auto Assoc., 164 F.3d 451, 454 (9th Cir. 1999)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3VH0-GKM0-0038-X53M-00000-00&context=) (expert testimony cannot be used to**[\*71]** provide the legal meaning or interpretation of insurance policy terms); [*Aguilar v. Int'l Longshoremen's Union Local No. 10, 966 F.2d 443, 447 (9th Cir. 1992)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-5880-008H-V4FG-00000-00&context=) (expert opinion that reliance was reasonable and foreseeable were inappropriate subjects for expert testimony). However, as a practical matter, experts may express opinions based upon hypotheticals and information which would otherwise be inadmissible hearsay on its own. Additionally, experts can rely upon the opinions of other experts. *See* [*DataQuill Ltd. v. High Tech Computer Corp., 887 F.Supp.2d 999, 1026 (S.D. Cal. 2011)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:54CV-RWF1-F04C-T37J-00000-00&context=) ("It is routine and proper for a damages expert in a technical patent case to rely on a technical expert for background."); [*United States v. 1014.16 Acres of Land, More or Less, Situated in Vernon Cnty., State of Mo., 558 F. Supp. 1238, 1242 (W.D. Mo. 1983)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4N-TVH0-0054-52VH-00000-00&context=) *aff'd*, [*739 F.2d 1371 (8th Cir. 1984)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4W-W9K0-003B-G195-00000-00&context=) (reasonable to expect that experts will rely on the opinion of experts in other fields as background material, as permitted by [*FRE 703*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-2991-FG36-120V-00000-00&context=)); [*Interwoven, Inc. v. Vertical Computer Sys., CV 10-04645 RS, 2013 U.S. Dist. LEXIS 100790, 2013 WL 3786633, at \*7 (N.D. Cal. July 18, 2013)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:58XM-20C1-F04C-T016-00000-00&context=) ("Experts are, however, permitted to rely on hearsay evidence in coming to their conclusions, so long as an expert in the field would reasonably rely on that information").

Thus, while expert testimony cannot be used as an end-run around the rules of evidence to admit the underlying evidence, experts in a particular field routinely opine based upon a set of factual assumptions given to them. They need not be experts in all fields. Nor must they**[\*72]** have personal knowledge of the factual background in the case. At trial, the proponent of the expert bears the burden of persuading the jury that the expert's opinion is, in fact, based upon a reasonable and convincing set of assumptions, or that the underlying facts upon which the expert's opinion is based exist. Thus, a jury is routinely charged:

[Expert] [o]pinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

Ninth Circuit Manual of Model Civil Jury Instructions, 2.11. And, at trial, an expert generally will not be called to opine until the evidence underlying the opinion has actually been admitted.

Moreover, at the class certification stage, the Court does not make an ultimate determination of the admissibility of an expert's report for purposes of a dispositive motion or trial. [*Dukes v. Wal-Mart Stores, Inc. (Dukes II), 603 F.3d 571, 602 n. 22 (9th Cir. 2010)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7YB3-XGH0-YB0V-P01W-00000-00&context=) *rev'd on other grounds* by [*564 U.S. 338, 131 S. Ct. 2541, 180 L. Ed. 2d 374 (2011)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:534M-F5W1-F04K-F4CT-00000-00&context=); [*Millenkamp v. Davisco Foods Int'l, Inc., 562 F.3d 971, 979 (9th Cir. 2009)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4W2X-FYW0-TXFX-D2VR-00000-00&context=). Rather, the court considers only whether the expert evidence is "useful in evaluating whether class certification requirements have been met." [*Tait v. BSH Home Appliances Corp., 289 F.R.D. 466, 495-96 (C.D. Cal. 2012)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:57FH-J2V1-F04C-T4R0-00000-00&context=) (citing**[\*73]** [*Ellis v. Costco Wholesale Corp., 657 F.3d 970, 982 (9th Cir. 2011))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:836D-Y8G1-652R-82V2-00000-00&context=); *see also* [*Rai v. Santa Clara Valley Transp. Auth., 308 F.R.D. 245 (N.D. Cal. 2015)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5FCK-BRH1-F04C-T3JB-00000-00&context=). At class certification, "the relevant inquiry is a tailored *Daubert* analysis which scrutinizes the reliability of the expert testimony in light of the criteria for class certification and the current state of the evidence." [*Rai, 308 F.R.D. at 264*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5FCK-BRH1-F04C-T3JB-00000-00&context=).

**III. IPP Motion for Class Certification**

IPPs seek to certify a *Rule 23(b)(3)* class defined as follows:

All persons and entities who, as residents of the United States and during the period from January 1, 2000 through May 31, 2011, indirectly purchased new for their own use and not for resale one of the following products which contained a lithium-ion cylindrical battery manufactured by one or more defendants or their co-conspirators: (i) a portable computer; (ii) a power tool; (iii) a camcorder; or (iv) a replacement battery for any of these products. Excluded from the class are any purchases of Panasonic-branded computers. Also excluded from the class are any federal, state, or local governmental entities, any judicial officers presiding over this action, members of their immediate families and judicial staffs, and any juror assigned to this action.

All non-federal and non-state governmental entities in California that, during the period from January 1, 2000 through**[\*74]** May 31, 2011, indirectly purchased new for their own use and not for resale one of the following products which contained a lithium-ion cylindrical battery manufactured by one or more defendants or their co-conspirators: (i) a portable computer; (ii) a power tool; (iii) a camcorder; or (iv) a replacement battery for any of these products. Excluded from the class are any purchases of Panasonic-branded computers. Also excluded from the class are any federal, state, or local governmental entities, any judicial officers presiding over this action, members of their immediate families and judicial staffs, and any juror assigned to this action.

The requirements of numerosity, adequacy, and *Rule 23(a)* commonality are met here, and essentially non-controversial. The class as defined would include hundreds of thousands of purchasers throughout the United States. There are at least some questions of law and fact common to the class members, including the existence of the alleged price-fixing conspiracy and the identity of the conspirators. The proposed representatives do not have conflicts of interest with other class members and proposed class counsel are qualified.

The focus of the parties' arguments on**[\*75]** the IPP class certification motion is whether:(1) the class representatives are sufficiently typical of the class they seek to represent; and (2) common questions predominate such that class certification is appropriate, including whether California law can be applied to the entire class.[[4]](#footnote-3)4

**A. Typicality**

Defendants challenge IPPs' typicality showing on two grounds: (*i*) lack of evidence of class membership; and (*ii*) lack of similarity of purchasing power of the putative class representatives in relation to other business and institutional class members. First, defendants contend that IPPs have failed to put forward evidence from the class representatives[[5]](#footnote-4)5 to demonstrate that their claims are typical. Defendants argue that, without documentation supporting their purchase of a product within the class definition, the class representatives cannot determine whether they are part of the class and may be subject to unique defenses. Defendants contend that, even if class members can document that they purchased a product, they can provide evidence that the product they purchased contained a cylindrical lithium-ion battery. *Rule 23* does not require documentation of a purchase in order to be part**[\*76]** of the class, and each class representative has offered other evidence of a purchase. IPPs offer evidence that the available information will allow a determination that a putative class members' purchase falls within the class definition, including: market share; markings on finished products, packs, and cells; and defendants' own data tracing cells to finished products in the context of product recalls. (*See* Declaration of Steven N. Williams ISO Class Cert., Dkt. No. 1036-4, Exh. 199-204.) IPPs' proffer, at this stage, is sufficient.

Next, defendants argue that the proposed class representatives are not typical because they are individuals who purchased small numbers of LIB products from resellers at non-negotiable prices, but the IPP class is comprised substantially of business entities and other institutional end-users who purchased products in bulk and had the power to negotiate pricing. For this argument defendants rely on two cases: [*In re Facebook, Inc., PPC Advert. Litig., 282 F.R.D. 446, 454 (N.D. Cal. 2012)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:55DS-7MK1-F04C-T1VG-00000-00&context=), *aff'd sub nom.* [*Fox Test Prep v. Facebook, Inc., 588 F. App'x 733 (9th Cir. 2014)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5DXN-X6V1-F04K-V3T8-00000-00&context=) ("*Facebook Ads*") and [*Soto v. Castlerock Farming & Transp., Inc., No. 1:09-CV-00701-AWI, 2013 U.S. Dist. LEXIS 179899, 2013 WL 6844377, at \*20 (E.D. Cal. Dec. 23, 2013)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5B49-9HM1-F04C-T4WS-00000-00&context=), *report and recommendation adopted*, [*No. 1:09-CV-00701-AWI, 2014 U.S. Dist. LEXIS 5917, 2014 WL 200706 (E.D. Cal. Jan. 16, 2014)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5B9D-NJK1-F04C-T2WC-00000-00&context=). The court in *Facebook Ads* denied certification, but did not do so based upon typicality. To**[\*77]** the contrary, the court there found that the putative class representatives' claims arose out of the same allegations as the absent class members and typicality was met. [*Facebook Ads, 282 F.R.D. at 453-54*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:55DS-7MK1-F04C-T1VG-00000-00&context=). Certification ultimately was denied on a failure to establish plaintiffs were adequate representatives, because they did not offer evidence that they suffered any concrete injury from the wrongdoing alleged. [*Id. at 454*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:55DS-7MK1-F04C-T1VG-00000-00&context=). As part of the adequacy analysis, the court also noted that plaintiffs' interests were different from others in the class, since they contracted with Facebook under different terms and using different advertising channels from the direct advertisers in the putative class. *Id.* In *Soto*, plaintiff and putative class members were employed by the same defendant and worked under the same policies and procedures, but other putative class members offered differing accounts of whether the employer required them to work off-the-clock without pay to complete certain tasks. [*Soto, 2014 U.S. Dist. LEXIS 5917, 2013 WL 6844377, at \*20*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5B49-9HM1-F04C-T4WS-00000-00&context=). The *Soto* court found that plaintiff had not shown his claims were typical of the members of the proposed class based on these conflicting declarations. *Id.*

Defendants' authorities do not persuade. Here, plaintiffs' contention is that the class was**[\*78]** harmed by the price-fixing conspiracy, which is common to all purchasers in the class. Defendants provide no evidence that certain class members were not harmed, or harmed in some materially different way. Instead, defendants offer mere speculation and argument that the price-fixing scheme would have impacted bulk purchasers differently than individual purchasers. As the district court found in the *In re SRAM* litigation, so, too, does this Court find that the overarching price-fixing scheme is the gravamen of the claim, regardless of the type of product purchased, the quantity, the purchasing procedures, or the price paid. *In re Static Random Access memory (*[*SRAM)* ***Antitrust*** *Litig., 264 F.R.D. 603, 609 (N.D. Cal. 2009)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7X6R-9M40-YB0M-N0MH-00000-00&context=). While the Court has some lingering questions about whether individual purchasers actually were injured in the same way and to the same degree as bulk purchasers, the evidence at this stage indicates that all class members have the same or similar injury based on the same conduct. *See* [*Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-0VD0-008H-V1HF-00000-00&context=). In the absence of evidence establishing material differences in the liability and impact as between different class members, the Court finds the present showing sufficient to meet the typicality requirement.

**B. Predominance of Common Questions**

The**[\*79]** analysis of whether questions of law or fact common to class members predominate begins with the elements of the underlying cause of action. [*Erica P. John Fund, Inc. v. Halliburton Co., 563 U.S. 804, 131 S. Ct. 2179, 180 L. Ed. 2d 24 (2011)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:531M-TPM1-F04K-F3WJ-00000-00&context=). For ***antitrust*** price-fixing cases, the elements are: (1) a conspiracy to fix prices in violation of the ***antitrust*** laws; (2) an ***antitrust*** injury — *i.e.*, the impact of the defendants' unlawful activity; and (3) damages caused by the ***antitrust*** violations. [*In re TFT-LCD (Flat Panel)* ***Antitrust*** *Litig., 267 F.R.D. 583, 600 (N.D. Cal. 2010)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:50TJ-Y111-F04C-T002-00000-00&context=), *amended in part*, [*No. M 07-1827 SI, 2011 U.S. Dist. LEXIS 84476, 2011 WL 3268649 (N.D. Cal. July 28, 2011)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:82TX-HMH1-652H-730N-00000-00&context=) (citing *In re Static Random Access memory (*[*SRAM)* ***Antitrust*** *Litig., 264 F.R.D. 603, 610-11 (N.D. Cal. 2009))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7X6R-9M40-YB0M-N0MH-00000-00&context=).

The crux of defendants' opposition to class certification focuses on their argument that IPPs have failed to offer reliable methods to show class-wide impact or class-wide damages.[[6]](#footnote-5)6 IPPs counter that the reports of Dr. Rosa Abrantes-Metz and Dr. Edward Leamer are sufficient to establish: (*i*) ***antitrust*** impact on a class-wide basis; (*ii*) an overcharge passed through to indirect purchasers; and (*iii*) a common method for calculating damages. Dr. Abrantes-Metz's report offers opinions, based on qualitative and quantitative data, to show the alleged collusion had a cohesive effect across defendants' prices and caused a market-wide impact. Dr. Leamer's report consists of four opinions: a correlation study between cells and packs and**[\*80]** an overcharge analysis, which combine to show class-wide impact; a pass-through analysis to establish liability to indirect purchasers; and a damages model.

***1. Common Proof of Antitrust Impact***

Under "the prevailing view, price-fixing affects all market participants, creating an inference of class-wide impact even when prices are individually negotiated." [*Dow Chem. Co. v. Seegott Holdings, Inc., (In re Urethane* ***Antitrust*** *Litig.), 768 F.3d 1245, 1254 (10th Cir. 2014)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5D7X-0N91-F04K-W0CB-00000-00&context=). However, such an inference must still be supported by evidence of class-wide impact. "[O]n a motion for class certification, the Court only evaluates whether the method by which plaintiffs propose to prove class-wide impact could prove such impact, not whether plaintiffs in fact can prove class-wide impact." [*In re TFT-LCD I, 267 F.R.D at 313*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7Y8S-25X0-YB0M-N03V-00000-00&context=). Stated another way, all that is required is that plaintiffs present a "'plausible methodology to demonstrate that ***antitrust*** injury can be proven on a class-wide basis.'" [*Id. at 311*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7Y8S-25X0-YB0M-N03V-00000-00&context=); *see also* [*In re Online DVD Rental* ***Antitrust*** *Litig., No. M 09-2029 PJH, 2010 U.S. Dist. LEXIS 138558, 2010 WL 5396064, at \*10 (N.D. Cal. Dec. 23, 2010)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:51W7-GPR1-652H-700R-00000-00&context=), *aff'd sub nom.* [*In re Online DVD-Rental* ***Antitrust*** *Litig., 779 F.3d 934 (9th Cir. 2015)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5FD3-M3P1-F04K-V0S8-00000-00&context=) (objections ultimately directed to the merits of plaintiffs' ability to prove impact did not establish that plaintiffs' methodology would require individualized evidence, and therefore did not bar certification).

In a class of**[\*81]** indirect purchasers, the issue of class-wide impact is complicated by the need to demonstrate a method for showing whether, and to what extent, the overcharge "impact" is passed on to each of the indirect purchasers in the distribution chain. [*In re Static Random Access memory (SRAM)* ***Antitrust*** *Litig., 264 F.R.D. 603, 613 (N.D. Cal. 2009)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7X6R-9M40-YB0M-N0MH-00000-00&context=). "Each divergent factor—customer size, type, procurement channel, product, distribution step—is a factor that increases the likelihood that proof of pass-through can only be shown with resort to individualized proof." [*State v. Infineon Technologies AG, No. C 06-4333 PJH, 2008 U.S. Dist. LEXIS 81251, 2008 WL 4155665, at \*11 (N.D. Cal. Sept. 5, 2008)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4TP3-1TW0-TXFP-C30D-00000-00&context=). There are five classes of factors that should be considered in evaluating whether generalized evidence can be used to determine the rate of pass-through. These include temporal relationships, pricing practices, directness of affected costs, supply and demand. [*SRAM, 264 F.R.D. at 613*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7X6R-9M40-YB0M-N0MH-00000-00&context=).

IPPs offer two expert reports detailing statistical analyses they contend will demonstrate that the alleged LIB price-fixing scheme here had a class-wide impact and that overcharges were passed through to the indirect purchasers.

*a. Dr. Abrantes-Metz*

Dr. Abrantes-Metz offers an opinion, based upon information about the LIB industry,**[\*82]** to show that the impact of a conspiracy would be class-wide. She opines that cylindrical batteries were highly standardized and commodified, that defendants controlled some 93 percent of the market at the time, and that barriers to entry into the market prevented the entry of any significant new competitors during that time. Abrantes-Metz also provides a statistical analysis of price changes using a regression model to show that battery cell prices were more similar across defendants during the class period than before or after and that, even when controlling for the effect of other forces on the prices of different battery models.

Defendants critique Dr. Abrantes-Metz's report on several grounds, namely that (1) she uses screening methods not generally accepted by other economists and which cannot be tested; (2) her opinions invade the province of the factfinder and are not the proper subject of expert testimony; and (3) she uses non-representative data in her quantitative analyses. The Court finds as follows:

First, while Dr. Abrantes-Metz has apparently done work in the area of screening techniques, she is not relying on such techniques in reaching her qualitative opinions. Instead,**[\*83]** she is offering an opinion based upon her expertise in forensic investigation of the categories of facts that indicate or facilitate collusive behavior among market competitors.

Second, while opinions about the intent or motive of parties are not a proper role for expert testimony, this expert's opinions about features of defendants' contacts that are indicative of collusion and the features of the cylindrical LIB market that make it susceptible to successful coordination, are proper for the purposes of class certification.[[7]](#footnote-6)7 *Cf.* [*In re Processed Egg Prods.* ***Antitrust*** *Litig., 81 F. Supp. 3d 412, 423 (E.D. Pa. 2015)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5F59-66P1-F04F-400H-00000-00&context=) (expert's opinion "tying the evidence of the case to the economic theory of collusion" by explaining factors conducive to collusion present in the record was admissible); [*U.S. Info. Sys., Inc. v. Int'l Bhd. of Elec. Workers Local Union No. 3, AFL-CIO, 313 F. Supp. 2d 213, 236 (S.D.N.Y. 2004)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4BSV-B3K0-0038-Y02G-00000-00&context=) (expert properly opined on the market and features thereof by interpreting evidence in the case based on his knowledge as an economist). Given Dr. Abrantes-Metz's qualifications, she appears capable of providing the jury with tools they can use to aid their fact-finding obligations, rather than usurping the jury's fact-finding role.

Third, as to the data selection argument, Dr. Abrantes-Metz provided an opinion on all of the useable data provided in discovery at that time. Whether this will**[\*84]** be sufficient at the time of trial or summary judgment remains an open question, but it suffices to support her opinions in support of class-wide impact at this stage.

Thus, defendants' motion to strike Dr. Abrantes-Metz's report from consideration in connection with class certification is **Denied**. It is evidence the Court considers for purposes of determining whether IPPs can meet their burden to establish impact on a common basis.

*b. Dr. Leamer*

Dr. Leamer first offers opinions concerning the impact of the conspiracy on LIB prices. Dr. Leamer uses a multi-variable reduced form regression analysis to estimate the impact of the conspiracy on the prices of cylindrical LIB cells. The regression controls for a number of variables including changes in the price of cobalt, portable computer pricing, housing starts, and industrial production. Dr. Leamer then estimates, on a month-by-month basis for the proposed class period, the relationship between the variables and the cost of the cells, as well as the co-movements of prices paid by different customers. Dr. Leamer performed regression analyses based on monthly weighted average prices of individual manufacturer cell codes — regression analyses**[\*85]** for each individual manufacturer cell part number (or product code) in the dataset, totaling around 680 separate regressions. The majority of the estimates showed price coordination, which Dr. Leamer opines is strong evidence of impact on cell and pack price by the alleged conspiracy. He also analyzed movement of prices paid by different customers, comparing each customer/purchaser against all others.

Dr. Leamer's analysis shows a statistically significant impact on actual prices of cells and packs throughout the alleged conspiracy period. Even in those parts of the alleged conspiracy period where the difference in the actual and but-for prices is diminished (*i.e.*, outside the cobalt period), Dr. Leamer's regressions still indicate a statistically significant difference, indicating impact of the alleged conspiracy on LIB prices.[[8]](#footnote-7)8

Dr. Leamer also conducted analyses to show that the price overcharges were passed through to the indirect purchasers in the class. Dr. Leamer used regression analyses to estimate 32 pass-through rates for nineteen companies at different points on the distribution chain for lithium-ion batteries (*See* Leamer Decl. I, Fig. 46)—seven original equipment manufacturers**[\*86]** ("OEMs"), three distributors, and nine retailers (two with data on power tools, one with data on cameras, one with data only on notebook computers, and five with data on one or more products in the class definition). On reply, based on additional information provided, Dr. Leamer ran more regressions, for a total of ten OEMs, three distributors, and 19 retailers. (Leamer II at Fig 18, 19.)

Defendants attack Dr. Leamer's report on five grounds. First, they argue that Dr. Leamer espouses views about confidence levels that are not accepted within the relevant expert community. However, defendants fail to acknowledge that all or nearly all of Dr. Leamer's regression analyses result in estimates statistically significant at either the 90% or 95% confidence levels, both widely accepted as valid for evidentiary purposes. (*See* Leamer Decl. I, at ¶¶ 11-15, 77-91, Fig. 34-36.)[[9]](#footnote-8)9 Dr. Leamer's conspiracy indicator coefficient had significance at the 90% level for cells and 99% level for packs. His pass-through analysis meets the 95% confidence level in all but one instance, and the 90% level for all instances. Moreover, courts generally have found that a statistical confidence level is more a matter**[\*87]** of weight than admissibility. *See,e.g.,* [*In re High-Tech Employee* ***Antitrust*** *Litig.., No. 11-CV-02509-LHK, 2014 U.S. Dist. LEXIS 47181, 014 WL 1351040, at \*15 (N.D. Cal. Apr. 4, 2014)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5BX3-1F31-F04C-T18F-00000-00&context=) ("the fact that these two variables are not statistically significant at the 1%, 5%, and 10% levels goes to the weight, not the admissibility" of the statistical model).

Second, defendants argue that aggregate and averaged data masks important differences in the pass-through analysis. However, the Court finds that these differences go to the weight of Dr. Leamer's opinion rather than its admissibility. As the court in *SRAM* noted, the pass-through question is not about tracing a specific price increase through the distribution chain to a specific class member, but rather how the anti-competitive conduct affected the prices paid by the consumers. [*SRAM, 264 F.R.D. at 614*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7X6R-9M40-YB0M-N0MH-00000-00&context=) (citing *Gordon v. Microsoft Corp.*, No. MC 00-5994, 2003 WL 23105550, at \*3 (Minn. Dist. Ct. Dec. 15, 2003)). Determination of the difference between prices paid and prices that would have been paid "but-for" the unlawful conduct is necessarily hypothetical. *Id.* "Thus, average pass through rates appear reasonable and even necessary to prove damages." *Id.* "Neither a variety of prices nor negotiated prices is an impediment to class certification if it appears that plaintiffs may be able to prove at trial that, as here, the price range**[\*88]** was affected generally." [*In re NASDAQ Mkt.-Makers* ***Antitrust*** *Litig., 169 F.R.D. 493, 523 (S.D.N.Y. 1996)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RVJ-5KC0-006F-P0MT-00000-00&context=). "Even if it could be shown that some individual class members were not injured, class certification, nevertheless, is appropriate where the ***antitrust*** violation has caused widespread injury to the class." *Id.*; *see also* [*Presidio Golf Club of San Francisco, Inc. v. Nat'l Linen Supply Corp., No. C-71-431 SW, 1976 U.S. Dist. LEXIS 11577, 1976 WL 1359, at \*5 (N.D. Cal. Dec. 30, 1976)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4V-HTH0-0054-603V-00000-00&context=) (proof of a price fixing claim requires only "an illustration of generalized injury" not proof of an effect on every item sold or else sophisticated conspirators could create complex price fixing agreements with price differentials "to run afoul of the ***antitrust*** laws with impunity").

Next, defendants' offer a variety of objections they believe affect the overall reliability of the analysis, namely that: (*i*) fragility testing was not performed; (*ii*) data collection was delegated to third party; and (*iii*) the data used was not a random sample. The Court finds these objections without merit. None of them affects whether IPPs have offered a reasonable method for determining impact on a class-wide basis. Moreover, the suggestion that the experts should use a random sample rather than an analysis based upon all usable data is debatable in a litigation context, and in any event, not dispositive in terms of striking**[\*89]** the opinion.

However, the Court finds other of defendants' objections to be well-stated. The Court agrees that Dr. Leamer's analysis relative to the issue of the pass-through rate is too abbreviated. While Dr. Leamer's analysis thus far indicates that there is a statistically significant pass-through rate approaching 100% for the class, the Court is not persuaded that the analysis sufficiently captures the variety of different types of class members and product categories. Most glaringly, there is no analysis for packers in the IPP class since plaintiffs had not obtained data from any of the packers for the cylindrical batteries covered by the class definition. Plaintiffs only obtained data from a packer of prismatic LIBs, used in mobile phones and GPS devices, none of which are included in the class here or shown to be sufficient substitutes for the batteries and products included in the IPP class.

Further, the Court is not satisfied that plaintiffs or their experts have explained how the pass-through analysis here demonstrates the ***antitrust*** impact is "passed on" to each level of the indirect purchasers in the distribution chain. As the *SRAM* court indicated, indirect purchaser plaintiffs**[\*90]** must find a "way to account for the decision-making of a variety of resellers and manufacturers in an intricate distribution chain" and must take into account the effect of the product at issue being but one component of an end product. [*SRAM, 264 F.R.D. at 613*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7X6R-9M40-YB0M-N0MH-00000-00&context=). For instance, Dr. Leamer acknowledged that bundling, rebates, and discounts would affect the accuracy of cost data, but apparently has offered no methodology to account for it in his analysis. Likewise, Dr. Leamer's opinions, on reply, about focal point pricing and adjustments to quality rather than cost, were not adequately supported or explained in his pass-through analysis.

As a consequence, the Court finds the Leamer declarations insufficient to show that pass-through and damages can be established by expert analysis on a class-wide basis. Plaintiffs have suggested, at least with respect to some of these issues, that they may be able to make a more fulsome showing, and may bring a renewed motion if the available information permits them to cure the deficiencies identified. The motion to strike Dr. Leamer's opinions is **Granted In Part** to the extent defendants object to the lack of representativeness in the data used to conduct the analyses, but**[\*91]** is otherwise denied. This ruling is without prejudice to IPPs revising the analysis to cure the defects identified.

***2. Choice of Law***

Although the motion may be denied without reaching the choice of law issues, the Court provides the following guidance to the parties, should plaintiffs elect to renew their motion.

Plaintiffs contend that purchasers of lithium ion battery products nationwide may bring claims under [*California's Cartwright Act*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5JFB-2YX1-DYB7-W1MN-00000-00&context=) because: (1) defendants conducted conspiratorial activity in California; (2) defendants targeted their collusion at California; and (3) each defendant maintained substantial contacts with California by locating their headquarters in California, doing business in California, sending employees to California, and/or selecting California law to govern their lithium ion battery contracts.

In determining what law should apply, the Court must first look to whether the application of California law to plaintiffs' claims violates due process. [*Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 818, 105 S. Ct. 2965, 86 L. Ed. 2d 628 (1985)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-B1X0-0039-N4D1-00000-00&context=). In *Phillips Petroleum*, the United States Supreme Court held that a forum state may apply its own substantive law to the claims of a nationwide class without violating the federal *due process clause* or [*full faith and credit clause*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GN51-NRF4-4160-00000-00&context=) if the state has a "'significant contact**[\*92]** or significant aggregation of contacts" to the claims of each class member such that application of the forum law is "not arbitrary or unfair." [*Id. at 821-822*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-B1X0-0039-N4D1-00000-00&context=).

Even where its own law may be constitutionally applied, California follows a three-step "governmental interest analysis" to determine whether conflicts of law exist, and to ascertain the most appropriate law applicable to the issues, in the absence of an effective choice-of-law agreement. [*Washington Mut. Bank, FA v. Superior Court, 24 Cal.4th 906, 919, 103 Cal. Rptr. 2d 320, 15 P.3d 1071 (2001)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:426S-FC10-0039-4082-00000-00&context=) (internal citations omitted). "Under the first step of the governmental interest approach, the foreign law proponent must identify the applicable rule of law in each potentially concerned state and must show it materially differs from the law of California." [*Id. at 919-20*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:426S-FC10-0039-4082-00000-00&context=). The mere fact that two or more states are involved does not indicate a conflict of laws problem absent a material difference. *Id.* If the court finds the laws materially different, it proceeds to the second step and determines what interest, if any, each state has in having its own law applied to the case. [*Id. at 920*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:426S-FC10-0039-4082-00000-00&context=). Even if there are material differences, there is no choice of law problem if only one state has an interest in having its law applied. *Id.* Thus, the court may properly find California law applicable**[\*93]** without proceeding to the third step in the analysis if the foreign law proponent fails to identify any actual conflict or to establish the other state's interest in having its own law applied. *Id.* Only if the trial court determines that the laws are materially different *and* that each state has an interest in having its own law applied (*i.e.*, an actual conflict) must the court take the final step and select the law of the state whose interests would be "more impaired" if its law were not applied. *Id.* Under California law, a court must make this determination on a case-by-case basis, taking into account the circumstances of the particular case. [*Kearney v. Salomon Smith Barney, 39 Cal. 4th 95, 107-08, 45 Cal. Rptr. 3d 730, 137 P.3d 914 (2006)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4KD6-88N0-0039-44FN-00000-00&context=); *see also* [*Bruno v. Eckhart, 280 F.R.D. 540 (CD Cal. 2012)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:554M-S611-F04C-T342-00000-00&context=) (post-*Mazza*).

Plaintiffs have the initial burden to establish "significant contact or significant aggregation of contacts to the claims asserted by each member of the plaintiff class . . . in order to ensure that the choice of . . . [forum] is not arbitrary or unfair." [*Shutts, 472 U.S. at 821-22*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-B1X0-0039-N4D1-00000-00&context=). "To the extent a defendant's conspiratorial conduct is sufficiently connected to California, and is not 'slight and casual,' the application of California law to that conduct is 'neither arbitrary nor fundamentally unfair,' and the application of California law does**[\*94]** not violate that defendant's rights under the *Due Process Clause*." [*AT & T Mobility LLC v. AU Optronics Corp., 707 F.3d 1106, 1107 (9th Cir. 2013)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:57RN-8MK1-F04K-V0C5-00000-00&context=) (citing [*Allstate Ins. Co. v. Hague, 449 U.S. 302, 312-13, 101 S. Ct. 633, 66 L. Ed. 2d 521 (1981))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6RS0-003B-S38F-00000-00&context=). Application of California law is fair where "more than a *de minimis* amount of that defendant's alleged conspiratorial activity leading to the sale of price[-]fixed goods to plaintiffs took place in California." [*Id. at 1113*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:57RN-8MK1-F04K-V0C5-00000-00&context=).

Here, Plaintiffs offer evidence to indicate that, of the defendants remaining in the IPP litigation at the time of the motion, two (Samsung SDI America, Inc. and Sanyo North American Corp.) have principal places of business in California and eight are located outside the United States (and thus, have no expectation in the application of one state's laws over another). Three are headquartered in New Jersey. Plaintiffs also offer evidence of numerous meetings with, communications from, and actions by defendants' California-based employees regarding pricing and implementation of pricing directives. Many defendants' employees traveled to and conferred with one another at trade association meetings in California. Some defendants maintained offices in California and conducted business with California customers. Many are registered to do business in California and maintain an agent for service of process in California. And**[\*95]** some contracts for LIB with certain defendants (Panasonic, LG Chem, Sanyo, Sony, and Toshiba) included California choice of law provisions. (*See, e.g.*, Exhs. 55, 56, 57, 82, 100, 152, 174.)

Defendants contend that only the location of the purchase of the price-fixed goods is relevant to contacts for purposes of the due process analysis. However, *AT&T Mobility* held that "[t]he relevant transaction or occurrence in a price-fixing case involves both the conspiracy to illegally fix prices and the sale of price-fixed goods." [*AT&T Mobility, 707 F.3d at 1113-14*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:57RN-8MK1-F04K-V0C5-00000-00&context=). The Court further held that a "place-of-purchase focus severely truncates the scope of anticompetitive conduct that the Act proscribes" and the "transaction or occurrence" includes. [*Id. at 1110*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:57RN-8MK1-F04K-V0C5-00000-00&context=). "Rightly understood then, the 'transaction or occurrence" proscribed by the Cartwright Act includes "the full extent of incipient conspiratorial conduct." [*Id. at 1110*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:57RN-8MK1-F04K-V0C5-00000-00&context=). Indeed, in *AT&T Mobility*, no products were sold in California, but maintenance of offices, entrance into agreements, and participation in price-sharing information were sufficient to show that contacts were not "slight and casual" and satisfied due process. *Id.*

*Mazza*, cited by defendants, is not to the contrary. There, the Ninth Circuit**[\*96]** found due process satisfied given the "constitutionally sufficient aggregation of contacts to the claims of each putative class member in this case because Honda's corporate headquarters, the advertising agency that produced the allegedly fraudulent misrepresentations, and one fifth of the proposed class members [were] located in California." [*Mazza v. Am. Honda Motor Co., 666 F.3d 581, 590 (9th Cir. 2012)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:54PJ-XDC1-F04K-V02F-00000-00&context=). Proceeding to the three-part choice of law test under California law, the Ninth Circuit further held that defendant had met its burden to show California law should not apply since: material differences between California consumer protection law and the laws of the other states at issue existed; other states had interests in enforcing the level of liability their legislatures and courts had set; and California's interests in applying its consumer protection laws were attenuated. Only then did the court find that each class member's consumer protection claims should be governed by the consumer protection laws in which the transaction took place. Moreover, *Mazza* did not concern alleged violations of the Cartwright Act.

Here, on the three-factor test, plaintiffs concede the first two prongs—that the relevant law is different in New Jersey versus**[\*97]** California, and that a "true conflict" exists—because New Jersey law would not provide standing to indirect purchaser plaintiffs. [*Sickles v. Cabot Corp., 379 N.J. Super. 100, 877 A.2d 267 (App. Div. 2005)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4GK3-3JH0-0039-40MF-00000-00&context=). *(See* Plaintiffs' Reply at 25.) Thus, the dispute centers on the third prong of the test: which state's interests would be more impaired by not having its law apply. Defendants contend that other states that have not repealed *Illinois Brick* to permit indirect purchaser standing have an interest in shielding resident businesses from excessive litigation, which would be impaired if the Cartwright Act were to be applied class-wide. Plaintiffs counter by citing to *AT&T Mobility*, which held that "[a]pplying California law to anticompetitive conduct undertaken within California advances the Cartwright Act's 'overarching goals of maximizing effective deterrence of ***antitrust*** violations, enforcing the state's ***antitrust*** laws against those violations that do occur, and ensuring disgorgement of any ill-gotten proceeds.'" [*AT&T Mobility, 707 F.3d at 1112-13*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:57RN-8MK1-F04K-V0C5-00000-00&context=). "California courts, when determining whether a foreign jurisdiction's stricter recovery rules should apply over California's more liberal rule, have held that a jurisdiction's only interest in having its damages limitation rules applied is to protect its resident**[\*98]** defendants from excessive financial burdens or exaggerated claims . . . ." [*Munguia v. Bekins Van Lines, LLC, Nos. 1:11-cv-01134-LJO-SKO, 1:11-cv-01675-LJO-SKO, 2012 U.S. Dist. LEXIS 151596, 2012 WL 5198480, at \*6-10 (E.D. Cal. Oct. 19, 2012)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:56W5-J961-F04C-T058-00000-00&context=) (collecting cases).

Plaintiffs contend that New Jersey's interest in limiting the liability of the three New Jersey-based defendants is small. However, the Ninth Circuit has held that each non-California jurisdiction has an interest in "calibrat[ing] liability to foster commerce" and "shielding out-of-state business from what [they] may consider to be excessive litigation." [*Mazza, 666 F.3d at 592-93*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:54PJ-XDC1-F04K-V02F-00000-00&context=). As other courts have found, given *Illinois Brick*'s express bar on indirect purchaser claims, and the failure of a state to repeal that bar, "it is too much of a stretch to employ California law as an end run around the limitations those states have elected to impose on standing" to protect its resident businesses. [*In re Optical Disk Drive* ***Antitrust*** *Litig., 2016 U.S. Dist. LEXIS 15899, 2016 WL 467444, at \*13 (N.D. Cal. Feb. 8, 2016)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5J26-S7B1-F04C-T248-00000-00&context=).[[10]](#footnote-9)10

Because the Court finds that the interests of *Illinois Brick* non-repealer states in precluding indirect purchaser claims would be impaired more significantly by applying the Cartwright Act than California's interests would be impaired by limiting its application to *Illinois Brick* repealer states, the Court finds**[\*99]** that a nationwide class under the Cartwright Act would not be appropriate. However, as to the *Illinois Brick* repealer states, California's interests would prevail over less significant issues of whether a state follows some or all of the standing factors in [*Associated General Contractors of California v. California State Council of Carpenters, 459 U.S. 519, 103 S. Ct. 897, 74 L. Ed. 2d 723 (1983)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-5500-003B-S0SB-00000-00&context=), statute of limitations differences, and the like.[[11]](#footnote-10)11 Any renewed motion for class certification should take this determination into account.

**IV. DPP Motion for Class Certification**

DPPs[[12]](#footnote-11)12 assert a claim for violation of *Section 1 of the Sherman Act* on behalf of themselves and the proposed DPP Class. DPPs purchased allegedly price-fixed Lithium Ion Cells as components of LIBs or LIB Products. DPPs now move pursuant to *Rules 23(a)* and *23(b)(3) of the Federal Rules of Civil Procedure* for certification of a class consisting of:

All persons and entities that purchased a cylindrical or prismatic Lithium Ion Battery Cell or a Lithium Ion Battery or Lithium Ion Battery Product containing a cylindrical or prismatic[[13]](#footnote-12)13 Lithium Ion Battery Cell from any Defendant, or any division, subsidiary or affiliate thereof, or any co-conspirator in the United States from May 1, 2002 through May 31, 2011. Excluded from the Class are Defendants, their parent companies, subsidiaries and affiliates, any Co-Conspirators,**[\*100]** federal governmental entities and instrumentalities of the federal government, states and their subdivisions, agencies and instrumentalities, and any judge or jurors assigned to this case.

In their motion, DPPs define certain terms in the class definition: (1) "Lithium Ion Batteries" are batteries[[14]](#footnote-13)14 that are rechargeable and use lithium ion technology; (2) "Lithium Ion Cells" are the main components of Lithium Ion Batteries; and (3) "Lithium Ion Products" are notebook (or netbook) computers, digital cameras, camcorders, cell phones, digital music players, power tools, personal digital assistants ("PDAs"), and mobile terminals sold by defendants that contain one or more Lithium Ion Cells. (Motion at 3:14-20.)

DPPs posit a shorter class period than IPPs, extending from May 1, 2002 through May 31, 2011, and characterized by four distinct periods of ***antitrust*** activity:

1. May 2002 through March 2007:

Actual collusion beginning about May 2002 and continuing through March 2007, as the Defendants began to meet regularly, and reached agreements to fix prices and restrict capacity.

2. April 2007 through September 2008:

The period for which LG Chem and Sanyo pled guilty—all manufacturers agreed to**[\*101]** use the cost of cobalt, a major input of LIB, as a focal point for raising prices.

3. October 2008 through January 2010:

DPPs contend that defendants adjusted their strategies while the cost of cobalt declined, but continued to share information and agree on prices until Japanese ***regulators*** demanded that competitor firms cease contact with each other.

4. February 2010 until May 2011:

Defendants alleged to have continued to conspire, but gradually grew more concerned about potential ***antitrust*** prosecution with less regular contacts, ending when the DOJ issued subpoenas to several defendants in May 2011.

As with the IPP certification motion, defendants here challenge predominance of common questions. Specifically, defendants dispute that DPPs have offered sufficient evidence that ***antitrust*** impact and damages can be proven on a class-wide basis. Defendants also raise questions about the typicality of certain class representatives.[[15]](#footnote-14)15 The Court addresses each issue in turn.

**A. Predominance**

DPPs' proffer regarding class-wide impact rests largely the expert report of Dr. Roger Noll, who provides statistical analysis, opinions about the structure of the industry, and a model for assessing the amount**[\*102]** of damages. DPPs also offer the declaration of James L. Kaschmitter[[16]](#footnote-15)16 to provide information on the LIB industry and characteristics of the products at issue.

Defendants contend that Dr. Noll's opinions are impermissible because: (1) he cannot opine on whether collusion occurred; (2) he artificially divided the alleged time period to make it appear there is statistically significant impact; (3) his use of averaging masks the lack of impact to some class members; (4) he improperly relied on relative cost information in Mr. Kaschmitter's report; and (5) they lack actual cost data to support his impact opinions. The Court addresses each of these objections to Dr. Noll's report.

As to the first argument, Dr. Noll's statements about conditions conducive to collusion are, like Dr. Abrantes-Metz's statements, grounded in expertise about the economic theory concerning price-fixing conspiracies. Dr. Noll's economic expertise permits him to state a factual basis and offer opinions about whether such facts would indicate market conditions susceptible to collusive activity, and other indicators of collusion. *See* [*In re Processed Egg Prods.* ***Antitrust*** *Litig., 81 F. Supp. 3d at 421-25*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5F59-66P1-F04F-400H-00000-00&context=); [*U.S. Info. Systems, 313 F. Supp. 2d at 236*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4BSV-B3K0-0038-Y02G-00000-00&context=). Whether evidence of collusion is**[\*103]** admitted at trial, and would ultimately support any opinion about indicators of collusion, is a separate question. Moreover, Dr. Noll outlines the communications and documents he reviewed relating to the alleged collusion to support his goal of "construct[ing] a regression model that would detect the anticompetitive effects of collusion only for firms, products, and time periods for which evidence of collusion exists." (Noll Reply Report ¶ 91.) Thus, the focus of Dr. Noll's report is his econometric analyses which show elevated prices corresponding to defendants' conduct, and which provide a means for demonstrating class-wide impact and estimating class-wide damages. Again, the manner in which testimony is allowed at trial is a separate question.

Second, the Court finds defendants' criticism of Dr. Noll use of sub-periods within the eleven-year class period, and the differences in the evidence concerning what communications and information exchanges were taking place unwarranted. Dr. Noll's models test whether the impact was constant throughout the class period, or if the identified sub-periods correspond with differing levels of price elevation. Dr. Noll relies on empirical evidence to support his**[\*104]** hypothesis of significant price elevations coinciding with these real world events and time periods. As the court in the *Processed Egg Product* case stated, "it is consistent with sound economic practice to review the factual record and formulate a hypothesis that can then be tested using economic theory — the examination of the factual record is necessary . . . to confirm that the stories drawn from the data and from the factual record are consistent." [*In re Processed Egg Products* ***Antitrust*** *Litig., 81 F. Supp. 3d 412, 2015 WL 337224, at \*11*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5F59-66P1-F04F-400H-00000-00&context=); *see also* [*In re Blood Reagents* ***Antitrust*** *Litig., No. 09-2081, 2015 U.S. Dist. LEXIS 141909, 2015 WL 6123211, at \*12 (E.D. Pa. Oct. 19, 2015)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5H65-4011-F04F-40C4-00000-00&context=) (declining to exclude expert damages model that assumed a conspiracy start date later than that alleged in initial complaint, citing *Processed Egg Products*). Dr. Noll's effort to map the factual record of the case onto the empirical data from his calculations is not a reason to exclude his opinions.[[17]](#footnote-16)17

Third, defendants' argument that average measures of impact might mask that certain class members had no overcharge while others did is not a reason to exclude Dr. Noll's opinions. As stated above, in attempting to measure how anti-competitive conduct might have affected prices as compared to a hypothetical, "but-for" world, it is both reasonable and necessary to rely on a certain amount of averaging, and is not a reason to either**[\*105]** exclude the opinion or to find that it prevents class certification. *See* [*SRAM, 264 F.R.D. at 614*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7X6R-9M40-YB0M-N0MH-00000-00&context=); [*In re NASDAQ, 169 F.R.D. at 523*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RVJ-5KC0-006F-P0MT-00000-00&context=); [*Presidio Golf Club, 1976 U.S. Dist. LEXIS 11577, 1976 WL 1359 at \*5*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4V-HTH0-0054-603V-00000-00&context=).

Fourth, Dr. Noll's reliance on Mr. Kaschmitter's opinions about the relative cost of materials in a cell is not *per se* improper. Experts may rely on information from other experts. Dr. Noll did not rely on a specific percentage or ratio from Mr. Kaschmitter's report as a basis of his regression model. Moreover, Mr. Kaschmitter's reply declaration offered additional bases for his opinions about relative cost of materials in a cell and cells being the predominate cost of all packs. Again, the Court does not find this objection to be a basis for excluding Dr. Noll's opinions.

Notwithstanding the foregoing, Dr. Noll's analysis fails to provide a firm foundation for class certification because he was unable to complete an analysis based on the actual cost data for any products other than Toshiba laptops. Further, even in his analysis of the Toshiba products, the data was limited and required some extrapolation. The data for all other products was, by Dr. Noll's own admission, insufficient to run an analysis as to any of the other products types covered by the class definition. (*See* Noll Decl. ¶¶ 100, 108, 147,**[\*106]** 167.) While it is unclear where to lay the blame, the Court nevertheless cannot ignore the large gaps in the evidence supporting the ability to demonstrate impact and damages on a class-wide basis.

The inadequacy of the data to perform the required analyses spills over into other arguments made by defendants. For instance, defendants object to Dr. Noll's report on the grounds that his regressions combine and average LIB cells (the alleged price-fixed item) with LIB packs, and therefore fail to isolate the effects, if any, on cells. Therefore, defendants contend, the model does not fit the theory of liability. The reality is that cells are only used in finished products in packs, making a combination of the data appear to be reasonable. Moreover, Dr. Noll attempted to run regressions isolating cell and pack data from each other, and he found those regressions demonstrated statistically significant overcharges. (Noll Reply ¶¶ 190-93.) However, these analyses appear to suffer from the same problems of being based on incomplete, and admittedly insufficient data sets.

In summary, while the Court does not find Dr. Noll's methodology to be unreliable, it does find that Dr. Noll's analysis ultimately**[\*107]** does not satisfy DPPs' burden under *Rule 23(b)*'s predominance requirement. Thus, the motion to strike Dr. Noll's report at this juncture is **Denied**, but the report fails to support class certification. This finding is without prejudice to DPPs making a renewed motion based on a showing derived from additional data, or some other evidentiary basis upon which common questions predominate. As it stands, the analysis of the Toshiba laptops alone does not satisfy the Court that a showing of ***antitrust*** impact for that product can be extrapolated as a measure of impact for the rest of the Cells, Batteries and Finished Products in the class definition.

**B. Typicality**

In cases involving an alleged price-fixing conspiracy, a representative plaintiff's claim is generally typical of the unrepresented members even if plaintiff's purchase was through different procedures, for different quantities, or at different prices than those unrepresented members. [*In re TFT-LCD (Flat Panel)* ***Antitrust*** *Litig., 267 F.R.D. 291, 300 (N.D. Cal. 2010)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7Y8S-25X0-YB0M-N03V-00000-00&context=) (abrogated on other grounds in [*In re ATM Fee* ***Antitrust*** *Litig., 686 F.3d 741 (9th Cir. 2012))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:563C-F621-F04K-V2R3-00000-00&context=). Defendants contend that, because the DPP class would include individuals, small and large retailers, and OEMs, the claims of the class members are not sufficiently typical of larger OEM or big box retailers to satisfy *Rule 23(a)*.

Defendants**[\*108]** rely heavily on the district court's decision in [*In re Graphics Processing Units* ***Antitrust*** *Litig., 253 F.R.D. 478 (N.D. Cal. 2008)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4V0N-2700-TXFP-C2CK-00000-00&context=) ("*GPU*"). The district court in *GPU* discussed a variety of cases finding that differences in products and pricing within the class definition undercut class treatment, either as part of a commonality, typicality, or adequacy analysis, in ***antitrust*** direct purchaser class actions. [*Id. at 484-89*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4V0N-2700-TXFP-C2CK-00000-00&context=). Common themes in the cases discussed were whether the named plaintiffs, often representing individual or smaller purchasers, could be expected to present claims typical of, or raising common questions in relation to, the claims of larger purchasers, such as original equipment manufacturers or large retailers. In surveying the decisions, the *GPU* court concluded that the "decisions indicate that evaluating the requirements for class certification in this context involves a particularized analysis of the specific industry and chain of distribution [and] . . . [f]actors favoring certification have been price lists and commodity products as opposed to individually negotiated deals and customized products." [*GPU, 253 F.R.D. at 489*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4V0N-2700-TXFP-C2CK-00000-00&context=). Examining those factors in the context of a class of purchasers of graphics chips and graphics cards, the *GPU* court found the differences between individual purchasers**[\*109]** of graphics cards and OEMs purchasing graphics chips in bulk for production of laptops and other products to be too great. [*Id. at 489*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4V0N-2700-TXFP-C2CK-00000-00&context=). The named plaintiffs purchased a single standardized graphics card at retail, whereas the unrepresented class members purchased enormous quantities of customized cards. [*Id. at 489*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4V0N-2700-TXFP-C2CK-00000-00&context=). Importantly, however, in *GPU*, direct sales of graphics cards to individual consumers accounted for only 0.5% of defendants' sales, while wholesale purchasers of chips and cards accounted for the remaining 99.5% of defendants' business. [*Id. at 490*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4V0N-2700-TXFP-C2CK-00000-00&context=).

Here, the class representatives include individual consumers, small- and medium-sized companies, and large retailers. The kind of extreme disconnect in the market share representation shown in [*GPU*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4V0N-2700-TXFP-C2CK-00000-00&context=) is not present. However, the class definition covers all purchasers of "a Lithium Ion Battery Cell or a Lithium Ion Battery or Lithium Ion Battery Product," and plaintiffs' representatives do not appear to include those who purchased only cells, nor is it clear that their expert analysis could account for impact on those who purchased cells, rather than "batteries" or "products." While the Court is inclined to find that the proposed class representatives here are typical**[\*110]** of a class of purchasers of Lithium Ion Battery Products, whether they are typical of purchasers of cells or batteries is less certain. While this generally might not preclude a finding of typicality, where there is significant uncertainty about whether impact is common for Cells, Batteries, and Products, typicality of the representatives' claims is necessarily uncertain as well. The Court leaves the ultimate determination of whether the class representatives' claims meet the typicality requirement for any renewed class certification motion.[[18]](#footnote-17)18

As a consequence of the Court's determinations that DPPs have not established typicality and predominance of common questions, DPPs motion for class certification is **Denied**.

**V. Conclusion**

For the reasons stated herein, the Court **Orders** that:

1. The IPP Plaintiffs' Motion for Class Certification (Dkt No. 1036) is **Denied without Prejudice** on the grounds that they have failed to establish typicality and their ability to prove ***antitrust*** impact on a class-wide basis;

2. The DPP Plaintiffs' Motion for Class Certification (Dkt. No. 1582 is **Denied without Prejudice** on the grounds that they have failed to establish typicality, adequacy, and their**[\*111]** ability to prove ***antitrust*** impact on a class-wide basis;

3. The Motion of Panasonic and Sanyo to Strike the Proposed Expert Testimony of Dr. Edward E. Leamer (Dkt. No. 1553) is **Granted In Part** on the grounds that his analyses rely on too narrow a range of data;

4. The Motion of Panasonic and Sanyo to Strike the Proposed Expert Testimony of Dr. Rosa M. Abrantes-Metz (Dkt. No. 1554) is **Denied**;

5. The Motion of Toshiba to Strike Certain Testimony of DPP Expert Dr. Roger Noll (Dkt. No. 1565) is **Denied** on the grounds stated in the motion;

6. The Motion of Toshiba to Strike Certain Proposed Testimony of DPP Expert Mr. James L. Kaschmitter (Dkt. No. 1569) is **Granted In Part** as to Table 2, Figures 35-36 and 38-39, and the statements concerning the percentage of pack costs comprised of cell costs, as well as the statement characterizing data in Figures 38 and 39 as typical.

This Order terminates Docket Nos. 1036, 1553, 1554, 1565, 1569, and 1582.

**It Is So Ordered**.

Dated: April 12, 2017

/s/ Yvonne Gonzalez Rogers

**Yvonne Gonzalez Rogers**

**United States District Court Judge**

**End of Document**

1. 1The IPP and DPP complaints each named as defendants the same eighteen corporate entities, which Plaintiffs have grouped identically into corporate families. Defendant GSYuasa was voluntarily dismissed from both complaints. (Dkt. No. 819.) A number of other defendants have entered into settlement agreements with the IPPs, DPPs, or both. The non-settling defendants are:

   for DPPs: LG Chem, Ltd. and LG Chem America, Inc. (collectively, "LG Chem"); Samsung SDI Co., Ltd., and Samsung SDI America, Inc. (collectively, "Samsung"); and Sanyo Electric Co., Ltd., and Sanyo North America Corp. (collectively, "Sanyo"); and

   for IPPs: Samsung; Sanyo; Toshiba; and Panasonic Corp. and Panasonic Corp. of North America (collectively, "Panasonic"). [↑](#footnote-ref-0)
2. 2On September 20, 2013, in a related criminal proceeding, defendant Sanyo Electric Co., Ltd. ("Sanyo Electric") entered a guilty plea to one count of conspiring to fix prices of cylindrical lithium ion battery packs used in notebook computers, from about April 2007 to about September 2007, in violation of ***Section 1 of the Sherman Act***. (Case No. 13-cr-472, Dkt. No. 32.) Pursuant to its plea agreement, Sanyo Electric agreed to pay a criminal fine of $10,731,000.00, but no restitution. On October 10, 2013, defendant LG Chem, Ltd entered a guilty plea to one count of conspiring to fix prices of cylindrical lithium ion battery packs used in notebook computers, from about April 2007 to about September 2007in violation of ***Section 1 of the Sherman Act***. (Case No. 13-cr-473, Dkt. No. 28.) LG Chem, Ltd. agreed to pay a criminal fine of $1,056,000.00. Restitution in both matters was deferred to the civil litigation. [↑](#footnote-ref-1)
3. 3The Ninth Circuit found that no separate "administrative feasibility" or ascertainability requirement exists in ***Rule 23***. [*Briseno v. ConAgra Foods, Inc., 844 F.3d 1121, 1124 n.4 (9th Cir. 2017)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5MJ7-X701-F04K-V1FJ-00000-00&context=). To the extent concerns arise about the identification of class members, those concerns are subsumed in ***Rule 23***'s superiority analysis, which considers whether the class is defined clearly and with objective criteria, and is manageable. [*Id. at 1127*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5MJ7-X701-F04K-V1FJ-00000-00&context=) ("***Rule 23(b)(3)*** already contains a specific, enumerated mechanism to achieve that goal [of mitigating burdens of trying a class action]: the manageability criterion of the superiority requirement."). [↑](#footnote-ref-2)
4. 4Defendants also argue that the class is not sufficiently ascertainable. However, in light of the Ninth Circuit's recent [*Briseno*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5MJ7-X701-F04K-V1FJ-00000-00&context=) decision, the arguments are more appropriately part of the Court's analysis of the typicality of the class representatives' claims, as well as the superiority of the class mechanism and concomitant questions of manageability of the class action. [↑](#footnote-ref-3)
5. 5Proposed class representatives of the nationwide IPP class are: Christopher Hunt, Shawn Sellers, Kristina Yee, Piya Robert Rojanasathit, Richard E. Johns, Steve Bugee, Tom Pham, Hathaway & Associates, Keith Uehara, Bradley Seldin, Patrick McGuinness, John Kopp, Joseph Pankow, Drew Fennelly, Jason Ames, William Cabral, Donna Shawn, Robert L. McGranahan, David Beson, Murray "Kim" Billingsly, Joseph O'Daniel, Cindy Booze, Matthew Ence, David Tolchin, Matt Bryant, Valentina Juncai, Kathleen Alice Tawney, Sheri Harmon, Christopher Bessette, Caleb Batey, David Reymann, Gail Murphy, Linda Lincoln, Bradley Van Patten, and class representatives of the governmental subclass are City of Palo Alto and City of Richmond. [↑](#footnote-ref-4)
6. 6Defendants essentially agree that the evidence of a conspiracy to fix prices would apply class-wide, based on the guilty pleas of defendants Sanyo and LG Chem, as well as evidence obtained by IPPs in the course of discovery regarding meetings and exchange of information by defendants. (Williams Decl., Exh. 1, Exh. 4.) [↑](#footnote-ref-5)
7. 7This ruling is without prejudice to further motion practice on the manner in which IPPs seek to admit the opinions without invading the jury's province. [↑](#footnote-ref-6)
8. 8Dr. Guerin-Calvert's chart showing the confidence intervals of but-for data overlapping the actual data was calculated incorrectly, according to Dr. Leamer's Reply Report at ¶¶ 17 and 18. Dr. Leamer opines that, if one calculates the confidence intervals by accepted methods, none of the 90% confidence intervals overlap the actuals. Ultimately, this may present a battle of the experts, but the dispute need not be resolved at this stage of the litigation. At class certification, it suggests that these are determinations that can be made on a class-wide basis. [↑](#footnote-ref-7)
9. 9In addition, multi-variable regression is the sort of analysis most routinely accepted as the appropriate tool for estimating impact and damages in ***antitrust*** cases. *See, e.g.* [*In re Steel* ***Antitrust*** *Litig., No. 08 C 5214, 2015 U.S. Dist. LEXIS 119652, 2015 WL 5304629, at \*11 (N.D. Ill. Sept. 9, 2015)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5GWG-G1C1-F04D-703N-00000-00&context=) (multiple regression analysis is "generally considered an appropriate tool for estimating ***antitrust*** damages on a class-wide basis," citing multiple authorities); [*In re Optical Disk Drive* ***Antitrust*** *Litig., 303 F.R.D. 311, 321 (N.D. Cal. 2014)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5D9G-TV81-F04C-T06S-00000-00&context=) (regression analyses may be employed to establish class-wide impact in an ***antitrust*** case). [↑](#footnote-ref-8)
10. 10The Court notes that the nationwide IPP classes certified in this district have been for injunctive relief to the class, not damages. *See* [*In re TFT-LCD (Flat Panel)* ***Antitrust*** *Litig., 267 F.R.D. 583, 597 (N.D. Cal. 2010)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:50TJ-Y111-F04C-T002-00000-00&context=), *amended in part*, [*No. M 07-1827 SI, 2011 U.S. Dist. LEXIS 84476, 2011 WL 3268649 (N.D. Cal. July 28, 2011)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:82TX-HMH1-652H-730N-00000-00&context=); *In re Static Random Access memory (*[*SRAM)* ***Antitrust*** *Litig., 264 F.R.D. 603, 610 (N.D. Cal. 2009)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7X6R-9M40-YB0M-N0MH-00000-00&context=). [↑](#footnote-ref-9)
11. 11The Court understands the *Illinois Brick* repealer states relevant here to include: Arizona, California, Florida, Hawaii, Illinois, Kansas, Maine, Michigan, Minnesota, Nebraska, Nevada, New York, South Dakota, Tennessee, and Wisconsin; and possibly to also include: Alabama, Arkansas, District of Columbia, Iowa, Massachusetts, Mississippi, Missouri, New Hampshire, New Mexico, North Carolina, North Dakota, Oregon, Utah, Vermont, and West Virginia. (*cf.* Mot. 51:5-8; Oppo. at 46:15-18; Reply at 27:26-27 [fn. 100].) The Court makes no legal determination as to which are states are or are not repealer states, given that this issue is not material to resolution of the motion. The parties should clarify this list upon any renewed motion. [↑](#footnote-ref-10)
12. 12DPP Plaintiffs and proposed class representatives are Automation Engineering LLC; Charles Carte; Alfred H. Siegel, acting solely in his capacity as the Liquidating Trustee of Circuit City Stores, Inc. Liquidating Trust; First Choice Marketing, Inc.; James O'Neil; Alfred T. Giuliano, as the Chapter 7 Trustee of Ritz Camera & Image, LLC; The Stereo Shop; Univisions-Crimson Holding, Inc.; and Terri Walner. Proposed class counsel are the law firms of: Saveri & Saveri, Inc.; Pearson, Simon & Warshaw, LLP; and Berman DeValerio. [↑](#footnote-ref-11)
13. 13DPPs have not sought certification of claims concerning polymer LIBs used primarily in Apple iPhones, iPods, iPads, and notebook computers. (Kaschmitter Report at 34.) They did so because they believed the transactional data produced for polymer LIBs was insufficient to produce a reliable price model. (Noll Report ¶ 22.) [↑](#footnote-ref-12)
14. 14DPPs use the terms "battery" and "pack" interchangeably. (*See* Motion at 3:16.) [↑](#footnote-ref-13)
15. 15Defendants also argue that class representatives who are bankruptcy trustees are not adequate because they may have a conflict of interest with unnamed class members. The Court sees no substantial basis for finding the bankruptcy trustees for Circuit City and Ritz Camera to be inadequate at this juncture. Moreover, the adequacy requirement normally would be satisfied so long as at least one of the class representatives is adequate. [*Rodriguez v. West Publ'g Corp., 563 F.3d 948, 961 (9th Cir. 2009)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4W4S-JFH0-TXFX-D3F8-00000-00&context=). Defendants make no showing of any true conflict of interests. [↑](#footnote-ref-14)
16. 16Defendants moved to strike portions of Kaschmitter's expert report as being based upon unverified material, particularly with respect to certain demonstrative figures in the report. DPPs counter that Kaschmitter is simply offered as an industry expert, not a scientific expert, and so his opinions are not subject to the exacting standards in *Daubert* and *Kumho Tire*. Because DPPs failed to disclose the source of some of Kaschmitter's industry information, the Court finds most of defendants' objections well taken. The motion to strike is **Granted In Part and Denied In Part**. The following portions of his report are stricken from consideration in connection with the class certification motion: Table 2, Figures 35-36 and 38-39, and the statements concerning the percentage of pack costs comprised of cell costs, as well as the statement characterizing data in Figures 38 and 39 as typical. More specifically, Kaschmitter's opinions that cell cost represents 2/3 the materials' cost per pack is stricken from his report without prejudice to offering some reliable basis for that opinion in connection with further proceedings. However, based on his industry experience, his more general opinion that materials' costs predominate the cost of a pack, regardless of cell technology will be considered. [↑](#footnote-ref-15)
17. 17Defendant's criticism that Drs. Noll and Leamer have taken different approaches to solving the same question does not in and of itself invalidate them. Such is the case in many industries, and economics is no exception. [↑](#footnote-ref-16)
18. 18Defendants contend that the class contains members who lack standing or were not harmed because it includes purchasers of Packs or Finished Products that were preceded by sales to third-party battery-pack manufacturers or third-party original design manufacturers ("ODMs"), making them, essentially, indirect purchasers of the Packs of Finished Products. Defendants' argument turns on a determination of whether purchases from certain entities defendant-affiliated entities would meet the "ownership or control" exception to the *Illinois Brick* doctrine. There are factual issues not properly before the Court in this motion that must be resolved on the "ownership or control" question. Thus, the Court declines to reach this issue in the context of this class certification motion. [↑](#footnote-ref-17)