

United States District Court
Northern District of California

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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MICROSYSTEMS DEVELOPMENT
TECHNOLOGIES, INC., et al.,

Plaintiffs,

v.

PANASONIC CORPORATION, et al.,

Defendants.

CHIP-TECH, LTD.,

Plaintiff,

v.

AVX CORPORATION, et al.,

Defendants.

TOP FLOOR HOME IMPROVEMENTS,

Plaintiff,

v.

PANASONIC CORPORATION, et al.,

Defendants.

CAPTION CONTINUED ON NEXT PAGE

Case No. 5:15-cv-03820-RMW

**ORDER FOLLOWING CASE
MANAGEMENT CONFERENCE**

Re: Dkt. Nos. 67, 68, 69

Case No. 5:15-cv-03868-RMW

Case No. 5:15-cv-03907-RMW

United States District Court
Northern District of California

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

MAKERSLED LLC, Plaintiff, v. PANASONIC CORPORATION, et al., Defendants.
NEBRASKA DYNAMICS, INC., Plaintiff, v. PANASONIC CORPORATION, et al., Defendants.
MICHAEL BROOKS, Plaintiff, v. PANASONIC CORPORATION, et al., Defendants.
LINKITZ SYSTEMS, INC., Plaintiff, v. PANASONIC CORPORATION, et al., Defendants.
SCHUTEN ELECTRONICS, INC., Plaintiff, v. AVX CORPORATION, et al., Defendants.

Case No. 5:15-cv-04042-RMW

Case No. 5:15-cv-04201-RMW

Case No. 5:15-cv-04206-RMW

Case No. 5:15-cv-04724-RMW

Case No. 5:15-cv-04878-RMW

The court held a case management conference in the above, related antitrust class actions on December 18, 2015. This order addresses the issues of appointment of lead counsel, as

1 discussed at the case management conference, as well as consolidation.

2 **I. BACKGROUND**

3 The plaintiffs in these related cases allege an antitrust conspiracy among certain
4 manufacturers of resistors, which are passive electronic components that are common to electronic
5 circuit boards found in virtually every consumer electronic product. Plaintiffs allege that
6 defendants conspired to raise, fix, or stabilize the price of resistors in violation of the Sherman
7 Act, the Cartwright Act, California's Unfair Competition Law, and other states' laws.

8 The plaintiffs in two of the related cases (Chip-Tech and Schuten) allege that they directly
9 purchased resistors from defendants. The plaintiffs in the six other related cases (Microsystems,
10 Top Floor, MakersLED, Nebraska Dynamics, Brooks, and Linkitz) allege that they are indirect
11 purchasers of resistors from defendants.

12 **II. APPOINTMENT OF INTERIM LEAD COUNSEL**

13 The parties have stipulated that the direct purchaser plaintiffs wish to be represented by
14 one group of attorneys, and the indirect purchaser plaintiffs wish to be represented by a separate
15 group of attorneys. Dkt. No. 66.¹ Three motions to appoint interim lead counsel have been filed.
16 The indirect purchaser plaintiffs filed an unopposed motion to appoint Cotchett, Pitre &
17 McCarthy, LLP ("CPM") as their interim lead counsel. Dkt. No. 68.

18 Counsel for Chip-Tech and counsel for Schuten filed competing motions seeking
19 appointment as interim lead counsel for the direct purchaser class. *See* Dkt. No. 67 (Schuten's
20 motion to appoint Kit A. Pierson of Cohen Milstein Sellers & Toll PLLC and Steve W. Berman of
21 Hagens Berman Sobol Shapiro LLP as interim lead counsel); Dkt. No. 69 (Chip-Tech's motion to
22 appoint Joseph R. Saveri of Joseph Saveri Law Firm, Inc. and Solomon B. Cera of Cera LLP as
23 interim lead counsel). Counsel seeking appointment as interim lead counsel have also filed
24 responses, Dkt. Nos. 73-74., and replies, Dkt. Nos. 80-81.

25 The court held a hearing on plaintiffs' motions on December 18, 2015. For the reasons

26
27 ¹ Unless otherwise specified, all docket numbers listed in this order refer to Case No.
28 5:15-cv-03820-RMW, *Microsystems Development Technologies, Inc. v. Panasonic Corp.*

1 explained below, the court appoints the Cohen Milstein and Hagens Berman firms as interim lead
 2 counsel for the direct purchaser plaintiffs and grants CPM's unopposed motion to be appointed as
 3 interim lead counsel for the indirect purchaser plaintiffs.

4 **A. Legal Standard**

5 Federal Rule of Civil Procedure 23(g) authorizes courts to "designate interim counsel to
 6 act on behalf of a putative class before determining whether to certify the actions as a class
 7 action." Fed. R. Civ. P. 23(g)(3). The rules provide four factors to guide a court's selection of
 8 class counsel:² (i) the work counsel has done in identifying or investigating potential claims in the
 9 action; (ii) counsel's experience in handling class actions, other complex litigation, and the types
 10 of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the
 11 resources counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A). Under Rule
 12 23(g), courts may also: "consider any other matter pertinent to counsel's ability to fairly and
 13 adequately represent the interests of the class" and "order potential class counsel to provide
 14 information on any subject pertinent to the appointment." Fed. R. Civ. P. 23(g)(1)(B), (C). In its
 15 initial case management order, the court noted two additional criteria beyond the four enumerated
 16 in Rule 23(g): (1) ability to work cooperatively with others; and (2) ability to maintain reasonable
 17 fees and expenses. Dkt. No. 55 at 5-6. Finally, any class counsel appointed by the court "must
 18 fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(4).

19 **B. Putative Direct Purchaser Plaintiff Class**

20 On balance, consideration of the factors above favors selection of the Cohen Milstein and
 21 Hagens Berman firms as interim lead counsel for the direct purchaser class.

22 There is no question that all candidates are capable and accomplished advocates, with
 23 extensive experience in complex litigation, including class actions and cases involving technology
 24 and antitrust claims. Accordingly, the court does not doubt that all candidates have extensive
 25

26 ² The factors in Rule 23(g)(a)(A) are those a court must consider in appointing class counsel,
 27 rather than *interim* lead counsel. However, courts have held that these same factors apply in to the
 28 selection of interim lead counsel. *See, e.g., In re Air Cargo Shipping Services Antitrust Litig.*, 240
 F.R.D. 56, 57 (E.D.N.Y. 2006).

1 knowledge in the applicable law. The court must thus examine other factors to determine which
2 attorneys are likely to best represent the direct purchaser class.

3 Regarding the work counsel has done in identifying or investigating potential claims in the
4 action, Saveri and Cera assert that they performed “[s]ubstantial investigation and analysis” before
5 Chip-Tech filed its complaint and months before news stories broke regarding a department of
6 justice investigation into the resistors industry. Dkt. No. 74 at 5. They further assert that prior to
7 the filing of the Schuten complaint, counsel for Chip-Tech conferred with counsel for Panasonic to
8 inquire whether it had cooperated under the Antitrust Criminal Penalty Enhancement and Reform
9 Act of 2004 (“ACPERA”). Dkt. No. 69 at 4 n.6. Saveri and Cera note that the Chip-Tech
10 complaint was filed eight weeks before Schuten filed a similar complaint. *Id.* at 4 n.10. Cohen
11 Milstein and Hagens Berman assert that they also conducted a significant investigation. *See* Dkt.
12 No. 67-1 ¶ 6. In any event, Cohen Milstein and Hagens Berman also argue that this factor should
13 receive minimal weight because all of the related civil cases were filed following reports of the
14 DOJ investigation and that “none of the counsel involved independently uncovered the alleged
15 wrongdoing.” Dkt. No. 67 at 14-15. On balance, the court finds that while the earlier filing of the
16 Chip-Tech complaint may suggest some additional investigation by its counsel, this factor does
17 not heavily favor either group of counsel.

18 Cohen Milstein and Hagens Berman argue that because their firms have a combined total
19 of 150 attorneys on both sides the United States, 40 of whom are antitrust specialists, they are in
20 the best position to commit the resources necessary to represent the putative class. *See* Dkt. No. 67
21 at 5, 16. They point out that the Saveri and Cera firms have a combined total of only 11 attorneys
22 and suggest that Saveri’s and Cera’s other commitments—including Saveri’s leadership role in the
23 co-pending *Capacitors Antitrust Litigation* in this district—may be an impediment to dedicating
24 sufficient resources to this case. Dkt. No. 73 at 3-4. Saveri and Cera point to their track record and
25 respond that they have a plan to utilize “other associated firms located around the country” as
26 needed to advance the interests of plaintiffs. Dkt. No. 69 at 15; *see also* Dkt. No. 74 at 7-8. The
27 court finds that because Cohen Milstein and Hagens Berman have more personnel within their
28 firms, it is at least plausible that they will be able to commit more resources than the Saveri and

1 Cera firms to representing the purported class.

2 Moreover, the court finds that Cohen Milstein and Hagens Berman may be best situated to
 3 maintain reasonable fees and expenses. Their firms submitted a prosecution plan with specific case
 4 management proposals to minimize duplication of efforts and ensure oversight.³ Dkt. No. 67-2.
 5 Reducing the number of outside firms in the case may also simplify management and reduce
 6 overhead. While Saveri and Cera argue that the prosecution plan merely suggests routine practices
 7 for antitrust class actions, Dkt. No. 74 at 10-11, Chip-Tech's counsel did not submit a plan with
 8 specific proposals to maintain reasonable fees and expenses or to manage associated firms. With
 9 regard to potential travel expenses, the court notes that the Saveri and Cera firms are based in this
 10 district, which would tend to reduce the cost of court appearances. However, the *Schuten* firms'
 11 footprint on the east and west coasts may tend to reduce the cost of dealing with defendants and
 12 witnesses in multiple locations. On balance, this factor favors appointing Cohen Milstein and
 13 Hagens Berman.

14 Finally, the court finds that neither group of firms has shown that it is significantly more
 15 capable than the other group of working cooperatively with other firms. On the one hand, the
 16 parties' Joint Case Management Statement shows significant work by Chip-Tech's counsel in
 17 attempting to reach consensus with defendants and the Department of Justice on scheduling
 18 matters. *See, e.g.*, Dkt. No. 82 at 7-10. Counsel for Schuten, on the other hand, apparently prefer to
 19 wait for a ruling appointing interim lead counsel before negotiating. *See id.* The court appreciates
 20 counsel's efforts to resolve issues without court intervention but understands the desire to avoid
 21 duplication of efforts.

22 The decision of which attorneys to appoint in this case is an extraordinarily close one,
 23 given the extensive qualifications of all applicants. Nevertheless, on the basis of their firms'
 24 available resources and their proposals to simplify case management and minimize costs, the court

25 _____
 26 ³ Cohen Milstein and Hagens Berman submitted a proposal *in camera* to limit their fees. Dkt. No.
 27 67-4. Because this *ex parte* submission violates the portion of this court's November 10, 2015 case
 28 management order requiring all substantive communications with the court to be e-filed and
 unfairly prevents Saveri and Cera from commenting on the submission, the court declines to
 consider it. *See* Dkt. No. 55 at 9.

1 appoints the Cohen Milstein and Hagens Berman firms as interim lead counsel for the putative
2 direct purchaser class.

3 **C. Putative Indirect Purchaser Plaintiff Class**

4 As noted above, CPM's motion to be appointed as interim lead counsel for the indirect
5 purchaser plaintiffs is unopposed. CPM was the first to file any of the related resistors class
6 actions in this district, suggesting a significant pre-filing investigation. CPM has significant
7 experience in litigating complex class actions, including antitrust actions involving electronics and
8 cases in this district. The court also finds that CPM has sufficient resources to represent the class.
9 Further, CPM has demonstrated its ability to work with others, as shown by the fact that its motion
10 for appointment is unopposed. CPM has also proposed specific billing limitations to keep costs
11 reasonable. Dkt. No. 68 at 10-11. Accordingly, the court grants CPM's unopposed motion for
12 appointment as interim lead counsel for the putative indirect purchaser plaintiff class.

13 **III. CONSOLIDATION**

14 The parties in the related cases have unanimously agreed that these cases should be
15 consolidated and coordinated for all pretrial purposes:

- 16 1. 5:15-cv-03820-RMW, *Microsystems Development Technologies, Inc. v. Panasonic*
17 *Corp.*
- 18 2. 5:15-cv-03868-RMW, *Chip-Tech. Ltd. v. AVX Corp.*
- 19 3. 5:15-cv-03907-RMW, *Top Floor Home Improvements v. Panasonic Corp.*
- 20 4. 5:15-cv-04042-RMW, *MakersLED LLC v. Panasonic Corp.*
- 21 5. 5:15-cv-04201-RMW, *Nebraska Dynamics, Inc. v. Panasonic Corp.*
- 22 6. 5:15-cv-04206-RMW, *Brooks v. Panasonic Corp.*
- 23 7. 5:15-cv-04724-RMW, *Linkitz Systems, Inc. v. Panasonic Corp.*
- 24 8. 5:15-cv-04878-RMW, *Schuten Electronics, Inc. v. AVX Corp.*

25 Dkt. No. 82 at 9. Pursuant to Fed. R. Civ. P. 42(a), the court consolidates the cases listed above
26 into Civil Action No. 15-cv-3820 for all pretrial proceedings before this court, without prejudice
27 to a motion to sever and coordinate at a later date if appropriate.

28 The clerk of the court will maintain a master case file under the style In re RESISTORS

United States District Court
Northern District of California

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

ANTITRUST LITIGATION and the identification 5:15-cv-03820-RMW. All filings and submissions from here on should be captioned: “*In re Resistors Antitrust Litigation*” under the 5:15-cv-03820-RMW case number. Service of all papers shall be made on each of the attorneys of record through ECF. When a pleading is intended to apply to all actions subject to this order, this shall be indicated in the caption by the words: “This Document Relates to All Cases.” When a pleading is intended to apply to fewer than all cases, this shall be indicated in the caption by the words: “This Document Relates to [individual case(s) identified by case number(s)].”

This consolidation does not constitute a determination that the actions should necessarily be consolidated for trial, nor does it have the effect of making any entity a party in any action in which he, she, or it has not been named, served, or added in accordance with the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

Dated: December 21, 2015



Ronald M. Whyte
United States District Judge