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24
25 **UNITED STATES DISTRICT COURT**
26
27 **NORTHERN DISTRICT OF CALIFORNIA**
28
29 **SAN FRANCISCO DIVISION**

30 IN RE TFT-LCD (FLAT PANEL)
31 ANTITRUST LITIGATION

) Case No. 3:07-MD-1827 SI
) MDL No. 1827
)
)

32 This Document Relates to:
33 Indirect-Purchaser Class Action;
34 *State of Missouri, et al. v. AU Optronics*
35 *Corporation, et al.*, Case No. 10-cv-3619;
36 *State of Florida v. AU Optronics Corporation,*
37 *et al.*, Case No. 10-cv-3517; and
38 *State of New York v. AU Optronics Corporation,*
39 *et al.*, Case No. 11-cv-0711.

) **INDIRECT-PURCHASER PLAINTIFFS’**
) **AND SETTling STATES’ JOINT**
) **NOTICE OF MOTION AND MOTION**
) **FOR FINAL APPROVAL OF**
) **COMBINED CLASS, PARENS PATRIAE,**
) **AND GOVERNMENTAL ENTITY**
) **SETTLEMENTS; MEMORANDUM OF**
) **POINTS AND AUTHORITIES**

) Hearing Date: May 18, 2012
) Time: 9:00 a.m.
) Courtroom: 10, 19th Floor

) The Honorable Susan Illston
)
)

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, on May 18, 2012, at 9:00 a.m. or as soon thereafter as the matter may be heard, in the Courtroom of the Honorable Susan Illston, United States District Judge for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California, the Indirect-Purchaser Plaintiffs (“IPPs”) will and hereby do move, under Rule 23(e) of the Federal Rules of Civil Procedure, for entry of an Order granting final approval of the combined class, *parens patriae*, and governmental entity settlements (“Proposed Settlements”) with the Chimei, Chunghwa, Epson, HannStar, Hitachi, Samsung, and Sharp Defendants; and dismissing, with prejudice, each of the foregoing defendant groups from the IPPs’ and Settling States’ actions. The Attorneys General of Arkansas, California, Florida, Michigan, Missouri, New York, West Virginia, and Wisconsin join this motion.

The grounds for the motion are that: (i) notice to all individuals and entities who would be bound by the Proposed Settlements has been conducted in a reasonable manner, in accordance with the Court’s Order granting preliminary approval of the Proposed Settlements (Dkt. 4688); and (ii) the Proposed Settlements meet the final approval standard of being fair, reasonable, and adequate. The motion is based upon this Notice; the following Memorandum of Points and Authorities; the accompanying Declarations of Francis O. Scarpulla, Anne E. Schneider, Katherine Kinsella, and Robin M. Niemiec; the concurrently-filed Response to Objections to Proposed Settlements and supporting declarations thereto; the arguments of counsel; and all records on file in this matter.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Court has granted preliminary approval to the Proposed Settlements, under which the
4 Settling Defendants agreed to:¹

5 (1) pay a total of approximately \$539 million:

6 (a) Chimei \$110,273,318.

7 (b) Chunghwa \$5,305,105.

8 (c) Epson \$2,850,000.

9 (d) HannStar \$25,650,000.

10 (e) Hitachi Displays \$38,977,224.

11 (f) Samsung \$240,000,000.

12 (g) Sharp \$115,500,000.

13 **TOTAL \$538,555,647.**

14 (2) implement antitrust compliance programs, including agreements not to engage in
15 conduct violative of the antitrust laws at issue in these actions, and instituting (or
16 maintaining) educational programs for employees, and verifying such compliance
17 for up to five years; and

18 (3) provide cooperation in the preparation and trial of the actions against the non-
19 settling defendants.²

20 The Court also approved the plan of notice of the Proposed Settlements presented by the
21 IPPs and the States of Arkansas, California, Florida, Michigan, Missouri, New York, West
22 Virginia, and Wisconsin (“Settling States”). The IPPs and the Settling States, through the Kinsella
23 Media and Rust Consulting, have executed the notice plan.

24 ¹ The terms “Proposed Settlements” and “Settling Defendants” as used herein have the same
25 meanings as defined in the motion for preliminary approval (Dkt. 4424, filed Dec. 23, 2011).

26 ² At the time the Proposed Settlements were executed, at least three defendant groups (AUO,
27 LG Display, and Toshiba) had not settled; in recent weeks, these remaining defendant groups have
28 entered into agreements in principle to settle the claims asserted against them. While the
cooperation provisions of the Proposed Settlements that are the subject of this motion may not be
necessary going forward, they were valuable consideration at the time negotiated, and were
valuable in achieving the subsequent settlements.

1 Approximately 18 objections, from a total of 28 objectors, to the Proposed Settlements
2 were received, most of which are from “serial” or “professional” class-action objectors, and all of
3 which lack merit.³

4 For the reasons explained below, the Court should grant final approval of the Proposed
5 Settlements on the grounds that they are fair, reasonable, and adequate. Indeed, these all-cash
6 indirect-purchaser recoveries represent an excellent result for the class members, and were
7 obtained following extensive discovery and dispositive motion practice.

8 **II. BACKGROUND**

9 **A. Overview of the Case**

10 **1. Indirect-Purchaser Plaintiff Class Action**

11 The IPPs allege that Defendants engaged in a worldwide, multi-year, conspiracy to fix
12 prices and restrain competition relating to the thin-film transistor liquid crystal display panels
13 (“LCD panels”) contained in TVs, notebook computers, and monitors. *See* IPPs’ Third Consol.
14 Am. Class Action Cmpl. (Dkt. 2694). Based on their purchases of TVs, notebook computers, and
15 monitors that contain LCD panels, the IPPs assert certified class claims for monetary relief under
16 the antitrust, consumer protection, and unfair competition laws of 24 states (including the District
17 of Columbia), and a certified injunctive relief class claim under federal antitrust law. The Settling
18 Defendants dispute the allegations and have asserted defenses to the IPPs’ claims.

19 The first indirect-purchaser complaints were filed in December 2006. In April 2007, the
20 Judicial Panel on Multidistrict Litigation ordered the transfer of all related actions to this Court for
21 pretrial proceedings. *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 483 F. Supp. 2d 1353 (Jud. Pan.
22 Mult. Lit. 2007). Full merits discovery commenced in January 2009, with the partial lifting of a
23 stay requested by the Antitrust Division of United States Department of Justice. *See* Order re Stay
24 of Discovery (Dkt. 631, filed May 27, 2008). In response to discovery requests, the IPPs received
25 more than 7.8 million documents, totaling more than 40 million pages, many of which are not in
26 English. Scarpulla Decl. ¶ 3. More than 100 depositions were taken by the IPPs, including many
27

28 ³ The IPPs and the Settling States are concurrently filing a separate Response to Objections.

1 depositions in Korea, Japan, and Taiwan. Throughout this period, the parties litigated numerous
2 discovery disputes. *Id.*

3 The Court granted the IPPs' motion for class certification in March 2010.⁴ *See* Dkt. 1642.
4 The Ninth Circuit denied Defendants' petition for review of the class certification order in June
5 2010. *See* Dkt. 1805. Fact discovery ended in May 2011. The parties exchanged expert damages
6 reports from May through August 2011. *See* Order Extending Time and Modifying Pretrial
7 Schedule (Dkt. 2948). The Court denied Defendants' dispositive motion under the Foreign Trade
8 Antitrust Improvements Act in October 2011 (Dkt. 3833), and declined to certify the ruling for
9 immediate appellate review in December 2011 (Dkt. 4346). The Court has also denied summary
10 judgment motions filed by Defendants. *See, e.g.*, Dkt. 4301 (denying summary judgment motion
11 based on "AGC" standing); 4123 (denying summary judgment motion based on "sole-sourced"
12 LCD panels); 4107 (denying Toshiba's summary judgment motion).

13 The IPPs have continued to prepare the case for trial, which was scheduled for May 21,
14 2012. Within the past two weeks, the IPPs and the Settling States reached agreements in principle
15 to settle with all of the remaining defendant groups in the action – AUO, LG Display, and Toshiba.

16 2. Settling States' Actions

17 After lengthy pre-complaint investigations, the Settling States filed complaints in various
18 federal and state courts beginning in 2010. Schneider Decl. ¶ 4. The actions assert claims and
19 seek various forms of relief against Defendants arising from indirect purchases made by
20 governmental entities, and/or by consumers of TVs, notebook computers, and monitors containing
21 LCD panels under each Settling State's *parens patriae* authority, proprietary claims, and
22 enforcement authority pursuant to both federal and state law. The Settling Defendants dispute the
23 allegations and have asserted defenses to the Settling States' claims.

24 B. Key Terms of the Proposed Settlements

25 The Proposed Settlements are the result of arm's-length negotiations conducted by
26

27 ⁴ The Court subsequently certified a Missouri indirect-purchaser statewide class in an
28 identical fashion to the 23 previously-certified statewide monetary relief classes (*see* Dkt. 3198),
bringing the total number of certified statewide monetary relief classes to 24.

1 plaintiffs' counsel who are experienced in antitrust class action and law enforcement cases.⁵
 2 Scarpulla Decl. ¶¶ 2, 4; Schneider Decl. ¶¶ 2, 7. The relief provided to the plaintiffs under the
 3 Proposed Settlements represents, to the best of plaintiffs' counsel's knowledge, the largest all-cash
 4 class recovery in any single indirect-purchaser antitrust case. Scarpulla Decl. ¶ 4.

5 **1. Consideration**

6 **a. Cash**

7 Under the Proposed Settlements, the Settling Defendants will pay a total of approximately
 8 \$539 million.⁶ A portion of this amount will be allocated to the Settling States to resolve their
 9 proprietary governmental entity claims against the Settling Defendants, according to a formula
 10 contained in the Proposed Settlements (except for the Chunghwa Proposed Settlement). First, all
 11 Court-approved attorneys' fees and expenses will be deducted. Then, an amount equal to the eight
 12 Settling States' pro rata share (as compared to the gross domestic product of the 24 certified
 13 statewide classes) is applied to 7% of the remaining amount, and is allocated to the Settling States
 14 for redress of their governmental entity claims. This amount will equal less than 5% of the
 15 remaining settlement funds. More than 95% of the remaining settlement funds will go to non-
 16 governmental consumers who comprise the members of the IPP statewide monetary relief classes
 17 and *parens patriae* group.

18 **b. Antitrust Injunction and Compliance**

19 Each Settling Defendant agrees, for a period of five years, that it will not engage in price
 20 fixing, market allocation, bid rigging, or other conduct that violates Section 1 of the Sherman Act,
 21 with respect to the sale of any LCD panels, or TVs, notebook computers, or monitors containing
 22 LCD panels, that are likely, through the reasonably anticipated stream of commerce, to be sold to
 23 end-user purchasers in the United States. (Epson no longer manufactures or sells TFT-LCDs and
 24 therefore the injunction provisions are not applicable to it.)

25 ⁵ The events leading up to each of the Proposed Settlements were described in detail in the
 26 motion for preliminary approval (Dkt. 4424, at pp. 7 - 11).

27 ⁶ The Proposed Settlements were attached as exhibits "A" through "G" to the declaration of
 28 Francis O. Scarpulla in support of the motion for preliminary approval (Dkt. 4424-2 through 4424-
 8). The Scarpulla Preliminary Approval Declaration and exhibits are incorporated herein by
 reference.

1 Thus, members of the statewide monetary relief classes (all of whom are also members of
2 the previously-certified nationwide injunctive relief class), release *all* claims relating to LCD
3 panels, while members of the previously-certified nationwide injunctive relief class, who are not
4 members of a statewide monetary relief class, release *only* injunctive relief claims relating to LCD
5 panels – no monetary relief claims are released by indirect-purchaser end-user consumers who are
6 members only of the nationwide injunctive relief class. Similarly, enforcement, proprietary,
7 injunctive, or *parens patriae* claims held by any state other than the eight Settling States
8 participating in the Proposed Settlements are not released, except as discussed in subsection (iii)
9 below. The releases in the Proposed Settlements do not affect contract, warranty, or product-
10 defect claims arising in the ordinary course of business unrelated to the conduct alleged in the
11 action.

12 **b. Settling States Release**

13 Upon obtaining final approval, the Settling States will dismiss the Settling Defendants with
14 prejudice and release the claims they brought in their respective actions under the terms of the
15 Proposed Settlements. Specifically, the Settling States release all claims that were asserted and all
16 claims that could have been asserted in each Settling States' respective action, arising in any way
17 from the sale of LCD panels and based on any form of alleged anticompetitive conduct occurring
18 on or before December 31, 2006, including claims based on governmental entity purchases and
19 applicable *parens patriae* claims, based on the facts alleged. The releases in the Proposed
20 Settlements do not affect contract, warranty, or product-defect claims arising in the ordinary
21 course of business unrelated to the conduct alleged in the action, held by the Settling States.

22 **c. The Proposed Order**

23 The proposed final approval order also clarifies the scope of the releases in situations in
24 which (i) a non-settling state has sued or will sue for monetary relief on behalf of its citizens (as
25 opposed to asserting proprietary claims of state agencies, instrumentalities, and etc.) and (ii) an
26 IPP Damages Class exists for that state. In those instances, the intent of the parties was that the
27 money damages claims of state citizens would be released – whether asserted by the citizens
28 themselves or by a representative such as a state attorney general – but that state proprietary claims

1 would not be released. Paragraph 10 of the proposed final approval order clarifies this intention by
2 stating that “no state may bring claims for monetary relief on behalf of its citizens, whether in
3 *parens patriae* or otherwise, to the extent that its citizens released their claims for monetary relief
4 as members of an IPP Damages Class.” Prop. Order ¶ 10.

5 **3. Distribution To IPP Class Members**

6 Money will not be distributed to class members until the completion of the case, so that all
7 funds received in this case, including from the recent agreements in principle with the three
8 remaining defendant groups, can be distributed together and at one time.

9 In conjunction with the approval process for the most recent agreements in principle with
10 the AUO, LG Display, and Toshiba defendants, the IPPs and the Settling States will submit a plan
11 of distribution for Court approval. The plan of distribution will explain how payments will be
12 made *pro rata*, based upon the products purchased. The plan of distribution will also state a
13 minimum payment cut-off for class members (*i.e.*, the smallest check amount that will be
14 distributed to a class member). The IPPs will seek to disburse all available proceeds to members
15 of the statewide monetary relief classes, with any residual amount disposed of through
16 supplemental distributions to class members and/or *cy pres* distributions, as approved by the Court.

17 Members of the nationwide injunctive relief class, who are not also members of any
18 statewide monetary relief class, will not receive monetary compensation (but neither will they
19 release monetary claims under the Proposed Settlements).

20 **4. Attorneys’ Fees and Costs**

21 The Proposed Settlements provide that counsel for the IPPs and the Settling States may
22 apply to the Court for an award of attorneys’ fees (not to exceed one-third of the payments made
23 under the Proposed Settlements) and payment of costs and litigation expenses out of the payments
24 made under the Proposed Settlements, and that the Settling Defendants will not oppose such an
25 application. At this time, the IPPs and the Settling States have not made any application for
26 attorneys’ fees. In conjunction with the approval process for the most recent agreements in
27 principle with the AUO, LG Display, and Toshiba defendants, the IPPs and the Settling States will
28 make an application for attorneys’ fees and costs, for Court approval.

1 **C. Preliminary Approval**

2 The Court granted preliminary approval of the Proposed Settlements on January 26, 2012.
3 *See* Dkt. 4688. Upon a showing by the IPPs and the Settling States in their moving papers, the
4 Court found that the Proposed Settlements fell within the range of possible final approval, and that
5 there was a sufficient basis for notifying class members of the Proposed Settlements. *Id.* at ¶ 6.
6 The Court also conditionally certified an Arkansas statewide settlement-only class. *Id.* at ¶ 2.

7 **D. Motion For Interim Reimbursement of Expenses**

8 On March 14, 2012, the IPPs and the Settling States filed a joint motion for interim
9 reimbursement of expenses. *See* Dkt. 5157. In accordance with the Court’s Order granting
10 preliminary approval, the motion and supporting papers were also placed on the website
11 www.LCDclass.com. *See* Niemiec Decl. at ¶ 7.

12 **E. Notice**

13 Pursuant to the Court’s Order granting preliminary approval, publication notice of the
14 Proposed Settlements was provided to members of the classes (as well as residents of those States
15 where *parens patriae* claims are being settled), advising of:

- 16 (a) the pendency of the litigation classes previously certified by the Court
17 (including the conditional certification of the Arkansas statewide settlement
18 class), and the deadline for any class member to be excluded;
19 (b) the Proposed Settlements, and the dates associated with objection and final
20 approval; and
21 (c) the pendency of the litigation of *parens patriae* claims against the non-
22 settling defendants, and the deadline for any consumers to be excluded from
23 the Attorney General actions.

24 The attached declarations of Katherine Kinsella and Robin M. Niemiec describe how the
25 notice plan was implemented. “Summary” or “short-form” notice appeared in a wide range of
26 print media, including *People* magazine, *Sports Illustrated*, and *The New York Times*. Kinsella
27 Decl. ¶¶ 5 – 8. Internet banner advertisements ran for one month on prominent web networks,
28 including Facebook and Microsoft Media Network. *Id.* at ¶ 9. Television commercials ran for two

1 weeks on a variety of networks like CNN and the Golf Channel, with an estimated 40,322,000
2 gross impression against adults 25 and older. *Id.* at ¶ 10. Press releases were distributed to nearly
3 5,000 print and broadcast outlets. *Id.* at ¶ 13. By using these and other methods described in her
4 declaration, Ms. Kinsella estimates that 85.6% of adults aged 25 and above were reached with an
5 estimated frequency of 5.4 times, delivering 947,246,000 gross impressions. *Id.* at ¶ 23(b).

6 The website www.LCDclass.com went “live” on February 13, 2012, and to date has been
7 visited over 450,000 times, with approximately 30,000 potential class members having registered
8 to receive email updates from the website. Niemic Decl., ¶¶ 5, 11. Visitors to the website can
9 access the preliminary approval motion papers (including the Proposed Settlements), the interim
10 expense reimbursement motion papers, and various Court orders relating to class certification and
11 trial. *Id.* at ¶¶ 5, 7. The website also provides access to the long-form notice (in English and
12 Spanish), as well as class definitions, defendant information, answers to frequently asked
13 questions, and contact information for the Notice Administrator. *Id.* at ¶¶ 4, 5, 6. The toll-free
14 telephone number established to provide information and facilitate informational requests has
15 received, to date, approximately 7,800 calls, and live operators have spoken with over 3,100
16 callers who have requested assistance. *Id.* at ¶ 13.

17 As Ms. Kinsella concludes, based on her expertise in implementing class notice, “the reach
18 of our target audiences and the number of exposure opportunities to the notice information is the
19 best notice practicable under the circumstances . . .”. Kinsella Decl. at ¶ 28.

20 **F. Objections To Proposed Settlements**

21 Approximately 18 objections, from a total of 28 objectors, to the Proposed Settlements
22 were received, (Niemic Decl. ¶ 17)⁷ most of which are from “serial” or “professional” class-
23 action objectors, and all of which lack merit. The IPPs and the Settling States are concurrently
24 filing a response to the objections to the Proposed Settlements.

25 _____
26 ⁷ The Niemic Declaration In Support Of Final Approval notes that Rust Consulting received 15
27 objections. Rust did not receive the following three additional objections, which were only filed
28 with the Court: comment/objection letter of Gary Joseph Bonas II (Dkt. 5507); partial objection of
ePlus Group, Inc. (Dkt. 5433); and objection of the States of Illinois and Washington (Dkt. 5330).
Finally, although not styled as an objection, Gary Joseph Bonas II submitted an additional
comment letter to the Court (Dkt. 5441).

1 approval hearing) where class members may be heard regarding the settlements, and counsel may
2 introduce evidence and present arguments regarding the fairness, adequacy, and reasonableness of
3 the settlements. *See* MANUAL FOR COMPLEX LITIGATION (FOURTH) §§ 21.632, *et seq.*; *see also* 4
4 Newberg on Class Actions, § 11.22 *et seq.* (4th ed. 2002).

5 The Court has completed the first step in this process by granting preliminary approval of
6 the Proposed Settlements. The second step, notice, has been completed as described above and in
7 the accompanying declarations of Katherine Kinsella and Robin M. Niemiec. By this motion, the
8 IPPs respectfully request that the Court take the final step by holding a formal fairness hearing and
9 granting final approval to the Proposed Settlements, and entering judgments of dismissal with
10 prejudice as to the Settling Defendants.

11 **C. The Notice Plan Comports With Due Process and Rule 23(e)**

12 Constitutional due process and Rule 23(e) of the Federal Rules of Civil Procedure require
13 that class members be given “reasonable” notice of a proposed settlement and their right to be
14 heard at the fairness hearing to determine whether final approval of the settlement should be
15 granted. *See* Fed. R. Civ. P. 23(e); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 113-14
16 (2d Cir. 2005).

17 In its January 26, 2012 Order granting preliminary approval of the Proposed Settlements,
18 the Court, based on the arguments fully set forth in the motion for preliminary approval, held that
19 the proposed notice program – which included publication notice and the posting of notice on the
20 website www.LCDclass.com – “is the best notice that is practicable under the circumstances, and
21 constitutes, valid, due, and sufficient notice that complies with the requirements of Rule 23 of the
22 Federal Rules of Civil Procedure.” Dkt. 4688 at ¶ 10. As noted above, that notice program was
23 implemented as required by the Court’s Order. No objections have been raised with regard to the
24 adequacy of the notice program. Therefore, the Court should find the notice program related to the
25 Proposed Settlements satisfies the requirements of due process and Rule 23(e).

26 **D. The Proposed Settlements Should Be Finally Approved**

27 It is well established in the Ninth Circuit that “voluntary conciliation and settlement are the
28 preferred means of dispute resolution.” *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615,

1 625 (9th Cir. 1982); accord *Knight v. Red Door Salons, Inc.*, No. 08-01520 SC, 2009 U.S. Dist.
2 LEXIS 11149, at *8 (N.D. Cal. Feb. 2, 2009). “[T]here is an overriding public interest in settling
3 and quieting litigation” and this is “particularly true in class action suits.” *Van Bronkhorst v.*
4 *Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976). In evaluating a proposed class action settlement,
5 the Ninth Circuit has recognized that:

6
7 [T]he universally applied standard is whether the settlement is fundamentally
8 fair, adequate and reasonable. The district court's ultimate determination will
9 necessarily involve a balancing of several factors which may include, among
10 others, some or all of the following: the strength of plaintiffs' case; the risk,
11 expense, complexity, and likely duration of further litigation; the risk of
maintaining class action status throughout the trial; the amount offered in
settlement; the extent of discovery completed and the stage of the proceedings;
the experience and views of counsel; the presence of a governmental
participant; and the reaction of the class members to the proposed settlement.

12 *Officers for Justice*, 688 F.2d at 625 (citations omitted); accord *Torrissi v. Tucson Elec. Power Co.*,
13 8 F.3d 1370, 1375 (9th Cir. 1993).

14 This Court is entitled to exercise its “sound discretion” when deciding whether to grant
15 final approval. *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661
16 F.2d 939 (9th Cir. 1981); *Torrissi*, 8 F.3d at 1375. In doing so, “the court's intrusion upon what is
17 otherwise a private consensual agreement negotiated between the parties to a lawsuit must be
18 limited to the extent necessary to reach a reasoned judgment that the agreement is not the product
19 of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement,
20 taken as a whole, is fair, reasonable, and adequate to all concerned.” *Officers for Justice*, 688 F.2d
21 at 625; *In re Heritage Bond Litig.*, MDL No. 02-ML-1475 DT, 2005 U.S. Dist. LEXIS 13555, at
22 *10 (C.D. Cal. June 10, 2005). “Where, as here, a proposed class settlement has been reached
23 after meaningful discovery, after arm's-length negotiation, conducted by capable counsel, it is
24 presumptively fair.” *M. Berenson Co., Inc. v. Faneuil Hall Marketplace, Inc.*, 671 F. Supp. 819,
25 822 (D. Mass. 1987); accord *In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, at **11-
26 12. Each of the Proposed Settlements here is certainly fair, reasonable, and adequate.

27 First, the consideration for each Proposed Settlement is substantial, ranging from \$2.9
28 million (Epson) to \$240 million (Samsung). The Proposed Settlements total \$538,555,647, and are

1 an extraordinary result, particularly for an indirect-purchaser case involving numerous complex
2 and highly contested issues, with which the Court is familiar. *See* Scarpulla Decl. ¶ 4. The total
3 amount of the Proposed Settlements represents a significant recovery of the damages amount
4 estimated by the IPPs’ experts. *See* Joint Pretrial Conference Statement (Dkt. No. 5121) at 30-31
5 (describing the IPPs’ single-damage estimates as ranging from \$2.27 billion to \$3.226 billion).
6 This level of recovery – which does not even settle the entire case, as it does not include the recent
7 settlements with the AUO, LG Display, and Toshiba defendants – is highly favorable as compared
8 to recoveries obtained in other antitrust class action settlements. *See, e.g., City of Detroit v.*
9 *Grinnell Corp.*, 495 F.2d 448, 455 n.2 (2nd Cir. 1974) (“In fact, there is no reason, at least in
10 theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth of a
11 single percent of the potential recovery.”).

12 Second, the Proposed Settlements were the product of intense and thorough arm’s-length
13 negotiations that were conducted by experienced and informed counsel. The negotiations occurred
14 over a span of many months and involved numerous meetings. The parties were assisted by two
15 nationally renowned mediators appointed by the Court, Professor Eric Green and the Honorable
16 Daniel Weinstein. Scarpulla Decl. ¶ 4. The negotiations were contested, conducted in the utmost
17 good faith, and the settlements were appropriate in light of the position of and evidence against
18 each Settling Defendant. *See* Preliminary Approval Motion (Dkt. 4424) at pp. 7 - 11.

19 Third, plaintiffs’ counsel were able to make informed evaluations of proposed settlement
20 offers because they negotiated the Proposed Settlements after undertaking fact and expert
21 discovery, reviewed and analyzed millions of pages of Defendants’ documents, dozens of
22 depositions, and numerous dispositive motions. Together, these steps provided plaintiffs’ counsel
23 with insight to both the strengths and weaknesses of the case, including as against each Settling
24 Defendant.

25 In addition, plaintiffs’ counsel’s belief that the Settlements are in the best interest of the
26 Class is entitled to “great weight.” *In re Paine Webber Partnerships Litig.*, 171 F.R.D. 104, 125
27 (S.D.N.Y. 1997) (citation omitted), *aff’d* 117 F.3d 721 (2d Cir. 1997); *accord Nat’l Rural*
28 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) (“‘Great weight’ is

1 accorded to the recommendation of counsel, who are most closely acquainted with the facts of the
2 underlying litigation.”). In fact, “the trial judge, absent fraud, collusion, or the like, should be
3 hesitant to substitute its own judgment for that of counsel.” *Nat'l Rural Telecomms.*, 221 F.R.D. at
4 528, *quoting Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977).

5 The participation in the Proposed Settlements by the Settling States should also be a factor
6 in favor of granting final approval of Proposed Settlements. *See In re Lorazepam & Clorazepate*
7 *Antitrust Litig.*, 205 F.R.D. 369, 380 (D.D.C. 2002) (*quoting In re Toys “R” Us Antitrust Litig.*,
8 191 F.R.D. 347, 351 (E.D.N.Y. 2000) (“participation of the State Attorneys General furnishes
9 extra assurance that consumers' interests are protected”); *see, e.g., Dunk v. Ford Motor Co.*, 48
10 Cal. App. 4th 1794, 1801 (Cal. App. 4th Dist. 1996).

11 **IV. CONCLUSION**

12 For the foregoing reasons, the IPPs and the Settling States respectfully request that the
13 Court finally approve the Proposed Settlements.

14
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10 **ATTESTATION**

11 Pursuant to General Order No. 45, § X(B), regarding signatures, I attest that I have
12 obtained the concurrence in the filing of this document from all signatories.

13
14 Dated: May 4, 2012

/s/ Francis O. Scarpulla
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