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

30 IN RE TFT-LCD (FLAT PANEL)) Case No. 3:07-MD-1827 SI
31 ANTITRUST LITIGATION) MDL No. 1827
32)
33)

34 This Document Relates to:) **INDIRECT-PURCHASER PLAINTIFFS'**
35) **AND SETTLING STATES' JOINT**
36 Indirect-Purchaser Class Action;) **NOTICE OF MOTION AND MOTION**
37) **FOR FINAL APPROVAL OF**
38 *State of Missouri, et al. v. AU Optronics*) **COMBINED CLASS, PARENS PATRIAE,**
39 *Corporation, et al.*, Case No. 10-cv-3619;) **AND GOVERNMENTAL ENTITY**
40) **SETTLEMENTS WITH AUO, LG**
41 *State of Florida v. AU Optronics Corporation,*) **DISPLAY, AND TOSHIBA**
42 *et al.*, Case No. 10-cv-3517; and) **DEFENDANTS; MEMORANDUM OF**
43) **POINTS AND AUTHORITIES**

44 *State of New York v. AU Optronics Corporation,*)
45 *et al.*, Case No. 11-cv-0711.)
46) Hearing Date: November 29, 2012
47) Time: 3:30 p.m.
48) Courtroom: 10, 19th Floor

49) The Honorable Susan Illston
50)

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, on November 29, 2012, at 3:30 p.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”), joined by the Attorneys General of Arkansas, California, Florida, Michigan, Missouri, New York, West Virginia, and Wisconsin (“Settling States”), will and hereby do move, under Rule 23(e) of the Federal Rules of Civil Procedure, for entry of an Order:

1. Granting final approval of the combined class, *parens patriae*, and governmental entity settlements (“Proposed Settlements”) with the AUO, LG Display, and Toshiba Defendants;
2. Dismissing, with prejudice, each of the foregoing defendant groups from the IPPs’ and Settling States’ actions; and
3. Approving the plan of distribution.

The grounds for the motion are that: (i) notice to individuals and entities who would be bound by the Proposed Settlements and the plan of distribution has been conducted in a reasonable manner, in accordance with the Court’s Order granting preliminary approval of the Proposed Settlements (Dkt. 6311); 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 Katherine Kinsella and Robin M. Niemiec; the concurrently-filed IPPs’ and Settling States’ Response to Objections, the IPPs’ Response to Objections to IPP Attorneys’ Fee Motion 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 preliminarily-approved Proposed Settlements with the AUO, LG Display, and Toshiba
4 defendants (collectively, “Settling Defendants”) provide substantial relief to members of the
5 certified IPP classes and the Settling States’ *parens patriae* actions.¹ Under the Proposed
6 Settlements, LG Display will pay \$361 million, AUO will pay \$161.5 million, and Toshiba will
7 pay \$21 million. In addition, LG Display and AUO will implement antitrust compliance
8 programs, including agreements not to engage in conduct violative of the antitrust laws at issue in
9 these actions, and institute (or maintain) educational programs for their employees. If the Court
10 grants final approval to the Proposed Settlements with these last three defendants, the IPPs’ and
11 Settling States’ actions will be fully resolved with ten settlements providing a record-setting, all-
12 cash, non-reversionary total recovery of \$1.082 billion for the benefit of class members. A chart
13 of the settlement amounts appears on the following page.

14 The Proposed Settlements meet the standard under Rule 23(e) of the Federal Rules of Civil
15 Procedure as being fair, reasonable, and adequate. The IPPs and Settling States have executed a
16 comprehensive notice program approved by the Court, informing class members of the Proposed
17 Settlements (including rights of exclusion or objection), the availability of claims forms, the plan
18 of distribution, and the pendency of motions for fees and costs. Of the multitude of individuals
19 and entities subject to the notice, a total of 11 objections to the Proposed Settlements were filed,
20 mostly by “professional” or “serial” class-action objectors and/or counsel.² As relevant to this
21 motion for final approval, none of the objections questions the Rule 23 sufficiency of the Proposed
22 Settlements. Accordingly, and as explained more fully below, the Court should grant final
23 approval to the Proposed Settlements.

24 _____
25 ¹ The capitalized terms “Proposed Settlements” and “Settling Defendants” as used herein
26 have the same meanings as defined in the motion for preliminary approval (Dkt. 6141, filed July
27 12, 2012).

28 ² These objections are fully addressed in the concurrently-filed IPPs’ and Settling States’
Response to Objections and in the IPPs’ Response to Objections to IPP Attorneys’ Fee Motion.
The objections focus exclusively on the plan of distribution (and any *cy pres* component thereof),
as well as the attorneys’ fees requested by IPP Class Counsel and the attorneys’ fees and
reimbursement of costs requested by the Settling States.

Defendant	Class Settlement Amounts	Civil Penalty Amounts	Total Settlement Payments
<i>Three Currently-Proposed Settlements</i>			
AUO	\$ 161,500,000.	\$ 8,500,000.	\$ 170,000,000.
LG Display	\$ 361,000,000.	\$ 19,000,000.	\$ 380,000,000.
Toshiba	\$ 21,000,000.	n/a	\$ 21,000,000.
TOTALS OF THREE CURRENTLY-PROPOSED SETTLEMENTS	\$ 543,500,000.	\$ 27,500,000.	\$ 571,000,000.
<i>Seven Previously-Approved Settlements</i>			
Chimei	\$110,273,318.	\$ 5,737,948.	\$ 116,011,266.
Chunghwa	\$ 5,305,105.	n/a	\$ 5,305,105.
Epson	\$ 2,850,000.	\$ 150,000.	\$ 3,000,000.
HannStar	\$ 25,650,000.	\$ 1,350,000.	\$ 27,000,000.
Hitachi	\$ 38,977,224.	\$ 1,494,760.	\$ 40,471,984.
Samsung	\$ 240,000,000.	n/a	\$ 240,000,000.
Sharp	\$ 115,500,000.	\$ 6,000,000.	\$ 121,500,000.
TOTALS OF SEVEN PREVIOUSLY-APPROVED SETTLEMENTS	\$ 538,555,647.	\$ 14,732,708.	\$ 553,288,355.
GRAND TOTALS OF ALL SETTLEMENTS	\$ 1,082,055,647.	\$ 42,232,708.	\$ 1,124,288,355.

II. BACKGROUND

A. Overview of the Case

1. Indirect-Purchaser Plaintiff Class Action

The IPPs' Third Consolidated Amended Class Action Complaint alleges that the defendants participated in a worldwide, multi-year conspiracy to fix prices and restrain competition for thin-film transistor liquid crystal display panels ("LCD Panels") contained in TVs, notebook computers, and monitors. *See* IPPs' Third Consol. Am. Class Action Cmpl. (Dkt. 2694). Based on their purchases of TVs, notebook computers, and monitors that contain LCD Panels, the IPPs' complaint asserts class claims for monetary relief under various antitrust, consumer protection, and unfair competition laws of 24 states (including the District of Columbia), and a nationwide injunctive relief class claim under federal antitrust law.

The Court granted the IPPs' motion for class certification in March 2010. Dkt. 1642 (order certifying 23 statewide monetary-relief classes and a nationwide injunctive-relief class). In July 2011, the Court certified a Missouri monetary-relief class. Dkt. 3198. On January 26, 2012, the Court granted preliminary approval to settlements totaling \$538.6 million with the Chimei, Chunghwa, Epson, HannStar, Hitachi, Samsung, and Sharp Defendants. Dkt. 4688. On the same day, the Court also prospectively modified the class definitions in advance of the trial against the then-remaining defendants. *See* Dkt. 4684 (order altering statewide classes to exclude overlapping members of the direct-purchaser class action, and redefining Missouri and Rhode Island statewide classes to exclude purchases not made for personal, family, or household use). To preserve uniformity with the previously-approved settlements, the Proposed Settlements cover the persons and entities that were excluded by operation of the January 26, 2012 order prospectively modifying the classes against AUO, LG Display, and Toshiba, resulting in the proposed settlement-only classes described below.

The Court granted final approval to the settlements with the Chimei, Chunghwa, Epson, HannStar, Hitachi, Samsung, and Sharp Defendants on July 11, 2012 (Dkt. 6130).

In connection with the previously-approved settlements, the IPPs have summarized key events in the past five years of this multi-district litigation, including the significant global

1 discovery efforts, and the class and dispositive motion practice before this Court and the Ninth
2 Circuit. *See* Dkt. 4424 (motion for preliminary approval of previous settlements); Dkt. 5600
3 (motion for final approval of previous settlements).

4 The Proposed Settlements were negotiated in the weeks leading up to the trial date of May
5 21, 2012. The IPPs were prepared for a trial absent these settlements, and completed all of the
6 necessary pre-trial filings, in coordination with the Direct-Purchaser Class Plaintiffs. In addition,
7 the IPPs completed the remaining discovery of AUO's fact and expert witnesses, which had been
8 postponed due to the AUO criminal proceedings. The IPPs also completed the remaining
9 discovery of Toshiba witnesses which had been postponed until the time for the government to
10 issue an indictment had passed. *See* Declaration of Francis O. Scarpulla In Support of Preliminary
11 Approval (Dkt. 6141, filed July 12, 2012) at ¶ 7.

12 2. Settling States' Actions

13 After lengthy pre-complaint investigations, the Settling States filed complaints in various
14 federal and state courts beginning in mid-2010. The actions assert claims and seek various forms
15 of relief against the defendants arising from indirect purchases made by governmental entities,
16 and/or by consumers of TVs, notebook computers, and monitors containing LCD Panels under
17 each Settling State's *parens patriae* authority, proprietary claims, and enforcement authority
18 pursuant to both federal and state law. The Settling States have previously summarized some of
19 the key events of their investigation and litigation, including motion practice and discovery work
20 that preceded the previously-approved settlements. *See* Dkt. 4424 (motion for preliminary
21 approval of previous settlements); Dkt. 5600 (motion for final approval of previous settlements);
22 Dkt. 6860 (corrected motion for attorneys' fees and additional costs). Since the filing of those
23 earlier settlements, six of the Settling States completed their own expert report and engaged in
24 expert discovery, completed depositions of eight of defendants' expert witnesses and were
25 preparing a rebuttal report. The Settling States were also conducting the remaining discovery of
26 AUO's fact and expert witnesses, which had been postponed due to the AUO criminal
27 proceedings, and the remaining discovery of Toshiba's witnesses. The Proposed Settlements were
28

1 negotiated over three months. *See* Declaration of Anne E. Schenider In Support of Preliminary
2 Approval (Dkt. 6141, filed July 12, 2012) at ¶ 3.

3 **B. Settlement Discussions**

4 The Proposed Settlements were difficult to attain; the negotiations were hard-fought and at
5 times contentious. Each Proposed Settlement was reached only following arm's-length
6 negotiations among counsel for the Settling Defendant, the IPPs, and the Settling States. The
7 parties were assisted by the Honorable Daniel Weinstein (Ret.), Professor Eric Green, and by the
8 Honorable Vaughn R. Walker (Ret.), former Chief Judge of the Northern District of California.
9 The Proposed Settlements were attached as Exhibits A – C to the Declaration of Francis O.
10 Scarpulla In Support Of Preliminary Approval (Dkt. 6141, filed July 12, 2012).

11 **1. AUO**

12 After initial mediation efforts failed to produce a settlement, and with both of the two
13 original mediators otherwise engaged and unavailable for a third round of meetings, counsel for
14 the IPPs, the Settling States, and AUO, with the help of Judge Walker, reached an agreement in
15 principle on April 23, 2012. Thereafter, the parties continued to negotiate the details of the
16 settlement, and the AUO Proposed Settlement was executed on June 20, 2012.

17 **2. Toshiba**

18 The IPPs and Settling States also attempted to reach an agreement with Toshiba utilizing
19 the services of Judge Weinstein and Professor Green during multiple sessions. Although progress
20 was made, these efforts were unsuccessful. Counsel for the IPPs, the Settling States, and Toshiba
21 reached an agreement in principle following additional negotiations on April 24, 2012. Thereafter,
22 the parties continued to negotiate the details of the settlement, until the Toshiba Proposed
23 Settlement was executed on June 20, 2012.

24 **3. LG Display**

25 Despite many attempts, both with the assistance of the two Court-appointed mediators and
26 with counsel alone, the parties were unable to reach an agreement. In one last-ditch effort to
27 resolve this case before trial, and with the assistance of Judge Walker, counsel for the IPPs, the
28 Settling States, and LG Display reached an agreement in principle on April 26, 2012. Thereafter,

1 the parties continued to negotiate the details of the settlement, until the LG Display Proposed
2 Settlement was executed on July 12, 2012.

3 C. Key Terms of the Proposed Settlements

4 The Proposed Settlements follow the key terms and conditions contained in the previously-
5 approved settlements. Thus, while the payment amounts and cooperation provisions differ as
6 compared to the previously-approved settlements, the releases in the Proposed Settlements largely
7 mirror the releases in the previously-approved settlements, and all other material terms are
8 substantially the same.

9 1. Consideration

10 a. Cash

11 Under the Proposed Settlements and the Settling States' separate settlements relating to
12 their civil penalties claims, the Settling Defendants will pay a total of \$571 million, of which \$27.5
13 million has already been paid to the Settling States in resolution of their civil penalties claims.
14 The remaining \$543.5 million represents consumer redress under the Proposed Settlements. A
15 portion of this Settlement Fund will be allocated to the Settling States to resolve their proprietary
16 governmental entity redress claims against the Settling Defendants, according to a formula
17 contained in the Proposed Settlements. First, all Court-approved attorneys' fees, expenses, and
18 incentive awards will be deducted. Then, an amount equal to the eight Settling States' pro rata
19 share (as compared to the gross domestic product of the states in which there are monetary-relief
20 classes) is applied to 7% of the remaining amount, and is allocated to the Settling States for redress
21 of their governmental entity claims.³ This amount will be less than 5% of the remaining
22 Settlement Fund. More than 95% of the remaining Settlement Fund will go to non-governmental
23 consumers who comprise the members of the IPP statewide monetary relief classes and *parens*
24 *patriae* groups.

25
26
27 ³ See Scarpulla Decl. In Support of Preliminary Approval (Dkt. 6141, filed July 12, 2012), Ex. A
28 (AUO Proposed Settlement), ¶ 30(e); Ex. B (LG Display Proposed Settlement), ¶ 32(e); Ex. C
(Toshiba Proposed Settlement), ¶ 18(e).

1 **2. Release**

2 **a. Indirect-Purchaser Plaintiff Release**

3 The scope of the release remains generally consistent with the previously-approved
4 settlements. Upon final approval, the IPPs will dismiss the Settling Defendants with prejudice and
5 release the claims under the terms of the Proposed Settlements. The Proposed Settlements use the
6 same IPP class definitions used in the previously-approved settlements, which consist of the
7 definitions used in the Court's class certification orders dated Mar. 28, 2010 (Dkt. 1642) and July
8 28, 2011 (Dkt. 3198). The Court's prospective modification of certain class definitions in advance
9 of trial against the then-remaining defendants by order dated Jan. 26, 2012 (Dkt. 4684) removed
10 Missouri and Rhode Island purchasers who did not purchase for personal, family, or household
11 use, and removed purchasers who were also members of the direct-purchaser class. These narrow
12 groups are the subjects of proposed settlement-only classes, the certification of which will preserve
13 uniformity with the previously-approved settlements.

14 Under the Proposed Settlements, the IPPs shall release, with respect to the claims asserted
15 in the IPP action (or arising in any way from the sale of LCD Panels contained in TVs, notebook
16 computers, and monitors):

- 17 a) during the class period of January 1, 1999 through December 31, 2006, all
18 claims for monetary relief held by indirect-purchaser end-user consumers
19 (both natural persons and business entities) in the certified statewide
20 monetary relief classes (and the proposed settlement-only classes); and
21 b) during the time period January 1, 1999 through February 13, 2012 (the date
22 of the first notice to the classes), all claims for *injunctive relief* held by
23 indirect-purchaser end-user consumers (both natural persons and business
24 entities) in the previously-certified nationwide federal Sherman Act
25 injunctive relief class.

26 Thus, members of the statewide monetary relief classes (all of whom are also members of
27 the previously-certified nationwide injunctive relief class), release their monetary and injunctive
28 relief claims relating to LCD Panels which arise out of the facts alleged in these MDL actions,

1 while members of the previously-certified nationwide injunctive relief class, who are not members
 2 of a statewide monetary relief class, release *only* injunctive relief claims relating to LCD Panels –
 3 no monetary relief claims are released by indirect-purchaser end-user consumers who are members
 4 only of the nationwide injunctive relief class. Similarly, enforcement, proprietary, or injunctive
 5 claims held by any state other than the eight Settling States participating in the Proposed
 6 Settlements are not released. The releases in the Proposed Settlements do not affect contract,
 7 warranty, or product-defect claims arising in the ordinary course of business unrelated to the
 8 conduct alleged in the action.⁶

9 **b. Settling States Release**

10 Upon final approval, the Settling States will dismiss the Settling Defendants with prejudice
 11 and release the claims they brought in their respective actions under the terms of the Proposed
 12 Settlements. Specifically, the Settling States release all claims that were asserted and all claims
 13 that could have been asserted in each Settling State's respective action, arising in any way from the
 14 sale of LCD Panels and based on any form of alleged anticompetitive conduct occurring on or
 15 before December 31, 2006, including claims based on governmental entity purchases and
 16 applicable *parens patriae* claims, based on the facts alleged. The releases in the Proposed
 17 Settlements do not affect contract, warranty, or product-defect claims arising in the ordinary
 18 course of business unrelated to the conduct alleged in the action, held by the Settling States.⁷

19 **D. Plan Of Distribution To IPP Class Members**

20 The IPPs and the Settling States propose to compensate members of the IPP monetary-
 21 relief classes according to a plan of distribution, which provides that qualifying claimants will be
 22 eligible to claim an amount of money from the Settlement Fund based on the number of LCD TVs,
 23 notebook computers, and monitors each class member purchased during the class period.

24 All IPP monetary-relief class members who seek payment from the Settlement Fund will be
 25 required to complete a claim form containing: (i) the class member's contact information; (ii)

26 ⁶ See Scarpulla Decl. In Support of Preliminary Approval (Dkt. 6141, filed July 12, 2012), Ex. A
 27 (AUO Proposed Settlement), ¶ 24; Ex. B (LG Display Proposed Settlement), ¶ 24; Ex. C (Toshiba
 Proposed Settlement), ¶ 12.

28 ⁷ *Id.*

1 verification of membership in the statewide classes; (iii) quantification of the number of each LCD
2 TV, notebook computer, and monitor purchased during the class period; and (iv) an attestation
3 under penalty of perjury that the information provided is accurate. The claim form was approved
4 by the Court and is available on the website www.LCDclass.com. The deadline to file a claim is
5 December 6, 2012.

6 All claimants will be subject to auditing and requests for documentation of purchases by
7 the claims administrator. The claims administrator will use commercially reasonable efforts to
8 identify and investigate potentially fraudulent claims. Initially, the claims administrator will
9 compute the straight pro-rata distribution of the available Settlement Fund among all claimed
10 product purchases, with TVs receiving twice the proportional weight of notebook computers and
11 monitors.

12 Because there will very likely be a broad range in the number of product purchases claimed
13 – with some average individual consumers reporting one or two products purchased, and some
14 corporate claimants reporting thousands of products purchased – the next step will be to determine
15 a minimum payment amount. Based on historical claim rates, it is expected that there will be
16 sufficient funds to distribute a minimum payment of at least \$25 to eligible class members who
17 submit a valid claim form. The purpose of the minimum payment amount is to incentivize the
18 filing of claims by small purchasers whose straight pro-rata distribution amount might be less than
19 the expected minimum payment amount of \$25. Thus, a hypothetical consumer claimant whose
20 straight pro-rata distribution amount would have been only \$15 would instead receive the
21 minimum payment amount of \$25. A hypothetical claimant whose straight pro-rata distribution
22 amount would have been *greater* than \$25 will continue to receive a larger amount based on an
23 adjusted pro-rata distribution (“adjusted” to compensate for the effect of the minimum payment
24 amount). The minimum payment amount of \$25 represents the IPPs’ and Settling States’
25 reasonable estimate at this time; the actual amount cannot be determined until the claims have
26 been processed. The Court’s approval for the minimum payment will be requested when the data
27 from the actual claim experience is available.

28

1 Using this adjusted pro rata distribution plan will ensure that all valid claimants receive fair
2 compensation based directly on their purchases of LCD products. The minimum payment ensures
3 that small claimants (*i.e.*, average individual consumers) receive meaningful compensation for
4 their participation in the claims process.

5 Additionally, a maximum payment amount of three times the estimated money damages
6 per claimant will apply. Any residue of the Settlement Fund will be subject to further distribution
7 as ordered by the Court. None of the Settlement Fund will revert to any Settling Defendant.
8 Members of the nationwide injunctive relief class, who are not also members of any statewide
9 monetary relief class, will not receive monetary compensation (but neither will they release
10 monetary claims under the Proposed Settlements).

11 **E. Preliminary Approval**

12 The Court granted preliminary approval of the Proposed Settlements on July 31, 2012. *See*
13 Dkt. 6311. Upon a showing by the IPPs and the Settling States in their moving papers, the Court
14 found that the Proposed Settlements fell within the range of possible final approval, and that there
15 was a sufficient basis for notifying class members of the Proposed Settlements. *Id.* at ¶ 8.

16 **F. Notice**

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

- 20 (a) the Proposed Settlements, and the dates associated with objection and final
21 approval;
- 22 (b) the certification of certain settlement-only classes, and the deadlines to be
23 excluded from these settlement-only classes;
- 24 (c) the availability of claims forms, and the process and deadline for
25 submission;
- 26 (d) the plan of distribution; and
- 27 (e) the pendency of motions for fees, costs, and incentive awards.

1 The attached declarations of Katherine Kinsella and Robin M. Niemiec describe how the
2 notice plan was implemented. “Summary” or “short-form” notice appeared in a wide range of
3 print media, including *People* magazine, *Sports Illustrated*, and *The New York Times*. Kinsella
4 Decl. ¶¶ 6 – 12. Internet banner advertisements ran for one month on prominent web networks,
5 including Facebook and Microsoft Media Network. *Id.* at ¶ 10. Television commercials ran for
6 two weeks on a variety of networks like CNN and the Golf Channel, with an estimated 56,661,000
7 gross impression against adults 25 and older. *Id.* at ¶ 11. Press releases were distributed to nearly
8 5,000 print and broadcast outlets. *Id.* at ¶ 13. By using these and other methods described in her
9 declaration, Ms. Kinsella estimates that 92.7% of adults aged 25 and above were reached with an
10 estimated frequency of 5.8 times, delivering 547,279,000 gross impressions. *Id.* at ¶ 23.

11 The website www.LCDclass.com went “live” on February 13, 2012, and to date has been
12 visited over 1,000,000 times, with approximately 44,074 potential class members having registered
13 to receive email updates from the website. Niemiec Decl. ¶ 14. Visitors to the website can access
14 and complete a claim form, view the preliminary approval motion papers (including the Proposed
15 Settlements), the interim expense reimbursement motion papers, and various Court orders relating
16 to class certification and trial. *Id.* at ¶¶ 5 - 10. The website also provides access to the long-form
17 notice (in English and Spanish), as well as class definitions, defendant information, answers to
18 frequently asked questions, and contact information for the Notice Administrator. *Id.* The toll-
19 free telephone number established to provide information and facilitate informational requests has
20 received, to date, approximately 26,119 calls, and live operators have spoken with over 7,745
21 callers who have requested assistance. *Id.* at ¶ 18.

22 As Ms. Kinsella concludes, based on her expertise in implementing class notice, “the reach
23 of our target audience and the number of exposure opportunities in the Second Notice Program is
24 the best notice practicable under the circumstances”. Kinsella Decl. at ¶ 28.

25 **G. Motions For Fees, Costs, and Incentive Awards**

26 The Proposed Settlements provide that counsel for the IPPs and the Settling States may
27 apply to the Court for an award of attorneys’ fees (not to exceed one-third of the payments made
28 under the Proposed Settlements) and payment of costs and litigation expenses out of the payments

1 made under the Proposed Settlements, and that the Settling Defendants will not oppose such an
 2 application. In its Preliminary Approval Order, the Court directed that any motions for attorneys'
 3 fees and costs be filed not later than 30 days before the deadline to file objections, and that such
 4 motions be posted to the website www.LCDclass.com. Dkt. 6311, at ¶ 19.

5 On September 7, 2012, the IPPs filed a motion for an award of attorneys' fees and
 6 incentive awards. Dkt. 6662. The IPPs also filed a motion for reimbursement of certain expenses
 7 that were not previously requested. Dkt. 6664. The Settling States filed a separate motion for an
 8 award of attorneys' fees and additional costs on the same day. Dkt. 6650; 6860 (corrected motion
 9 for fees and additional costs). All filings were posted to the website www.LCDclass.com, more
 10 than 30 days in advance of the October 9, 2012 deadline for objections. (Previously, the IPPs and
 11 Settling States filed a motion for interim reimbursement of expenses. *See* Dkt. 5157, filed March
 12 14, 2012. That motion was also posted to the website www.LCDclass.com.)

13 **H. Objections**

14 A total of 11 objections to the Proposed Settlements were filed, mostly by "professional" or
 15 "serial" class-action objectors and/or counsel.⁸ As relevant to this motion for final approval, none
 16 of the objections questions the Rule 23 sufficiency of the Proposed Settlements.

17 **I. Requests For Exclusion**

18 No requests for exclusion from the settlement-only classes certified in the Court's
 19 Preliminary Approval Order were received, as indicated in the IPPs' and Settling States' notice
 20 regarding exclusions, filed on October 29, 2012. *See* Dkt. 7070.

21 **III. ARGUMENT**

22 **A. The Settlement of Complex Litigation Is Favored**

23 There is a "strong judicial policy that favors settlements, particularly where complex class
 24 action litigation is concerned." *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008);
 25 *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976) ("It hardly seems necessary to
 26

27 ⁸ These objections are fully addressed in the concurrently-filed IPPs' and Settling States'
 28 Response to Objections and the IPPs' Response to Objections to IPP Attorneys' Fee Motion. The
 objections focus exclusively on the plan of distribution (and any *cy pres* component thereof), as
 well as the attorneys' fees requested by IPP Class Counsel.

1 point out that there is an overriding public interest in settling and quieting litigation. This is
2 particularly true in class action suits . . .”). Moreover, “a district court’s certification of a
3 settlement simply recognizes the parties’ deliberate decision to bind themselves according to
4 mutually agreed-upon terms without engaging in any substantive adjudication of the underlying
5 causes of action.” *Sullivan v. DB Invs. Inc.*, 667 F.3d 273, 312 (3rd Cir. 2011) (en banc)
6 (affirming certification of a nationwide indirect-purchaser settlement class), *cert. denied sub nom.*
7 *Murray v. Sullivan*, 132 S. Ct. 1876 (2012).

8 **B. Class Action Settlement Approval Process**

9 Rule 23(e) provides that “[t]he claims, issues, or defenses of a certified class may be
10 settled, voluntarily dismissed, or compromised only with the court’s approval.” Consistent with
11 this Rule, class action jurisprudence has developed three distinct steps for the approval of a class
12 settlement: a) preliminary approval of the proposed settlements; b) dissemination of notice of the
13 proposed settlements to class members; and c) a fairness hearing (also referred to as a final
14 approval hearing) where class members may be heard regarding the settlements, and counsel may
15 introduce evidence and present arguments regarding the fairness, adequacy, and reasonableness of
16 the settlements. *See* MANUAL FOR COMPLEX LITIGATION (FOURTH) §§ 21.632, *et seq.*; *see also* 4
17 *Newberg on Class Actions*, § 11.22, *et seq.* (4th ed. 2002) (“*Newberg*”).

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

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

25 Constitutional due process and Rule 23(e) of the Federal Rules of Civil Procedure require
26 that class members be given “reasonable” notice of a proposed settlement and their right to be
27 heard at the fairness hearing to determine whether final approval of the settlement should be
28

1 granted. *See* Fed. R. Civ. P. 23(e); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 113-14
2 (2d Cir. 2005).

3 In its July 31, 2012 Order granting preliminary approval of the Proposed Settlements, the
4 Court, based on the arguments fully set forth in the motion for preliminary approval, held that the
5 proposed notice program – which included publication notice and the posting of notice on the
6 website www.LCDclass.com – “is the best notice that is practicable under the circumstances, and
7 constitutes, valid, due, and sufficient notice that complies with the requirements of Rule 23 of the
8 Federal Rules of Civil Procedure.” Dkt. 6311 at ¶ 11. As noted above, that notice program was
9 implemented as required by the Court’s Order. No objections have been raised with regard to the
10 adequacy of the notice program. Therefore, the Court should find the notice program related to the
11 Proposed Settlements satisfies the requirements of due process and Rule 23(e).

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

13 It is well established in the Ninth Circuit that “voluntary conciliation and settlement are the
14 preferred means of dispute resolution.” *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615,
15 625 (9th Cir. 1982); *accord Knight v. Red Door Salons, Inc.*, No. 08-01520 SC, 2009 U.S. Dist.
16 LEXIS 11149, at *8 (N.D. Cal. Feb. 2, 2009). “[T]here is an overriding public interest in settling
17 and quieting litigation” and this is “particularly true in class action suits.” *Van Bronkhorst v.*
18 *Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976). In evaluating a proposed class action settlement,
19 the Ninth Circuit has recognized that:

20 [T]he universally applied standard is whether the settlement is fundamentally
21 fair, adequate and reasonable. The district court's ultimate determination will
22 necessarily involve a balancing of several factors which may include, among
23 others, some or all of the following: the strength of plaintiffs' case; the risk,
24 expense, complexity, and likely duration of further litigation; the risk of
25 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.

26 *Officers for Justice*, 688 F.2d at 625 (citations omitted); *accord Torrasi v. Tucson Elec. Power Co.*,
27 8 F.3d 1370, 1375 (9th Cir. 1993).

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

14 **1. Arm’s-Length Negotiations**

15 Any settlement is entitled to “an initial presumption of fairness” where it is the result of
 16 arm’s-length negotiations among experienced counsel. *Newberg* § 11.41; *Hughes v. Microsoft*
 17 *Corp.*, No. C98-1646C, 2001 U.S. Dist. LEXIS 5976, at *20 (W.D. Wash. Mar. 26, 2001). The
 18 Proposed Settlements occurred after more than five years of litigation and with less than a month
 19 before trial of the IPP case was to begin. *See* Scarpulla Decl. ¶ 6. Six of the Settling States had
 20 nearly completed expert discovery when the Proposed Settlements were reached. *See* Schneider
 21 Decl. ¶ 3. The Settling Defendants were represented by the highest caliber counsel with years of
 22 experience and success in defending antitrust and class action claims. The IPPs and Settling States
 23 were represented by highly-experienced counsel who engaged in extensive discovery and trial
 24 preparation. Thus, there is no dispute that the settlements were reached by counsel with extensive
 25 knowledge of the strengths and weaknesses of the case. The parties engaged in multiple mediation
 26 sessions with three highly-respected mediators. All parties were prepared for trial when the parties
 27 reached these three settlements.

28 **2. Settlements in Relation To the IPPs’ and Settling States’ Cases**

1 The IPPs and the Settling States believe the \$543.5 million cash payment under the
2 Proposed Settlements for consumer redress represents the largest all-cash recovery for an indirect-
3 purchaser antitrust case. *See* Scarpulla Decl. ¶ 8. The payments under the Proposed Settlements,
4 combined with the payments under the previously-approved settlements, exceed \$1 billion and
5 represent approximately half of the potential single damages as estimated by the IPPs’ experts. *Id.*
6 This result is unprecedented and eclipses settlements approved in other price-fixing cases. *See,*
7 *e.g., In re Linerboard Antitrust Litig.*, 321 F. Supp. 2d 619, 627 (E.D. Pa. 2004); *Fisher Bros. v.*
8 *Mueller Brass Co.*, 630 F. Supp. 493, 499 (E.D. Pa. 1985).

9 The value of these settlements becomes even more striking when considered in the context
10 of the opinions of the defendants’ experts, including those retained by the Settling Defendants.
11 The defense experts filed reports and testified that it was their opinion that the IPPs and Settling
12 States suffered little or no damages as a result of the defendants’ alleged anticompetitive activity.
13 Throughout this litigation, the defendants have maintained that the alleged conspiracy was
14 ineffective and unsuccessful and the IPPs would be incapable of “linking” any agreed-upon price
15 increases for LCD Panels to increased prices of products containing such panels to end-user
16 purchases of class members. IPP counsel prevailed against efforts to decertify or modify the
17 classes based on this argument.

18 Additionally, the risks at trial (and on appeal) for the IPPs were significant, and add to the
19 reasonableness of the Proposed Settlements. The defendants mounted major attacks on the IPPs’
20 evidence that, while insufficient to prevail on summary judgment, presented real risks to obtaining
21 a jury verdict – including, for example, arguments regarding evidence of pass-through of damages
22 to the IPPs, ascertainability of price-fixed LCD Panels, and involvement in the conspiracy of the
23 Japanese defendants. *See, e.g.,* Dkt. 4107 (order denying Toshiba summary judgment motion re
24 Japanese defendant involvement in conspiracy). While the IPPs remain confident in the strength
25 of the evidence supporting their claims, a successful jury verdict remained a risky proposition.

26 Moreover, a jury award would then have to withstand appellate review. In this case, the
27 defendants raised substantial arguments against the Court’s class certification decision. *See* Dkt.
28 1805 (Ninth Circuit order denying petition for interlocutory review of class certification). These

1 Moreover, the IPPs were prepared to try this case to a jury. *See* Scarpulla Decl. In Support of
2 Preliminary Approval (Dkt. 6141, filed July 12, 2012) at ¶ 6.

3 4 5 **4. Opinion of Experienced Counsel**

6 IPP class counsel – who are experienced in antitrust and consumer class actions – have
7 determined that the Proposed Class Settlements are in the best interests of the class members. *See*
8 Scarpulla Decl. In Support of Preliminary Approval (Dkt. 6141, filed July 12, 2012) at ¶ 8.
9 Experienced plaintiffs’ counsel’s judgment that settlements are fair and reasonable is entitled to
10 great weight at the preliminary approval stage. *See Nat’l Rural Telecomm. Coop. v. DIRECTV,*
11 *Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) (“Great weight’ is accorded to the recommendation of
12 counsel, who are most closely acquainted with the facts of the underlying litigation.”).

13 The participation in the Proposed Settlements by the Settling States should also be a factor
14 in favor of granting final approval of Proposed Settlements. *See In re Lorazepam & Clorazepate*
15 *Antitrust Litig.*, 205 F.R.D. 369, 380 (D.D.C. 2002) (quoting *In re Toys “R” Us Antitrust Litig.*,
16 191 F.R.D. 347, 351 (E.D.N.Y. 2000) (“participation of the State Attorneys General furnishes
17 extra assurance that consumers’ interests are protected”); *see, e.g., Dunk v. Ford Motor Co.*, 48
18 Cal. App. 4th 1794, 1801 (Cal. App. 4th Dist. 1996).

19 **E. The Proposed Plan of Distribution Should Be Finally Approved**

20 The IPPs and the Settling States request that the Court grant final approval to the plan of
21 distribution. Distribution of settlement funds generally follows the following sequence: (1)
22 Notice; (2) Submission of proof of claim; (3) Claim verification; and (4) Actual distribution. 3
23 *Newberg on Class Actions*, § 10.12 (4th ed. 2002).

24 As part of the notice plan, the IPPs and the Settling States have provided class members
25 with a claim form, and informed them that qualifying claimants will be eligible to claim from the
26 available funds based on the number of LCD TVs, notebook computers, and monitors each class
27 member purchased during the class period. The notices also advise class members of other aspects
28 of the distribution plan and direct them to the website www.LCDclass.com for additional details.

1 At the hearing on final approval of the previous settlements, the Court addressed pro rata
2 distribution, concluding that it is the most appropriate means of providing compensation to class
3 members. *See* May 18, 2012 Hr’g Tr. at p. 43 ln. 7 – 11 (THE COURT: “... but the idea that it be
4 *pro rata*, seems to me, can be passed on at this time. And I approve that approach. How you
5 implement it is something we’re just going to have to work out.”).

6 **IV. CONCLUSION**

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

9
10 Dated: November 15, 2012

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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: November 15, 2012

/s/ Francis O. Scarpulla
Francis O. Scarpulla

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16 3240134v4