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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**

17 IN RE: TFT-LCD (FLAT PANEL)
18 ANTITRUST LITIGATION

Case No. 3:07-md-1827 SI
MDL No. 1827

19 **CLASS ACTION**

20 This Document Relates to:
21 ALL INDIRECT PURCHASER ACTIONS

**INDIRECT PURCHASER PLAINTIFFS’
NOTICE OF MOTION AND THIRD
MOTION FOR REIMBURSEMENT OF
EXPENSES**

Date: August 22, 2014
Time: 9:00 AM
Dept.: Courtroom 10, 19th Floor
Judge: The Hon. Susan Illston

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

NOTICE IS HEREBY GIVEN that on August 22, 2014 at 9:00 AM or as soon thereafter as the matter may be heard in the Courtroom of the Honorable Susan Illston, United States Judge for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California, the Indirect Purchaser Plaintiffs (“IPPs”) and their counsel (“Class Counsel”) will and hereby do move this Court for an entry of an Order awarding reimbursement of litigation expenses incurred by Class Counsel on behalf of class members.

This motion is based upon this Notice of Motion and Third Motion; the accompanying Memorandum of Points and Authorities in Support thereof; the Declaration of Jack W. Lee and exhibits thereto, filed herewith; the other records, pleadings, and papers filed in this action; and upon such other documentary and oral evidence or argument as may be presented to the Court at the hearing of this Motion.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Indirect Purchaser Plaintiffs (“IPPs”) and their counsel (“Class Counsel”) hereby submit their Third Motion for Reimbursement of Expenses in the amount of \$192,718.30.¹ Class Counsel seek reimbursement of out of pocket litigation expenses as follows:

<i>Description</i>	<i>Cost Incurred</i>
Special Master Fees	\$86,852.55
Experts and Consultants.....	54,193.00
Notice Program and Media Placement	20,000.00
Mediators.....	13,954.00
Deposition Transcripts	13,279.96
Hearing Transcripts.....	2,130.25
Document Reproduction	1,299.79
Translators.....	1,008.75
TOTAL.....	<u>\$192,718.30</u>

¹ This amount is in addition to the \$8,736,131.43 litigation cost reimbursement previously awarded by the Court on April 3, 2013. Dkt. # 7697.

1 All of the requested expenses were reasonable and necessary to the prosecution of this
2 matter, and all are verified by actual invoices and other supporting information. Class Counsel has
3 not previously requested reimbursement for any of these costs. Many of the types of expenses
4 included in this Motion have been approved by the Special Master and the Court in prior orders as
5 appropriate for reimbursement. As with Class Counsel's previous requests for reimbursement of
6 expenses, this request does not seek reimbursement for "soft" costs related to any individual law
7 firm's travel, meals, or lodging. All such soft costs have been absorbed by Class Counsel.

8 II. BACKGROUND

9 A. OVERVIEW OF THE LITIGATION

10 This Multidistrict Litigation arises from a price-fixing conspiracy by major manufacturers
11 of TFT-LCD ("LCD") panels from 1999 through 2006. Third Consolidated Amended Complaint,
12 Dkt. # 2694.

13 On January 26, 2012, the Court granted preliminary approval of the IPPs' settlements with
14 the Chi Mei, Chunghwa, Epson, HannStar, Hitachi, Samsung, and Sharp Defendants totaling
15 \$538.6 million. Dkt. # 4688. The Court granted final approval of these settlements on July 11,
16 2012. Dkt. # 6130.

17 Class Counsel and the States Attorneys General filed a Motion for Interim Reimbursement
18 of Expenses ("Motion for Interim Expenses") on March 14, 2012. Dkt. # 5158. In the Motion for
19 Interim Expenses, the IPPs sought reimbursement of \$7,509,134.53 in expenses incurred through
20 December 31, 2011. *Id.* On July 27, 2012, Liaison Counsel filed a Supplemental Declaration in
21 Support of the Motion for Interim Expenses that included copies of invoices and other supporting
22 documents, and revised the IPPs' request for reimbursement to \$7,506,816.54. Dkt. #6290.

23 On July 31, 2012, the Court granted preliminary approval to the IPPs' settlements with the
24 AUO, LG, and Toshiba Defendants totaling \$543.5 million. Dkt. # 6311.

25 On September 7, 2012, Class Counsel filed their Second Motion for Reimbursement of
26 Expenses ("Second Motion for Expenses"). Dkt. # 6664. In this Motion, Class Counsel sought
27 reimbursement of an additional \$1,234,314.89 in expenses incurred through September 7, 2012.

28

1 On February 13, 2013, the Special Master issued his Order Granting Indirect Purchaser
2 Plaintiffs' Motion for Interim Reimbursement of Expenses and Second Motion for Reimbursement
3 of Expenses. Dkt. # 7608. The Special Master recommended reimbursement of a total of
4 \$8,736,131.43 in IPP litigation costs. *Id.*

5 The Court granted final approval of the AUO, LG, and Toshiba settlements on March 29,
6 2013. Dkt. # 7685. On April 1, 2013, the Court issued an amended order granting final approval
7 of the AUO, LG, and Toshiba settlements. Dkt. # 7688. On April 3, 2013, the Court issued its
8 Second Amended Order granting final approval of these settlements (the "Final Approval Order").
9 Dkt. # 7697.

10 The Final Approval Order also awarded attorneys' fees, reimbursement of litigation
11 expenses, and class representative service awards for the Indirect Purchaser Plaintiff class
12 representatives. *Id.* The Court approved the Special Master's recommended reimbursement of
13 \$8,736,131.43 in litigation expenses incurred by IPP counsel. *Id.*

14 The settlement agreements with Defendants (the "Settlements Agreements") provide, in
15 pertinent part, that counsel for the IPPs may apply to the Court for the payment of costs.
16 Declaration of Francis O. Scarpulla in Support of Indirect-Purchaser Plaintiffs' and Settling States'
17 Joint Motion for Preliminary Approval of Combined Class, *Parens Patriae*, and Governmental
18 Entity Settlements ("Scarpulla Dec. I"), Dkt # 4424-1 (December 23, 2011), Exhs. A-G;
19 Declaration of Francis O. Scarpulla in Support of Motion for Preliminary Approval of Settlements
20 with AUO, LG Display, and Toshiba Defendants ("Scarpulla Dec. II"), Dkt # 6141-1 (July 12,
21 2012), Exhs. A-C.

22 III. ARGUMENT

23 A. PLAINTIFFS SEEK REIMBURSEMENT OF LITIGATION EXPENSES

24 Class Counsel may be reimbursed for reasonable and necessary litigation costs from a
25 common settlement fund established for the benefit of class members. Fed R. Civ. P. 23 (h) ("the
26 court may award reasonable attorneys' fees and nontaxable costs that are authorized by law or by
27 the parties' agreement"); Fed. R. Civ. P. 54 (d) (allowing costs to prevailing parties); *In re Media*
28 *Vision Tech. Sec. Litig.*, 913 F.Supp. 1362, 1366 (N.D. Cal. 1995). A common fund has been

1 created by the settlements that have been finally approved by the Court. Class Counsel should thus
2 be reimbursed for their expenses as set forth herein. The Settlement Agreements also provide that
3 reimbursement of litigation costs and expenses shall be paid to Class Counsel out of the settlement
4 funds, if approved by the Court. *See e.g.*, Scarpulla Dec. II, Exh. A (IPPs' Settlement Agreement
5 with the AUO Defendants), ¶ 32.

6 **B. THE REQUESTED REIMBURSEMENT OF EXPENSES IS REASONABLE**

7 The IPPs and Class Counsel now request reimbursement for expenses in the amount of
8 \$192,718.30, none of which have been previously requested. These expenses were reasonable and
9 necessary in this litigation and have been expended for the direct benefit of the IPP class. *See*
10 *Media Vision*, 913 F.Supp. at 1366. Copies of invoices and other supporting documents for these
11 expenses are attached as **Exhibits 1-9** to the Declaration of Jack W. Lee in Support of the Indirect
12 Purchaser Plaintiffs' Third Motion for Reimbursement of Expenses ("Lee Dec."), filed herewith.

13 The expenses sought by Class Counsel are of the type customarily approved by courts as
14 proper, reimbursable litigation expenses. *See Media Vision*, 913 F.Supp at 1366. Litigation costs
15 and expenses that are typically determined to be "reasonable," and therefore reimbursable, include:
16 "(1) witness fees; (2) expert or specialist fees; (3) special master; (4) transcripts of hearings and
17 depositions; (5) copying charges; (6) travel; (7) long-distance and conference telephone; (8)
18 postage; (9) delivery services; (10) computerized legal research; [and] (11) settlement
19 administration costs." A. Conte, *Attorney Fee Awards*, § 2.19 (3d ed., 2004). The litigation costs
20 and expenses for which Class Counsel seek reimbursement at this time are as follows:

21 1. Special Master Fees. In its August 29, 2012 Order, the Court appointed Martin
22 Quinn, Esq. of JAMS to prepare reports and issue recommendations on the subjects of
23 reimbursement of expenses and awards of attorneys' fees. Dkt. # 6580. Class Counsel have
24 incurred net total costs of \$86,852.55 for these services from September 7, 2012 to the present.
25 Lee Dec., ¶ 8, **Exh. 2**. These costs are reasonable and necessary to the litigation, and have been
26 incurred pursuant to the Court's Order. The Court and Special Master have also held in previous
27 orders and Reports & Recommendations that reimbursement for Special Master services is
28 appropriate. Dkt. #7221, #7608, #7697.

1 2. Experts and Consultants. Class Counsel seek reimbursement of \$54,193.00 in
 2 expert and consultant costs incurred from September 7, 2012 to the present. Lee Dec., ¶ 9, **Exh. 3.**
 3 Class Counsel retained Stanford Consulting Group to review and analyze investment guidelines
 4 and investment options for the IPP settlement fund. *Id.* Class Counsel retained Balancing Element
 5 Incorporated to review competing proposals from numerous financial institutions offering escrow
 6 agent services for the settlement funds in this matter. *Id.* Class Counsel also retained Evidentia
 7 Consulting to perform an independent audited accounting of the litigation cost fund for complete
 8 transparency of the fund. *Id.* These expert and consultant costs were necessary to ensure that the
 9 IPPs and Class Counsel (1) properly accounted for the funds that Class Counsel devoted to
 10 litigating this matter and (2) prudently invested the settlement funds as part of their duties to the
 11 IPP class. Expert expenses are also routinely billed to client, and it is thus appropriate for Class
 12 Counsel to recover these costs. *In re Omnivision Techs.*, 559 F.Supp.2d 1036, 1048-49 (N.D. Cal.
 13 2007).

14 3. Notice Program and Media Placement. Class Counsel incurred costs of \$20,000.00
 15 for media placement efforts provided by Halpin House West (“Halpin”). Lee Dec., ¶ 10, **Exh. 4.**
 16 The purpose of this effort was to increase media coverage of the settlements and participation in
 17 the claims process in this matter. Lee Dec., ¶ 10. These efforts were focused on the states in
 18 which indirect purchaser classes were certified, and the cities in which the Class Representatives
 19 resided. *Id.* Halpin devoted approximately 240 hours to this effort from approximately October
 20 30, 2012 through December 31, 2012. *Id.* During this period, Halpin contacted approximately 151
 21 media outlets. *Id.* Halpin’s media placement work included:

- 22 • Interviewing local Class Counsel and their individual Class Representative
- 23 clients to gather background information and detail regarding their contributions to the litigation;
- 24 • Drafting press releases and disseminating them to local media outlets;
- 25 • Arranging Class Counsel and Class Representative interviews with local
- 26 media outlets; and
- 27 • Providing media training and interview preparation for Class
- 28 Representatives. *Id.*

1 Halpin's efforts contributed to the strong response rate in this case. As ensuring notice to
2 potential class members is an important duty of Class Counsel and a critical aspect of a complete
3 notice program, the costs incurred for these media placement efforts are fair and reasonable.

4 4. Mediators. The IPPs incurred costs for highly experienced mediators who
5 successfully negotiated the Settlements, including Professor Eric D. Green and Hon. Daniel
6 Weinstein (Ret.). Lee Dec., ¶ 11, **Exh. 5**. Class Counsel request reimbursement of \$13,954.00 in
7 mediator costs at this time. Such mediation fees are normally billed to fee-paying clients, and thus
8 are recoverable. *See Frenz v. Quereshi*, 1999 U.S. Dist. LEXIS 4329 at *18-19 (D. Or. March 11,
9 1999); *see also Media Vision*, 913 F. Supp. at 1366. The Court and Special Master have also
10 previously held that mediator costs in this matter are reimbursable. Dkt. #7221, #7608, #7697.

11 While these mediator services were provided prior to submission of the Second Motion for
12 Expenses on September 7, 2012, they were not billed and/or paid until after September 7, 2012.
13 Lee Dec., ¶ 11. Thus, these expenses have not been included in any prior request for
14 reimbursement of expenses.

15 5. Deposition Transcripts. Class Counsel request reimbursement for \$13,279.96 in
16 deposition transcripts at this time. Lee Dec., ¶ 12, **Exh. 6**. \$12,907.71 of this amount was for
17 transcripts of the settlement objectors' depositions. *Id.* \$372.25 of this amount was for transcripts
18 of a class representative deposition that occurred in 2011, but for which no invoices were received
19 by Co-Lead and Liaison counsel until after September 7, 2012. *Id.*

20 As these deposition transcripts were necessarily obtained for use in the case, these costs are
21 reimbursable. *Media Vision*, 913 F.Supp. at 1371. The Court and Special Master have also held in
22 prior rulings that reimbursement for deposition transcript costs is appropriate. Dkt. #7221, #7608,
23 #7697.

24 6. Hearing Transcripts. Class Counsel have incurred net total costs of \$2,130.25 for
25 transcripts of Court proceedings before this Court and the Special Master since September 7, 2012.
26 Lee Dec., ¶ 13, **Exh. 7**. These costs are allowed by statute as taxable costs. *See* 28 U.S.C. §
27 1920(2). The Court and Special Master have also previously held that hearing transcript costs are
28 reimbursable. Dkt. #7221, #7608, #7697.

1 7. Document Reproduction. Class Counsel request reimbursement of \$1,299.79 for
2 document reproduction costs paid out of the litigation fund. Lee Dec., ¶ 14, **Exh. 8**. This request
3 is for payment to an outside vendor who provided copies of voluminous documents in preparation
4 for trial. *Id.* Utilization of this outside vendor was reasonable and necessary because of the
5 volume of documents involved. These costs are not normally absorbed as part of law firm
6 overhead and are also allowed by statute as taxable costs. *See* 28 U.S.C. § 1920(4). The Court and
7 Special Master have also held that reimbursement for document reproduction costs is appropriate.
8 Dkt. #7221, #7608, #7697.

9 This document reproduction service was provided prior to Class Counsel filing the Second
10 Motion for Expenses on September 7, 2012, but this invoice was not paid until after September 7,
11 2012. Lee Dec., ¶ 14. This expense was not included in any previous motion for reimbursement of
12 expenses. *Id.*

13 8. Professional Translators. The IPPs have incurred costs of \$1,008.75 for translator
14 costs since September 7, 2012. Lee Dec., ¶ 15, **Exh. 9**. The costs of such services are taxable by
15 statute. 28 U.S.C. § 1920(6). The Court and Special Master have also held in prior orders that
16 reimbursement for translator costs is appropriate in this matter. Dkt. #7221, #7608, #7697.

17 While these translation services were provided prior to Class Counsel filing the Second
18 Motion for Expenses on September 7, 2012, the invoices for these services were not received by
19 Liaison Counsel, and thus were not paid, until after September 7, 2012. Lee Dec., ¶ 15. These
20 costs were not included in any previous motions for reimbursement of costs. *Id.*

21 **C. THE IPP'S HAVE PROVIDED ADEQUATE NOTICE OF THIS REQUEST**
22 **FOR REIMBURSEMENT**

23 Federal Rule of Civil Procedure 23(h) requires Class Counsel to provide notice to the
24 parties and class members of this request for reimbursement of expenses. This Motion will be
25 made publicly available both through the Court's ECF system, and posted on the IPPs' settlement
26 website at <https://lcdclass.com>. Lee Dec., ¶ 16. Notice that Class Counsel would be applying for
27 reimbursement of expenses was also provided to all parties and class members through the
28 Settlement Agreements, which are publicly available on the website <https://lcdclass.com>. These

1 Agreements included provisions that Plaintiffs would move for reimbursement of litigation costs.
2 Scarpulla Dec. I, Exhs. A-G, Scarpulla Dec. II, Exhs. A-C. Specifically, these settlements state:
3 “Settling Class Counsel shall be awarded such fees and reimbursed such costs and expenses from
4 the Settlement Fund as are approved by the Court ...” *Id.*

5 **IV. CONCLUSION**

6 Based on the foregoing, the IPPs respectfully request that the Court grant Class Counsel’s
7 request for reimbursement of \$192,718.30 in litigation costs and expenses and order that the funds
8 be withdrawn from the Settlement fund and transferred to the Indirect Purchaser Plaintiffs’ LCD
9 Litigation Costs Fund.

10
11 Dated: July 11, 2014

MINAMI TAMAKI LLP

12 By: /s/ Jack W. Lee

13 Jack W. Lee

14 *Liaison Counsel for the Indirect Purchaser*
15 *Plaintiffs*