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

17 IN RE TFT-LCD (FLAT PANEL)) Case No. 3:07-MD-1827 SI
 18 ANTITRUST LITIGATION) MDL No. 1827

19 _____) **INDIRECT-PURCHASER PLAINTIFFS’**
 20 This Document Relates to:) **AND SETTLING STATES’ JOINT**
 21 Indirect-Purchaser Class Action;) **NOTICE OF MOTION AND MOTION**
 22 *State of Missouri, et al. v. AU Optronics*) **FOR PRELIMINARY APPROVAL OF**
 Corporation, et al., Case No. 10-cv-3619;) **COMBINED CLASS, PARENS PATRIAE,**
 23 *State of Florida v. AU Optronics Corporation,*) **AND GOVERNMENTAL ENTITY**
 et al., Case No. 10-cv-3517; and) **SETTLEMENTS WITH AUO, LG**
 24 *State of New York v. AU Optronics Corporation,*) **DISPLAY, AND TOSHIBA**
 et al., Case No. 11-cv-0711.) **DEFENDANTS; MEMORANDUM OF**
 25) **POINTS AND AUTHORITIES**
 26) Hearing Date: July 27, 2012*
 27) Time: 9:00 a.m.
) Courtroom: 10, 19th Floor
) The Honorable Susan Y. Illston
 28) **subject to concurrently-filed motion to*
) *advance hearing*

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, subject to the concurrently-filed motion to advance hearing, on July 27, 2012, at 9:00 a.m. or as soon thereafter as the matter may be heard, in the Courtroom of the Honorable Susan Y. Illston, United States District Judge for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California, the Indirect-Purchaser Plaintiffs will and hereby do move, under Rule 23 of the Federal Rules of Civil Procedure, for entry of an Order:

1. Granting preliminary approval to the combined class, *parens patriae*, and governmental entity settlements (“Proposed Settlements”) with the AUO, LG Display, and Toshiba Defendants;
2. Certifying settlement-only classes of: (a) Arkansas indirect purchasers; (b) Missouri and Rhode Island indirect purchasers who did not buy for personal, family, or household use; and (c) indirect purchasers in all previously-certified classes who are also direct purchasers and who did not exclude themselves from the direct-purchaser product class; and appointing the proposed representatives and counsel for these classes;
3. Granting preliminary approval to the proposed plan of distribution and proposed claim form;
4. Approving the proposed notice plan and forms of notice to inform class members of: (a) the Proposed Settlements, and the opportunity to object, or, with respect to members of the settlement-only classes, the opportunity to opt-out; and (b) the proposed plan of distribution;
5. Setting a schedule for final approval of the Proposed Settlements; and
6. Setting a schedule for any motions for an award of attorneys’ fees, litigation expenses, and incentive awards for the named plaintiffs.

1 Joining the motion are the Attorneys General of Arkansas, California, Florida, Michigan,
2 Missouri, New York, West Virginia, and Wisconsin.

3 The grounds for this motion are that the Proposed Settlements meet, and indeed exceed, the
4 preliminary approval standard of being within the range of reasonableness for final approval. Like
5 the previous seven settlements granted final approval by the Court, these three Proposed
6 Settlements are the result of extensive arm's-length negotiations conducted by experienced counsel.
7 The motion is based upon this Notice; the following Memorandum of Points and Authorities; the
8 accompanying Declarations of Francis O. Scarpulla, Anne Schneider, Adam Miller, Janet S. Netz,
9 and Katherine Kinsella; the arguments of counsel; and all records on file in this matter.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. INTRODUCTION**

12 The Indirect-Purchaser Plaintiffs ("IPPs") seek preliminary approval, under Rule 23 of the
13 Federal Rules of Civil Procedure, of class settlements with the AUO, LG Display, and Toshiba
14 Defendants (the "Proposed Settlements")¹ for a total of \$543.5 million. The States of Arkansas,
15 California, Florida, Michigan, Missouri, New York, West Virginia, and Wisconsin (the "Settling
16 States") join this motion.² If approved, these three Proposed Settlements – along with the seven
17 previously-approved settlements³ and the separate settlements of the Settling States' claims for civil
18 penalties⁴ – will fully conclude these actions and result in the defendants making total settlement
19

20 ¹ The Proposed Settlements are exhibits A to C to the accompanying declaration of Francis O.
21 Scarpulla. The AUO, LG Display, and Toshiba Defendants – as identified in each of the Proposed
22 Settlements, and inclusive of named related entities – are collectively referred to as the "Settling
23 Defendants."

24 ² Payments in the amount of \$27.5 million have been paid to the Settling States pursuant to
25 separate settlement agreements with AUO and LG Display, resolving the Settling States'
26 enforcement claims for assessments of civil penalties.

27 ³ The Court granted final approval to settlements with the Chimei, Chunghwa, Epson, HannStar,
28 Hitachi, Samsung, and Sharp Defendants on July 11, 2012 (Dkt. 6130).

⁴ The Settling States have entered separate settlements addressing their statutory claims for civil
penalties; in settlement of those claims, AUO, Chimei, Epson, LG Display, HannStar, Hitachi, and
Sharp have paid or will be paying \$42.2 million to the Settling States.

1 payments of \$1.124 billion. This will provide class members with a record-setting all-cash, non-
 2 reversionary recovery of \$1.082 billion, as summarized in the chart below.

3 Defendant	Class Settlement Amounts	Civil Penalty Amounts	Total Settlement Payments
<i>Three Currently-Proposed Settlements</i>			
5 AUO	\$ 161,500,000.	\$ 8,500,000.	\$ 170,000,000.
6 LG Display	\$ 361,000,000.	\$ 19,000,000.	\$ 380,000,000.
7 Toshiba	\$ 21,000,000.	n/a	\$ 21,000,000.
8 TOTALS OF THREE CURRENTLY-PROPOSED SETTLEMENTS	\$ 543,500,000.	\$ 27,500,000.	\$ 571,000,000.
<i>Seven Previously-Approved Settlements</i>			
10 Chimei	\$110,273,318.	\$ 5,737,948.	\$ 116,011,266.
11 Chunghwa	\$ 5,305,105.	n/a	\$ 5,305,105.
12 Epson	\$ 2,850,000.	\$ 150,000.	\$ 3,000,000.
13 HannStar	\$ 25,650,000.	\$ 1,350,000.	\$ 27,000,000.
14 Hitachi	\$ 38,977,224.	\$ 1,494,760.	\$ 40,471,984.
15 Samsung	\$ 240,000,000.	n/a	\$ 240,000,000.
16 Sharp	\$ 115,500,000.	\$ 6,000,000.	\$ 121,500,000.
17 TOTALS OF SEVEN PREVIOUSLY-APPROVED SETTLEMENTS	\$ 538,555,647.	\$ 14,732,708.	\$ 553,288,355.
18			
19 GRAND TOTALS OF ALL SETTLEMENTS	\$ 1,082,055,647.	\$ 42,232,708.	\$ 1,124,288,355.

20 The terms and conditions of the Proposed Settlements follow those contained in the
 21 settlements granted final approval by the Court on July 11, 2012 (Dkt. 6130). Thus, the Proposed
 22 Settlements call for the Settling Defendants that continue to manufacture LCD Panels (AUO and
 23 LG Display) to implement antitrust compliance programs, including agreements not to engage in
 24 conduct violative of the antitrust laws at issue in these actions, and instituting (or maintaining)
 25 educational programs for employees, and verifying such compliance for up to five years.

26 In exchange, the IPPs will provide the same scope of releases to the Settling Defendants as
 27 the releases contained in the previously-approved settlements. Specifically, the IPPs will release all
 28

1 claims for monetary relief against the Settling Defendants arising in any way from the sale of LCD
2 Panels contained in TVs, notebook computers, and monitors held by members of the statewide
3 monetary-relief classes. The IPPs will also release all LCD Panel-related claims for injunctive
4 relief held by members of the previously-certified nationwide federal Sherman Act injunctive relief
5 class.

6 As with the previously-approved settlements, the Proposed Settlements resolve the *parens*
7 *patriae* and/or governmental entity claims asserted against the Settling Defendants in the separate
8 lawsuits filed by the Settling States. The Settling States will receive an agreed-upon portion of the
9 total amount paid under the Proposed Settlements to settle the governmental entity claims,
10 according to a formula that is uniform across all of the previously-approved settlements as well as
11 the Proposed Settlements. The Settling States' portion for governmental entity claims will be less
12 than 5% of the class settlement payments under the Proposed Settlements after deduction of any
13 Court-approved fees, costs, and incentive awards. In exchange, the Settling States have agreed to
14 release the Settling Defendants – in the same fashion as the releases in the previously-approved
15 settlements – from all claims that arise in any way from the sale of LCD Panels contained in TVs,
16 notebook computers, and monitors in the Settling States' actions.

17 The IPPs and the Settling States propose to compensate members of the IPP classes and
18 residents of the Settling States according to the proposed plan of distribution under which
19 qualifying claimants are eligible to receive a distribution from the Settlement Fund based on the
20 number and type of LCD TVs, notebook computers, and monitors purchased, as documented in the
21 proposed claim form.

22 Notice to IPP class members and residents of the Settling States will be accomplished by a
23 comprehensive notice program – the components of which are the same as the notice program used
24 in connection with the previously-approved settlements – designed by Katherine Kinsella of
25 Kinsella Media LLC. The notice program directs interested persons to the website,
26 www.LCDclass.com, where they can find additional detailed information, documents, and further
27 assistance (via a toll-free telephone number with live operators available). The proposed notice
28

1 program is designed to provide the best notice practicable under the circumstances, and comports
2 with all requirements of due process and Rule 23.

3 For these reasons, the IPPs and the Settling States submit that they have met all of the
4 requirements for preliminary approval, and respectfully request that the Court enter an order: (i)
5 granting preliminary approval to the Proposed Settlements; (ii) certifying the settlement-only
6 classes; (iii) preliminarily approving the proposed plan of distribution and proposed claim form;
7 (iv) authorizing the notice program as complying with due process and Rule 23; (v) setting a
8 schedule for a final approval hearing; and (vi) establishing a schedule for hearing any motions for
9 an award of attorneys' fees, litigation expenses, and incentive awards for the named plaintiffs.

10 **II. BACKGROUND**

11 **A. Overview of the Case**

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

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

21 The Court granted the IPPs' motion for class certification in March 2010. Dkt. 1642 (order
22 certifying 23 statewide monetary-relief classes and a nationwide injunctive-relief class). In July
23 2011, the Court certified a Missouri monetary-relief class. Dkt. 3198. On January 26, 2012, the
24 Court granted preliminary approval to settlements totaling \$538.6 million with the Chimei,
25 Chunghwa, Epson, HannStar, Hitachi, Samsung, and Sharp Defendants. Dkt. 4688. On the same
26 day, the Court also prospectively modified the class definitions in advance of the trial against the
27 then-remaining defendants. *See* Dkt. 4684 (order altering statewide classes to exclude overlapping
28

1 members of the direct-purchaser class action, and redefining Missouri and Rhode Island statewide
2 classes to exclude purchases not made for personal, family, or household use). To preserve
3 uniformity with the previously-approved settlements, the Proposed Settlements cover the persons
4 and entities that were excluded by operation of the January 26, 2012 order prospectively modifying
5 the classes against AUO, LG Display, and Toshiba, resulting in the proposed settlement-only
6 classes described below.

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

9 In connection with the previously-approved settlements, the IPPs have summarized key
10 events in the past five years of this multi-district litigation, including the significant global
11 discovery efforts, and the class and dispositive motion practice before this Court and the Ninth
12 Circuit. *See* Dkt. 4424 (motion for preliminary approval of previous settlements); Dkt. 5600
13 (motion for final approval of previous settlements).

14 The Proposed Settlements were negotiated in the weeks leading up to the trial date of May
15 21, 2012. The IPPs were prepared for a trial absent these settlements, and completed all of the
16 necessary pre-trial filings, in coordination with the Direct-Purchaser Class Plaintiffs. In addition,
17 the IPPs completed the remaining discovery of AUO's fact and expert witnesses, which had been
18 postponed due to the AUO criminal proceedings. The IPPs also completed the remaining discovery
19 of Toshiba witnesses which had been postponed until the time for the government to issue an
20 indictment had passed. *See* Scarpulla Decl. at ¶¶ 6 – 7.

21 **2. Settling States' Actions**

22 After lengthy pre-complaint investigations, the Settling States filed complaints in various
23 federal and state courts beginning in mid-2010. The actions assert claims and seek various forms
24 of relief against the defendants arising from indirect purchases made by governmental entities,
25 and/or by consumers of TVs, notebook computers, and monitors containing LCD Panels under each
26 Settling State's *parens patriae* authority, proprietary claims, and enforcement authority pursuant to
27 both federal and state law. The Settling States have previously summarized some of the key events
28

1 of their investigation and litigation, including motion practice and discovery work that preceded the
2 previously-approved settlements. *See* Dkt. 4424 (motion for preliminary approval of previous
3 settlements); Dkt. 5600 (motion for final approval of previous settlements). Since the filing of
4 those earlier settlements, six of the Settling States completed their own expert report and engaged
5 in expert discovery, completed depositions of eight of defendants' expert witnesses and were
6 preparing a rebuttal report. The Settling States were also conducting the remaining discovery of
7 AUO's fact and expert witnesses, which had been postponed due to the AUO criminal proceedings,
8 and the remaining discovery of Toshiba's witnesses. The Proposed Settlements were negotiated
9 over the past three months. Schneider Decl. ¶ 5.

10 **B. Settlement Discussions**

11 The Proposed Settlements were difficult to attain; the negotiations were hard-fought and at
12 times contentious. Each Proposed Settlement was reached only following arm's-length
13 negotiations among counsel for the Settling Defendant, the IPPs, and the Settling States. The
14 parties were assisted by the Honorable Daniel Weinstein (Ret.), Professor Eric Green, and by the
15 Honorable Vaughn R. Walker (Ret.), former Chief Judge of the Northern District of California.

16 **1. AUO**

17 After initial mediation efforts failed to produce a settlement, and with both of the two
18 original mediators otherwise engaged and unavailable for a second round of meetings, counsel for
19 the IPPs, the Settling States, and AUO, with the help of Judge Walker, reached an agreement in
20 principle on April 23, 2012. Thereafter, the parties continued to negotiate the details of the
21 settlement, and the AUO Proposed Settlement was executed on June 20, 2012. Scarpulla Decl. Ex.
22 A.

23 **2. Toshiba**

24 The IPPs and Settling States also attempted to reach an agreement with Toshiba utilizing the
25 services of Judge Weinstein and Professor Green during multiple sessions. Although progress was
26 made, these efforts were unsuccessful. Counsel for the IPPs, the Settling States, and Toshiba
27 reached an agreement in principle following additional negotiations on April 24, 2012. Thereafter,
28

1 the parties continued to negotiate the details of the settlement, until the Toshiba Proposed
2 Settlement was executed on June 20, 2012. Scarpulla Decl. Ex. C.

3 **3. LG Display**

4 Despite many attempts, both with the assistance of the two Court-appointed mediators and
5 with counsel alone, the parties were unable to reach an agreement. In one last-ditch effort to
6 resolve this case before trial, and with the assistance of Judge Walker, counsel for the IPPs, the
7 Settling States, and LG Display reached an agreement in principle on April 26, 2012. Thereafter,
8 the parties continued to negotiate the details of the settlement, until the LG Display Proposed
9 Settlement was executed on July 12, 2012. Scarpulla Decl. Ex. B.

10 **C. Key Terms of the Proposed Settlements**

11 The Proposed Settlements follow the terms and conditions contained in the previously-
12 approved settlements. Thus, while the payment amounts and cooperation provisions differ as
13 compared to the previously-approved settlements, the releases in the Proposed Settlement mirror
14 the releases in the previously-approved settlements, and all other material terms are the same.

15 **1. Consideration**

16 **a. Cash**

17 Under the Proposed Settlements and the Settling States' separate settlements relating to
18 their civil penalties claims, the Settling Defendants will pay a total of \$571 million, of which \$27.5
19 million is payable to the Settling States in resolution of their civil penalties claims. The remaining
20 \$543.5 million represents consumer redress. A portion of this Settlement Fund will be allocated to
21 the Settling States to resolve their proprietary governmental entity redress claims against the
22 Settling Defendants, according to a formula contained in the Proposed Settlements. First, all Court-
23 approved attorneys' fees, expenses, and incentive awards will be deducted. Then, an amount equal
24 to the eight Settling States' pro rata share (as compared to the gross domestic product of the states
25 with monetary-relief classes) is applied to 7% of the remaining amount, and is allocated to the
26 Settling States for redress of their governmental entity claims.⁵ This amount will be less than 5%

27 ⁵ See Scarpulla Decl., Ex. A (AUO Proposed Settlement), ¶ 30(e); Ex. B (LG Display Proposed
28

1 of the remaining Settlement Fund. More than 95% of the remaining Settlement Fund will go to
 2 non-governmental consumers who comprise the members of the IPP statewide monetary relief
 3 classes and *parens patriae* groups.

4 **b. Antitrust Injunction and Compliance**

5 AUO and LG Display agree, for a period of up to five years,⁶ not to engage in price fixing,
 6 market allocation, bid rigging, or other conduct that violates Section 1 of the Sherman Act, with
 7 respect to the sale of any LCD Panels, or TVs, notebook computers, or monitors containing LCD
 8 Panels, that are likely, through the reasonably anticipated stream of commerce, to be sold to end-
 9 user purchasers in the United States. The IPPs and the Settling States will ask the Court to enter an
 10 order to this effect.

11 Additionally, each Settling Defendant agrees to establish (or if applicable, maintain) an
 12 antitrust compliance program for the officers and employees responsible for the pricing or
 13 production capacity of LCD Panels. Each Settling Defendant shall certify, through an annual
 14 written report for the next five years (three years for Toshiba), that they are in compliance with this
 15 obligation.

16 **c. Cooperation by AUO and LG Display**

17 The AUO and LG Display Proposed Settlements contain cooperation provisions that
 18 become operable in the event that one or more of the Proposed Settlements is not approved by the
 19 Court. Accordingly, if the IPPs or the Settling States go to trial against one or more of the Settling
 20 Defendants due to the Court's rejection of a Proposed Settlement, then those Settling Defendants
 21 for whom the Court has approved a Proposed Settlement with a cooperation provision are obligated
 22 to provide cooperation to the IPPs and the Settling States, including authentication of documents,
 23 producing witnesses for interviews, depositions, and/or trial, and providing other assistance.⁷

24 Settlement), ¶ 32(e); Ex. C (Toshiba Proposed Settlement), ¶ 18(e).

25 ⁶ See Scarpulla Decl., Ex. A (AUO Proposed Settlement) at ¶ 43, Scarpulla Decl., Ex. B (LG
 26 Display Proposed Settlement) at ¶ 45.

27 ⁷ See Scarpulla Decl., Ex. A (AUO Proposed Settlement), ¶ 44; Ex. B (LG Display Proposed
 28 Settlement), ¶ 46.

1 **2. Release**

2 **a. Indirect-Purchaser Plaintiffs' Release**

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

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

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 course
 18 of business unrelated to the conduct alleged in the action, held by the Settling States.⁹

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

20 The IPPs and the Settling States propose to compensate members of the IPP monetary-relief
 21 classes according to a plan of distribution, which provides that qualifying claimants will be eligible
 22 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
 25

26 ⁸ See Scarpulla Decl., Ex. A (AUO Proposed Settlement), ¶ 24; Ex. B (LG Display Proposed
 Settlement), ¶ 24; Ex. C (Toshiba Proposed Settlement), ¶ 12.

27 ⁹ *Id.*

1 All IPP monetary-relief class members who seek payment from the Settlement Fund will be
2 required to complete a claim form containing: (i) the class member's contact information; (ii)
3 verification of membership in the statewide classes; (iii) quantification of the number of each LCD
4 TV, notebook computer, and monitor purchased during the class period; and (iv) an attestation
5 under penalty of perjury that the information provided is accurate. The proposed claim form is
6 attached as Exhibit D to the Declaration of Francis O. Scarpulla.

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

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 would 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 minimum
21 payment amount of \$25. A hypothetical claimant whose straight pro-rata distribution amount
22 would have been *greater* than \$25 will continue to receive a larger amount based on an adjusted
23 pro-rata distribution (“adjusted” to compensate for the effect of the minimum payment amount).
24 The minimum payment amount of \$25 represents the IPPs’ and Settling States’ reasonable estimate

25
26 ¹⁰ As explained in the attached declaration of IPP economic expert Janet S. Netz, Ph.D., it is
27 appropriate to give greater weight to LCD TVs than to notebook computers and monitors because
28 of the larger size (and therefore greater cost), on average, of LCD Panels used in TVs than in other
applications. *See* Netz Decl. at § II.

1 at this time; the actual amount cannot be determined until the claims have been processed. The
2 Court's approval for the minimum payment will be requested when the data from the actual claim
3 experience is available.

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

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

14 **E. Attorneys' Fees & Costs and Class Representative Incentive Awards**

15 The Proposed Settlements provide that counsel for the IPPs and the Settling States may
16 apply to the Court for an award of attorneys' fees (not to exceed one-third of the Settlement Fund),
17 and for payment of costs and litigation expenses, both of which come out of the Settlement Fund.
18 The Settling Defendants will not oppose such an application.¹¹

19 The Proposed Notices (attached as Exhibits 2 and 3 to the declaration of Katherine Kinsella)
20 advise that the IPPs and the Settling States intend to apply for attorneys' fees and costs (not to
21 exceed one-third of the Settlement Fund), which applications shall be heard at the final approval
22 hearing. Additionally, the Proposed Notices advise that the IPPs intend to apply for individual
23 incentive awards for the IPP class representatives, who fully participated in the discovery and trial
24 preparation phases of the case. These applications will be filed with the Court and posted to the
25 website www.LCDclass.com at least 30 days in advance of the deadline for objections in order to

26 _____
27 ¹¹ See Scarpulla Decl., Ex. A (AUO Proposed Settlement), ¶ 33; Ex. B (LG Display Proposed
28 Settlement), ¶ 35; Ex. C (Toshiba Proposed Settlement), ¶ 21.

1 permit class members to review the applications and to have an opportunity to either support or to
2 file objections to any fee request.

3 **F. Notice**

4 As explained in the attached declaration of Katherine Kinsella of Kinsella Media LLC, the
5 IPPs and the Settling States propose to disseminate notice advising of the Proposed Settlements,
6 and the dates associated with objection and final approval. Kinsella Media, a highly-experienced
7 class action notice administrator, has formulated a notice plan that satisfies due process standards
8 and represents the best notice practicable under the circumstances, consistent with Rule 23. *See*
9 Kinsella Decl. ¶ 23. The components of the notice plan are the same as the notice plan used in
10 connection with the previously-approved settlements, which the Court found satisfied due process
11 and Rule 23 requirements. *See* Dkt. 4688; Kinsella Decl. at ¶ 5. Notice to the class members will
12 be provided via print media, broadcast media, online media, and other media (including, *e.g.*, by
13 text message). *See* Kinsella Decl. ¶¶ 5 – 19.

14 Included with the Kinsella declaration is the proposed “short-form” notice (Kinsella Decl.
15 Ex. 3) to be placed in publications, as well as the “long-form” notice (Kinsella Decl. Ex. 2) that will
16 be available on the website www.LCDclass.com and by mail. The notices explain that class
17 members must submit a claim form in order to receive compensation. (The proposed claim form is
18 attached as Exhibit D to the Declaration of Francis O. Scarpulla.) The notices also explain that all
19 class members have the right to object to the Proposed Settlements, and that members of the
20 settlement-only classes have the right to exclude themselves. All other IPP class members were
21 previously provided an opportunity to exclude themselves in connection with the notice of the
22 previously-approved settlements, and no additional opportunity for exclusion is necessary.

23 **III. ARGUMENT**

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

25 There is a “strong judicial policy that favors settlements, particularly where complex class
26 action litigation is concerned.” *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008);
27 *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976) (“It hardly seems necessary to
28

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) (affirming
6 certification of a nationwide indirect-purchaser settlement class), *cert. denied sub nom. Murray v.*
7 *Sullivan*, 132 S. Ct. 1876 (2012).

8 **B. The Proposed Settlements Should Be Granted Preliminary Approval**
9 **Under Rule 23**

10 The Court has previously certified IPP classes that are subject to the Proposed Settlements,
11 and also appointed class representatives and class counsel. *See* Dkt. 1642 (order certifying 23
12 statewide monetary-relief classes and a nationwide injunctive-relief class); Dkt. 3198 (order
13 certifying Missouri monetary-relief class). In doing so, the Court found all elements of Rule 23(a),
14 (b)(2), and (b)(3) to be satisfied, though in the settlement context “manageability” is not an issue.
15 *See Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 625 (1997); *Sullivan*, 667 F.3d at 303. Thus,
16 with respect to these classes, there is no need to make additional certification findings or
17 appointments for purposes of granting preliminary approval.

18 The IPPs also propose certification of three settlement-only classes that are consistent with
19 the Court’s previous class certification rulings, and which make the terms of the Proposed
20 Settlements uniform with the terms of the seven previously-approved settlements. As was done in
21 connection with the motion for preliminary approval of the previously-approved settlements, the
22 IPPs, with the State of Arkansas’ consent and approval, propose an Arkansas statewide settlement-
23 only class.

24 The IPPs also propose certification of settlement-only classes consisting of Missouri and
25 Rhode Island indirect purchasers who did not buy for personal, family, or household use, and a
26 class of indirect purchasers in all previously-certified classes who are also direct purchasers and did
27 not exclude themselves from the direct-purchaser class. These settlement-only classes restore
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1 narrow groups of purchasers who were excluded prospectively from the IPP classes by operation of
2 the Court's January 26, 2012 order prospectively modifying the class definitions (Dkt. 4684) in
3 advance of the trial against the then-remaining defendants, and thus preserve uniformity with the
4 terms of the previously-approved settlements (which cover these purchasers). The IPPs
5 respectfully request that the Court grant certification of these settlement-only classes by reference
6 to its previous class certification orders which included these purchasers. Alternatively, the Court
7 may exercise its broad discretion under Rule 23 to modify the January 26, 2012 order amending the
8 class definitions so as to achieve the same effect of including these former IPP class members.

9 **1. Procedure and Standards for Approval of Class Settlements**

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

20 Preliminary approval requires a court simply to find that the proposed settlement fits
21 “within the *range* of possible approval” and should be given further consideration. *Gautreaux v.*
22 *Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982) (emphasis added). Preliminary approval of a
23 proposed class action settlement is appropriate “if the preliminary evaluation of the proposed
24 settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as
25 unduly preferential treatment of class representatives or of segments of the class, or excessive
26 compensation for attorneys and appears to fall within the range of possible approval.” *In re*
27 *Vitamins Antitrust Litig.*, No. 99-197 (TFH), 2001 U.S. Dist. LEXIS 25071, at *30 (D.D.C. July 25,
28

1 2001); *see also In re Nasdaq Market Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997).
2 Preliminary approval is intended to “ascertain whether there is any reason to notify class members
3 of the proposed settlement and to proceed with a fairness hearing.” *Pierce*, 690 F.2d at 621; *see*
4 *also Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1988). In contrast, the purpose of the
5 final approval fairness hearing is to determine whether the settlement is fair, reasonable and
6 adequate after notice has been given to the class.

7 The approval of a proposed settlement of a class action is a matter of discretion for the trial
8 court. *Churchill Village, L.L.C. v. GE*, 361 F.3d 566, 575 (9th Cir. 2004). It is well established,
9 however, that in exercising that discretion, the Court should recognize that as a matter of sound
10 policy, settlements of disputed claims are encouraged and a settlement approval hearing should
11 “not be turned into a trial or rehearsal for trial on the merits.” *Officers for Justice v. Civil Serv.*
12 *Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982), *cert. denied sub nom. Byrd v. Civil Serv. Comm’n*, 459
13 U.S. 1217 (1983). Furthermore, courts must give “proper deference” to the settlement agreement,
14 because “the court’s intrusion upon what is otherwise a private consensual agreement negotiated
15 between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned
16 judgment that the agreement is not the product of fraud or overreaching by, or collusion between,
17 the negotiating parties, and the settlement, taken as a whole, is fair, reasonable and adequate to all
18 concerned.” *Hanlon*, 150 F.3d at 1027 (quotations omitted).

19 To grant preliminary approval of the Proposed Settlements, the Court need only find that
20 the settlements fall within “the range of reasonableness.” *Newberg* § 11.25. The Manual for
21 Complex Litigation (Fourth) § 21.632 (2004) (“*Manual*”) characterizes the preliminary approval
22 stage as an “initial evaluation” of the fairness of the proposed settlement made by the court on the
23 basis of written submissions and informal presentation from the settling parties. *Manual* § 21.632.

24 The *Manual* summarizes the preliminary approval criteria as follows:

25 Fairness calls for a comparative analysis of the treatment of the
26 class members *vis-à-vis* each other and *vis-à-vis* similar
27 individuals with similar claims who are not in the class.
28 Reasonableness depends on an analysis of the class allegations
and claims and the responsiveness of the settlement to those
claims. Adequacy of the settlement involves a comparison of the

1 relief granted to what class members might have obtained without
2 using the class action process.

3 *Manual* § 21.62.

4 A proposed settlement may be finally approved by the trial court if it is determined to be
5 “fundamentally fair, adequate, and reasonable.” *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268,
6 1276 (9th Cir. 1992). While consideration of the requirements for final approval is unnecessary at
7 this stage, all of the relevant factors weigh in favor of the Proposed Settlements. As shown below,
8 the Proposed Settlements are fair, reasonable and adequate. Therefore, the Court should grant
9 preliminary approval of the Proposed Settlements and authorize dissemination of notice.

10 **2. The Proposed Settlements Are Within the Range of Reasonableness and
the Product of Arm’s-Length Negotiations**

11 All of the relevant factors heavily favor approval of the Proposed Settlements. In assessing
12 whether a proposed settlement meets the standard for preliminary approval, the courts have
13 identified the primary factors that should be considered: (1) whether the settlement is a result of
14 arm’s-length negotiations; (2) the terms of the settlement in relation to the strength of plaintiff’s
15 case; (3) whether sufficient discovery had been conducted at the time of settlement to evaluate the
16 case; and (4) the opinion of experienced counsel. *In re Mid-Atlantic Toyota Antitrust Litig.*, 564 F.
17 Supp. 1379, 1383-1384 (D. Md. 1983); *see also In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454,
18 458 (9th Cir. 2000). Each of these factors weighs in favor of granting preliminary approval.

19 **a. Arm’s-Length Negotiations**

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

6 **b. Settlements in Relation To the IPPs' Case**

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

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

24 Additionally, the risks at trial (and on appeal) for the IPPs were significant, and add to the
25 reasonableness of the Proposed Settlements. The defendants mounted major attacks on the IPPs'
26 evidence that, while insufficient to prevail on summary judgment, presented real risks to obtaining
27 a jury verdict – including, for example, arguments regarding evidence of pass-through of damages
28

1 to the IPPs, ascertainability of price-fixed LCD Panels, and involvement in the conspiracy of the
2 Japanese defendants. *See, e.g.*, Dkt. 4107 (order denying Toshiba summary judgment motion re
3 Japanese defendant involvement in conspiracy). While the IPPs remain confident in the strength of
4 the evidence supporting their claims, a successful jury verdict remained a risky proposition.

5 Moreover, a jury award would then have to withstand appellate review. In this case, the
6 defendants raised substantial arguments against the Court's class certification decision. *See* Dkt.
7 1805 (Ninth Circuit order denying petition for interlocutory review of class certification). These
8 arguments were rejected on an interlocutory basis by the Ninth Circuit, but that rejection provides
9 no assurance that the arguments would have likewise been rejected in a traditional end-of-case
10 review. Class certification jurisprudence, in particular, has received heightened scrutiny from
11 appellate courts in the wake of the Supreme Court's decision in *Wal-Mart Stores Inc. v. Dukes*, 131
12 S. Ct. 2541 (2011), and the Supreme Court has recently granted certiorari in the closely-watched
13 antitrust case *Comcast Corp. v. Behrend*, __ S. Ct. __, 2012 WL 113090 (June 25, 2012).

14 Still another area of significant potential appellate risk comes from the rapidly-changing
15 landscape of the Foreign Trade Antitrust Improvements Act ("FTAIA"), a statute which the
16 defendants unsuccessfully asserted in this Court as the basis for a dispositive motion. *See* Dkt.
17 3833 (order denying defendants' FTAIA motion). The FTAIA has recently been the subject of two
18 major appellate decisions from the Third and Seventh Circuits which announced new
19 interpretations of the FTAIA's jurisdictional effect, and provided new glosses on the statute's
20 abstruse text. *See Animal Sci. Prods. Inc. v. China Minmetals Corp.*, 654 F.3d 462 (3rd Cir. 2011);
21 *Minn-Chem Inc. v. Agrium Inc.*, __F.3d__, 2012 WL 2403531 (7th Cir. June 27, 2012). These
22 developments heighten the uncertainty surrounding any appellate review of a district court's
23 FTAIA analysis, no matter how careful or well-supported it may be. In sum, the all-cash recovery
24 of approximately half of the estimated single damages in an indirect-purchaser antitrust class action
25 is not only unprecedented, but an extraordinary result that avoids the meaningful risk in this case at
26 trial and on appeal.

1 **c. Sufficiency of Discovery**

2 The stage of the proceedings at which the Proposed Settlements were reached also favors
3 preliminary approval. The IPPs and Settling States negotiated these settlements after extensive pre-
4 filing investigation, full discovery, and, as to the IPPs, the filing of oppositions to defense motions
5 for summary judgment, decertification, and other rigorous and time-consuming motions. Tens of
6 millions of pages of the defendants' documents were reviewed, over 110 depositions were taken,
7 and the parties conducted extensive economic analysis. *See* Scarpulla Decl. ¶ 7; *see also* Schneider
8 Decl. ¶ 3. The IPPs and Settling States were able to negotiate the Proposed Settlements with
9 detailed knowledge of the factual and legal issues underlying the claims and defenses in the action,
10 and the strengths and weaknesses of the actions. Moreover, the IPPs were prepared to try this case
11 to a jury. *See* Scarpulla Decl. ¶ 6.

12 **d. Opinion of Experienced Counsel**

13 IPP class counsel – who are experienced in antitrust and consumer class actions – have
14 determined that the Proposed Class Settlements are in the best interests of the class members. *See*
15 Scarpulla Decl. ¶ 8. Experienced plaintiffs' counsel's judgment that settlements are fair and
16 reasonable is entitled to great weight at the preliminary approval stage. *See Nat'l Rural Telecomm.*
17 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) (“‘Great weight’ is accorded to the
18 recommendation of counsel, who are most closely acquainted with the facts of the underlying
19 litigation.”). The participation in the Proposed Settlements by the Settling States should also be a
20 factor in favor of the Court's approval of the Proposed Settlements. *See In re Lorazepam &*
21 *Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 380 (D.D.C. 2002) (quoting *In re Toys “R” Us*
22 *Antitrust Litig.*, 191 F.R.D. 347, 351 (E.D.N.Y. 2000) (“participation of the State Attorneys
23 General furnishes extra assurance that consumers' interests are protected”); *see, e.g., Dunk v. Ford*
24 *Motor Co.*, 48 Cal. App. 4th 1794, 1801 (Cal. App. 4th Dist. 1996).

25 **C. The Settlement-Only Classes Should Be Certified**

26 For purposes of maintaining uniformity with the terms of the previously-approved
27 settlements and distribution of the settlement proceeds, the IPPs seek certification of three
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1 settlement-only classes. First, the IPPs, with the State of Arkansas' consent and approval, seek
2 certification of a settlement-only class of Arkansas indirect purchasers, defined in an identical
3 manner to the previously-certified 24 statewide IPP monetary relief classes. The Court previously
4 certified an Arkansas settlement-only class in connection with final approval of the previous
5 settlements. *See* Dkt. 6130. The Arkansas settlement-only class here is defined as:

6 All persons and entities in Arkansas who, from January 1, 1999 to
7 December 31, 2006, as residents of Arkansas, purchased TFT-LCD
8 Panels incorporated in televisions, monitors, and/or laptop computers
9 in Arkansas indirectly from one or more of the named Defendants or
10 Quanta Display, Inc., for their own use and not for resale.
11 Specifically excluded from the Class are defendants; the officers,
12 directors, or employees of any defendant; the parent companies and
13 subsidiaries of any defendant; the legal representatives and heirs or
14 assigns of any defendant; and the named affiliates and co-
15 conspirators. Also excluded are any federal, state or local
16 governmental entities, any judicial officer presiding over this action
17 and the members of his/her immediate family and judicial staff, and
18 any juror assigned to this Action.

19 Second, the IPPs seek certification of a settlement-only class of entities in Missouri and
20 Rhode Island whose purchases were not for personal, family, or household use. The class is
21 defined as:

22 All persons and entities in Missouri or Rhode Island who, from
23 January 1, 1999 to December 31, 2006, as residents of Missouri or
24 Rhode Island, respectively, purchased TFT-LCD Panels incorporated
25 in televisions, monitors, and/or laptop computers in Missouri or
26 Rhode Island, respectively, indirectly from one or more of the named
27 Defendants or Quanta Display, Inc., primarily for business use (and
28 not for personal, family, or household use) and not for resale.
Specifically excluded from the Class are defendants; the officers,
directors, or employees of any defendant; the parent companies and
subsidiaries of any defendant; the legal representatives and heirs or
assigns of any defendant; and the named affiliates and co-
conspirators. Also excluded are any federal, state or local
governmental entities, any judicial officer presiding over this action
and the members of his/her immediate family and judicial staff, and
any juror assigned to this Action.

29 Third, the IPPs seek certification of a settlement-only class of entities whose purchases
30 brought them within the definition of the direct-purchaser product class, and who did not opt-out.
31 The class is defined as:

32 All persons and entities in Arizona, Arkansas, California, District of
33 Columbia, Florida, Hawaii, Iowa, Kansas, Maine, Massachusetts,

1 Michigan, Minnesota, Mississippi, Missouri, Nevada, New Mexico,
2 New York, North Carolina, North Dakota, Rhode Island, South
3 Dakota, Tennessee, Vermont, West Virginia, or Wisconsin who, from
4 January 1, 1999 to December 31, 2006, as residents of the respective
5 state, purchased TFT-LCD Panels incorporated in televisions,
6 monitors, and/or laptop computers in the respective state, indirectly
7 from one or more of the named Defendants or Quanta Display, Inc.,
8 for their own use and not for resale, and whose purchases bring them
9 within the definition of the certified direct purchaser product class in
10 this Multidistrict Litigation No. 1827 and who did not opt-out of that
11 class. Specifically excluded from the Class are defendants; the
12 officers, directors, or employees of any defendant; the parent
13 companies and subsidiaries of any defendant; the legal
14 representatives and heirs or assigns of any defendant; and the named
15 affiliates and co-conspirators. Also excluded are any federal, state or
16 local governmental entities, any judicial officer presiding over this
17 action and the members of his/her immediate family and judicial
18 staff, and any juror assigned to this Action.

19 The Court enjoys broad flexibility under Rule 23(c)(1)(C) to alter or amend a class
20 certification order before final judgment. “Even after a certification order is entered, the judge
21 remains free to modify it in the light of subsequent developments in the litigation.” *Gen. Tel. Co.*
22 *of the Southwest v. Falcon*, 457 U.S. 147, 160 (1982); *see also Armstrong v. Davis*, 275 F.3d 849,
23 871 n.28 (9th Cir. 2001) (Rule 23 “provides district courts with broad discretion to determine
24 whether a class should be certified, and to revisit that certification throughout the legal proceedings
25 before the court.”). Orders amending a previous class certification need address only those aspects
26 of the class certification decision to be modified, in recognition of the flexibility and discretion
27 committed to the district court under Rule 23(c)(1)(C). *See In re Pharm. Indus. Avg. Wholesale*
28 *Price Litig.*, 588 F.3d 24, 39 (1st Cir. 2009) (“The depth of explanation courts should provide in
amended certification orders depends on the circumstances. Courts can amend certification orders
to reflect major changes or minor adjustments to the class.”).

Certification of the settlement-only classes here may be accomplished by reference to
previous orders of the Court. Specifically, the Court previously certified an identical Arkansas
settlement class in granting final approval to the previous settlements. Dkt. 6130. The remaining
settlement classes are comprised solely of entities that were included in the certified IPP classes
until the Court issued its January 26, 2012 order amending certain class definitions. *See* Dkt. 4684.

1 Thus, the Court's class certification analysis contained in its March 28, 2010 (Dkt. 1642) and July
2 28, 2011 (Dkt. 3198) orders provide a complete Rule 23 analysis. Accordingly, the IPPs
3 respectfully request that the Court conditionally certify the proposed settlement-only classes, and
4 appoint class representatives¹² and class counsel as specified in the proposed order. Alternatively,
5 the Court may exercise its broad discretion under Rule 23 to modify the January 26, 2012 order
6 amending the class definitions so as to achieve the same effect of including these former IPP class
7 members.

8 **D. The Proposed Plan of Distribution Should Be Preliminarily Approved**

9 The IPPs and the Settling States further request that the Court preliminarily approve the
10 plan of distribution and proposed claim form. Distribution of settlement funds generally follows
11 the following sequence: (1) Notice; (2) Submission of proof of claim; (3) Claim verification; and
12 (4) Actual distribution. 3 *Newberg on Class Actions*, § 10.12 (4th ed. 2002).

13 As part of the notice plan outlined above, the IPPs and the Settling States propose to
14 provide class members with a claim form and to inform them that qualifying claimants will be
15 eligible to claim from the available funds based on the number of LCD TVs, notebook computers,
16 and monitors each class member purchased during the class period. The notices also advise class
17 members of other aspects of the distribution plan and direct them to the website
18 www.LCDclass.com for additional details.

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

24
25
26 ¹² The IPPs propose that Robert Harmon be named class representative for the Arkansas
27 settlement class, as was done in connection with the previously-approved settlements. The IPPs
28 propose that the existing litigation class representatives be named as the class representatives for
the other settlement classes.

1 **E. The Plan and Forms Of Notice Should Be Approved Under Rule 23**

2 The Court has previously found the manner of notice to comply with the requirements of
3 Rule 23. Dkt. 4688. Under Rule 23(e)(1), “[t]he court must direct notice in a reasonable manner to
4 all class members who would be bound by a proposed settlement, voluntary dismissal, or
5 compromise.” Notice of a proposed settlement must inform class members of the following: (1)
6 the nature of the pending litigation; (2) the general terms of the proposed settlement; (3) that
7 complete information is available from the court files; and (4) that any class member may appear
8 and be heard at the fairness hearing. *See Newberg*, § 8.32. The notice must also disclose to the
9 class members that they have an opportunity to opt-out, that the judgment will bind all class
10 members who do not opt-out, and that any member who does not opt-out may appear through
11 counsel. Fed. R. Civ. P. 23(c)(2)(B).

12 The form of notice is “adequate if it may be understood by the average class member.”
13 *Newberg* § 11.53. Notice to the class must be “the best notice practicable under the circumstances,
14 including individual notice to all members who can be identified through reasonable effort.”
15 *Amchem Prods.*, 521 U.S. at 617. Publication notice is an acceptable method of providing notice
16 where the identity of specific class members is not reasonably available. *See In re Tableware*
17 *Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007) (citing *Manual* § 21.311).

18 As they have done previously, the IPPs and the Settling States propose disseminating a
19 summary notice, to be published in print media, broadcast media, online media, and other media
20 throughout the United States, along with a detailed website accessible to class members. This is
21 similar to procedures approved in numerous class actions, and fulfills all the requirements of
22 Federal Rule of Civil Procedure 23 and due process. *See, e.g., Torrasi v. Tucson Elec. Power Co.*, 8
23 F.3d 1370, 1374-75 (9th Cir. 1993); *In re AOL Time Warner ERISA Litig.*, No. 02 Civ. 8853 SWK,
24 2006 U.S. Dist. LEXIS 70474, at *30-31 (S.D.N.Y. Sept. 27, 2006).

1 **F. The Court Should Preliminarily Approve the Proposed Settlements Under the**
2 **Arkansas and California *Parens Patriae* Statutes**

3 Arkansas and California law specifically require court approval of any settlement of those
4 States' *parens patriae* claims, as well as the notification efforts made to affected residents of those
5 States. See Ark. Code Ann. § 4-75-315 (c)(3) (“any consent decree. . . must be approved by the . .
6 . federal district court”); Cal. Bus. & Prof. Code § 16760(c) (an “action. . . shall not be dismissed or
7 compromised without the approval of the court”). Because Arkansas is a plaintiff in the MDL
8 action, the Arkansas Attorney General needs the Court’s approval of the *parens patriae* settlement
9 under Ark. Code Ann. § 4-75-315 (c)(3). However, that provision contains no “fairness” or other
10 standard, and there are no cases interpreting the statute. Therefore, it is reasonable to presume that
11 a settlement that meets the standard under Rule 23 also deserves approval under Arkansas law.

12 In contrast to Arkansas and the other Settling States, California, along with specified
13 California government entities, are plaintiffs only in Case No. CGC-10-504651, pending in San
14 Francisco Superior Court (the “California State Court Action”). But this Court has ancillary
15 jurisdiction over California’s participation in the Proposed Settlements under “two separate, though
16 sometimes related, purposes: (1) to permit disposition by a single court of claims that are, in
17 varying respects and degrees, factually interdependent [citations omitted] and (2) to enable a court
18 to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its
19 decrees [citations omitted].” See *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 379-80
20 (1994). Here, although California has maintained an independent action in state court, its *parens*
21 *patriae* and government claims are factually interdependent with the claims at issue in the MDL,
22 and it has consented to the Court’s jurisdiction solely for the purpose of effectuating the Proposed
23 Settlements.

24 Under Cal. Bus. & Prof. Code § 16760(b)(1), the California Attorney General is required to
25 provide notice of her *parens patriae* action by publication, subject to direction by the Court. On
26 February 3, 2012, San Francisco Superior Court Judge Richard A. Kramer issued an order holding
27 that the notice plan described in the previously-approved settlements complied with the Cartwright
28

1 Act, *i.e.*, Cal. Bus. & Prof. Code § 16760. *See* Miller Decl. ¶ 2. Regarding the Proposed
 2 Settlements, the California Attorney General and the AUO, LG Display, and Toshiba Defendants
 3 believe that no additional *parens patriae* notice or opportunity to exclude pursuant to Cal. Bus. &
 4 Prof. Code § 16760(b) is necessary, but they will comply with any direction from Judge Kramer in
 5 this regard. *See, e.g.*, Scarpulla Decl. Ex. A (AUO Proposed Settlement) at ¶ 21(d). In any event,
 6 the plan and form of notice contemplated for the Proposed Settlements here will provide additional
 7 notice of, *inter alia*, the California Attorney General’s *parens patriae* action. *See* § III.G, below.

8 In addition, under Cal. Bus. & Prof. Code § 16760(c), the superior court is also authorized
 9 to approve any dismissal or compromise of the California State Court Action. It is the intention of
 10 the California Attorney General, following final approval of all of the settlements in this Court, to
 11 obtain approval of all the settlements from Judge Kramer. This may include, if necessary,
 12 requesting that Judge Kramer contact this Court in order to discuss and implement any joint
 13 coordination orders necessary to effectuate the Proposed Settlements as well as the previously-
 14 approved settlements. *See* Miller Decl. ¶ 3.

15 **G. The Plan and Forms of Notice Satisfy Any *Parens Patriae* Notice**
 16 **Requirements**

17 The laws of the settling states of Florida, Michigan, Missouri and New York¹³ do not
 18 contain formal notice requirements for those states’ *parens patriae* claims. The Arkansas and
 19 California statutes, in contrast, require that the attorneys general in those states give notice of their
 20 statutory *parens patriae* claims, (and any settlement of those claims) by publication, unless
 21 otherwise directed by the court. Ark. Code Ann. § 4-75-315 (b)(2); Cal. Bus.& Prof. Code §
 22 16760(b)(1). Both codes also provide that their states’ consumers may exclude themselves from
 23 the case by filing an election with the court. Ark. Code Ann. § 4-75-315 (b)(3)(A); Cal. Bus. &
 24 Prof. Code § 16760(b)(2). This is because “the final judgment in the action shall be *res judicata* as
 25 to any claim. . .” Ark. Code Ann. § 4-75-315 (b)(3)(B); Cal. Bus. & Prof. Code § 16760(b)(3).
 26

27 ¹³ The Settling States of West Virginia and Wisconsin do not assert *parens patriae* claims.
 28

1 While the Arkansas and California *parens patriae* statutes are not the same as Rule 23, to
 2 the extent any additional *parens patriae* notices is required, the independent notice requirements
 3 are satisfied in this case, for purposes of approving the Proposed Settlements, by the IPPs’
 4 proposed notice plan under Rule 23. Compare Fed. R. Civ. P. Rule 23 (c)(2)(B), with Ark. Code
 5 Ann. § 4-75-315 (b)(2)-(3), and Cal. Bus. & Prof. Code § 16760(b).; see *Washington v. Chimei*
 6 *Innolux Corp.*, 659 F. 3d 842, 850 n.4 (9th Cir. 2011) (California’s *parens patriae* statute does not
 7 contain Rule 23 class action requirements, such as typicality and adequacy of representation
 8 requirements, but does “contain other procedural requirements such as notice to the affected
 9 citizens, opt-out provisions, and court approval for any settlements”). In particular, the Arkansas
 10 and California Attorneys Generals’ obligations to give notice of their *parens patriae* actions are
 11 satisfied if the court-approved notice is given by publication and otherwise comports with due
 12 process. Ark. Code Ann. §§ 4-75 315 (b)(2), 4-75-315 (c)(4); Cal. Bus. & Prof. Code §
 13 16760(b)(1). To the extent any additional court’s approval is required, as discussed above, the
 14 parties in the California State Court Action that are participating in the Proposed Settlements intend
 15 to request that Judge Kramer contact this Court to discuss and implement any joint coordination
 16 orders necessary to effectuate the Proposed Settlements.

17 **H. The Schedule for Final Approval Should Be Adopted**

18 The last step in the settlement approval process is the final approval hearing. The proposed
 19 order concurrently filed with this motion sets forth proposed deadlines for disseminating notice,
 20 exclusions, objections, filing of an application for attorneys’ fees and costs, and sets a date for the
 21 final approval hearing:

- 22 • Dissemination of notice: within 30 days of order granting preliminary approval
- 23 • Last day to file fee and cost applications: 30 days before deadline to object to
 24 settlements
- 25 • Last day to file objections or requests for exclusion: 60 days after dissemination of
 26 notice begins
- 27 • Fairness hearing: approximately 90 days after dissemination of notice begins

1 These deadlines comply with all requirements of Rule 23, the Class Action Fairness Act (28 U.S.C.
2 § 1332(c) *et seq.*), applicable state laws, and relevant case law (including, *inter alia*, *In re Mercury*
3 *Interactive Sec. Litig.*, 618 F.3d 988, 995 (9th Cir. 2010) (regarding adequacy of time to review
4 application for attorneys' fees before final approval hearing)).

5 **IV. CONCLUSION**

6 For the foregoing reasons, the IPPs and the Settling States respectfully request that the
7 Court grant preliminary approval to the Proposed Settlements.

8
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ATTESTATION

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

Dated: July 12, 2012

/s/ Francis O. Scarpulla

Francis O. Scarpulla

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