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12
13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**

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

MDL No. 1827

CLASS ACTION

**INDIRECT PURCHASER PLAINTIFFS'
AND STATES ATTORNEYS GENERAL'S
JOINT NOTICE OF MOTION AND
MOTION FOR INTERIM
REIMBURSEMENT OF EXPENSES**

18
19 This Document Relates to:

20 ALL INDIRECT PURCHASER ACTIONS

21 *State of Missouri, et al. v. AU Optronics*
Corporation, et al.,
22 Case No. 10-cv-03619 SI; and

23 *State of Florida v. AU Optronics*
Corporation, et al.,
24 Case No. 10-cv-3517 SI.

25 *State of New York v. AU Optronics*
Corporation, et al.,
26 Case No. 11-cv-0711.

Date: May 18, 2012
Time: 9:00 a.m.
Dept.: Courtroom 10, 19th Floor
Judge: The Hon. Susan Illston

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

NOTICE IS HEREBY GIVEN that on May 18, 2012 at 9:00 a.m., or as soon thereafter as the matter may be heard in the Courtroom of the Honorable Susan Illston, United States Judge for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California; Indirect Purchaser Plaintiffs and the States of Arkansas, Florida, Michigan, Missouri, New York, West Virginia and Wisconsin, joined by the State of California, (the “Settling States”) (collectively, the “Plaintiffs”) will and hereby do move this Court for an entry of an Order awarding interim reimbursement of litigation expenses in the amount of \$7,509,134.53 and \$794,343.58, respectively, incurred through the end of December 2011 by Class Counsel on behalf of class members and by the States Attorneys General in the above-referenced actions.

This motion is based upon this Notice of Motion and Motion; the accompanying Memorandum of Points and Authorities in Support thereof; the Declarations of Jack W. Lee and Anne E. Schneider; the 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.

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MEMORANDUM OF POINTS AND AUTHORITES

I. INTRODUCTION

The Indirect Purchaser Plaintiffs (“IPPs”) and their counsel (“Class Counsel”), and the Settling States through their counsel, respectfully submit this Memorandum in Support of their Motion for Interim Reimbursement of Expenses. The IPPs and Class Counsel and the Settling States have achieved settlements totaling \$538,555,647 (the “Settlements”) with seven defendants, Chi Mei, Chunghwa, Epson, Hannstar, Hitachi, Samsung, and Sharp (collectively, the “Settling Defendants”). This Court preliminarily approved the Settlements on January 26, 2012. The nationwide Notice Program approved by the Court in its January 26, 2012 Order is currently underway. A Fairness Hearing on the Settlements is set for May 18, 2012 – the same date that this Motion has been noticed to be heard. April 13, 2012 is the last day for class members to opt-out or file objections to the Settlements.

Class Counsel seek interim reimbursement of \$7,509,134.53 for litigation costs and expenses incurred through December 2011. This requested reimbursement reflects actual and necessary out-of-pocket litigation expenses that Class Counsel have incurred as follows:

IPP COSTS

Description	Cost Incurred
Experts / Consultants	\$5,535,230.56
Electronic Document Database	\$1,083,623.39
Mediators’ Fees	\$248,781.32
Discovery Special Master Fees	\$47,084.60
Deposition Transcripts	\$500,827.73
Court Reporters / Transcripts	\$5,060.95
Translators / Interpreters	\$88,525.98
TOTAL	\$7,509,134.53

The Settling States seek interim reimbursement of litigation costs and expenses incurred through December 2011 in the amount of \$794,343.58. This requested reimbursement reflects actual and necessary out-of-pocket litigation expenses that the Settling States have incurred through December 2011 for expert economists and consultants, court reporters, and deposition and hearing transcripts as follows:

STATE COSTS

Description	Costs Incurred
Experts / Consultants	\$ 759,572.76
Deposition and Hearing Transcripts	\$ 34,770.82
TOTAL	\$ 794,343.58

These types of expenses are all routinely approved by courts as litigation expenses. All the requested expenses were reasonable and necessary to the prosecution of this complex multidistrict litigation.

Class Counsel have dedicated their time and resources and, as a group, have borne all expenses related to litigating this case on behalf of the IPPs for the last five years with no guarantee of repayment of any of their expenses (or attorneys' fees). Likewise, the Settling States have dedicated significant public resources to the investigation and litigation of these actions since late 2008 without certainty of recovery or reimbursement. An interim reimbursement of expenses is proper in these circumstances.

Plaintiffs do not seek an award of attorneys' fees at this time. Plaintiffs also do not seek reimbursement for certain other significant categories of litigation costs at this time, including court costs and filing fees, travel, meals, lodging, service of process, photocopies, postage and couriers, bank fees, computer research, and witness fees. Plaintiffs will request reimbursement of these additional litigation costs and an award of attorneys' fees at a later date.

II. BACKGROUND

A. Overview of the Litigation

This multidistrict litigation arises from a price-fixing conspiracy by major manufacturers of TFT-LCD ("LCD") panels from at least 1999 through 2006. Third Consolidated Amended Complaint, Dkt. # 2694; *see* Dkt. # 2652, 2693 and 4763 for current versions of the States' complaints) The Plaintiffs allege that the Defendants fixed prices and restrained competition relating to panels contained in televisions, notebooks computers, and monitors. *Id.* Based on their purchases of these products, the IPPs assert class claims for injunctive relief pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26, for Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, and damages or restitution under relevant state antitrust, consumer protection and unjust

1 enrichment laws. *Id.* The Settling States seek to enforce federal and state laws, and specifically
2 have asserted claims for 1) injunctive relief pursuant to Section 16 of the Clayton Act, 15 U.S.C. §
3 26, for Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C. § 1 and corresponding
4 state laws, 2) civil penalties for violations of state laws, and 3) damages or restitution under relevant
5 state antitrust and/or consumer protection laws, in addition to the recovery of costs of their
6 investigation and prosecution, as provided by federal and state law. *Id.* The State of California's
7 action, filed in California state court, makes similar allegations and claims. *People of the State of*
8 *California v. AU Optronics, et al.*, Cal. Supr. Ct., County of San Francisco Case No. CGC-10-
9 504651. On March 28, 2010, the Court certified a nationwide injunctive class of indirect purchasers
10 who purchased TFT-LCD panels contained in televisions, laptops and/or monitors, and twenty-three
11 statewide indirect purchaser classes. *See* Dkt. # 1642. On June 14, 2010, the Ninth Circuit denied
12 defendants' petitions for permission to appeal that decision pursuant to Fed. R. Civ. P. 23(f). *See*
13 Order, Nos. 10-80087 and 10-80089 (9th Cir. June 14, 2010) (denying petitions by defendants LG
14 and Samsung for permission to appeal) (Dkt # 17 and 29).

15 After the close of merits discovery in May 2011, Defendants filed numerous unsuccessful
16 motions to wholly defeat or substantially limit Plaintiffs' claims. The Court denied Defendants'
17 dispositive motion under the Foreign Trade Antitrust Improvements Act in October 2011 (Dkt. #
18 3833), and declined to certify the ruling for immediate appellate review in December 2011 (Dkt. #
19 4346). The Court denied Defendants' *Daubert* motion on February 21, 2012. Dkt # 4848. The
20 Court has also denied summary judgment motions filed by Defendants. *See, e.g.*, Dkt. # 4301
21 (denying summary judgment motion based on "AGC" standing); # 4123 (denying summary
22 judgment motion based on "sole-sourced" LCD panels); # 4107 (denying Toshiba's summary
23 judgment motion).

24 The Settling States began their respective investigations in 2008 and 2009, using their
25 statutory pre-litigation subpoena authority to gather and review documents and make other inquiries
26 into the conduct underlying the complaints that were subsequently filed. In August, 2010, six of the
27 Settling States filed actions under federal and state law in this Court and were transferred to the
28 MDL. New York filed a similar action in this Court in March, 2011. The State of California filed a

1 separate action in California state court but has joined the mediation efforts that lead to the
2 settlements for which approval is now sought. Schneider Dec., ¶ 4.

3 Plaintiffs and their counsel continue to pursue all claims against the non-settling Defendants
4 - LG Display, AU Optronics and Toshiba. The IPPs' trial date is set for April 23, 2012. Pretrial
5 Preparation Order (Dkt # 4106). The majority of the Settling States are on the "Track One"
6 schedule for the Direct Action Plaintiffs, meaning that they are presently conducting expert
7 discovery and are scheduled to begin trial in November, 2012.

8 **B. Costs and Expenses Incurred**

9 The IPPs have advanced and incurred well over \$8 million in litigation expenses and costs.
10 Declaration of Jack W. Lee in Support of Indirect Purchaser Plaintiffs' Motion for Interim
11 Reimbursement of Expenses ("Lee Dec."), ¶ 2. Class Counsel request reimbursement for a portion
12 of these expenses, specifically those associated with expert economists and consultants, the
13 electronic document database, depositions and court reporters, mediators, the Special Masters, and
14 translators and interpreters. These costs and expenses are detailed further *infra* at Section III(B).

15 The Settling States investigated and prosecuted their respective actions for more than three
16 years without recovery of costs (with the exception of a pre-litigation settlement of certain claims
17 against Chunghwa Picture Tubes, Inc.). As of this time the Settling States have incurred and
18 advanced more than \$1,000,000.00 in litigation expenses and costs. *See* Declaration of Anne E.
19 Schneider in Support of the Settling States' Motion for Interim Reimbursement of Expenses
20 ("Schneider Dec."), ¶ 13. At this time, the Settling States request reimbursement for a portion of
21 these expenses, specifically those associated with expert economists and consultants, and
22 depositions and court reporters. These costs and expenses are detailed further below.

23 Although Plaintiffs have also incurred additional out-of-pocket expenses that are commonly
24 associated with complex class action litigation, such as court costs and filing fees, service of
25 process, photocopies, postage and couriers, bank fees, computer research, witness fees, travel,
26 meals, and lodging, they do not request reimbursement for these expenses as this time. Lee Dec., ¶
27 4; Schneider Dec., ¶ 13.

28 ///

1 **C. Litigation Cost Fund**

2 Class Counsel have collected regular monetary contributions from certain law firms
3 representing the Class and placed these funds in a “Litigation Cost Fund.” Lee Dec., ¶ 2. Most
4 litigation costs and expenses incurred by the IPPs have been paid out of this Litigation Cost Fund.
5 *Id.* Individual law firms have also paid for certain litigation costs and expenses separately. *Id.*

6 **D. Summary of Proposed Settlements**

7 As set forth in further detail in the Indirect-Purchaser Plaintiffs’ and Settling States’ Joint
8 Notice of Motion and Motion for Preliminary Approval of Combined Class, *Parens Patriae*, and
9 Governmental Entity Settlement (the “Preliminary Approval Motion”), the IPPs have entered into
10 settlement agreements (the “Proposed Settlements”) with seven defendant groups for \$538,555,647.
11 Dkt. # 4424. This Court preliminarily approved these Settlements on January 26, 2012. Dkt. # 4688.

12 The Settlements Agreements provide, in pertinent part, that counsel for the IPPs and the
13 Settling States may apply to the Court for the payment of costs. Declaration of Francis O. Scarpulla
14 in Support of Indirect-Purchaser Plaintiffs’ and Settling States’ Joint Motion for Preliminary
15 Approval of Combined Class, *Parens Patriae*, and Governmental Entity Settlements, Dkt # 4424-1
16 (Dec. 23, 2011), Exhs. A-G. No objections have been received to the Proposed Settlements to date.
17 Lee Dec., ¶ 13.

18 **E. Class Notice**

19 As detailed in the Preliminary Approval Motion, the IPPs and the Settling States have
20 implemented a Notice Program to inform members of the IPP class and consumers who are the
21 subject of the Settling States’ *Parens Patriae* claims of the Settlements, the dates for any objections,
22 and the final approval date. Dkt # 4424. The class notice states explicitly that “Class Counsel and
23 the Attorneys General will ask the Court for ... reimbursement of their costs and expenses.” Dkt #
24 4688, Exh. A. Pursuant to the Court’s Order granting preliminary approval of the settlements, Class
25 Counsel and the Settling States published notice to the class on February 13, 2012. Lee Dec., ¶ 13.

26 **III. ARGUMENT**

27 **A. Plaintiffs are Entitled to Interim Reimbursement of Litigation Expenses**

28 It is well-established that plaintiffs’ class action counsel may be reimbursed for reasonable

1 and necessary litigation costs from a common settlement fund established for the benefit of class
2 members. Fed R. Civ. P. 23(h) (“the court may award reasonable attorneys’ fees and nontaxable
3 costs that are authorized by law or by the parties’ agreement”); Fed. R. Civ. P. 54(d) (allowing costs
4 to prevailing parties); *In re Media Vision Tech. Sec. Litig.*, 913 F.Supp. 1362, 1366 (N.D. Cal.
5 1995). The States are also entitled to recovery of their expenses and fees. 15 U.S.C. § 15c(a)(2)
6 provides that “the court shall award the State ... the cost of suit, including a reasonable attorney’s
7 fee.” Here, the Settlements before the Court for final approval would create a common fund for the
8 benefit of the Class. If those Settlements are approved, Class Counsel should be reimbursed for the
9 expenses set forth herein. Similarly, so should the Settling States be reimbursed. *E.g.*, *In re*
10 *Cardizem Antitrust Litigation*, 218 F.R.D. 508 (E.D. Mich. 2003); *In re Toys “R” Us Antitrust*
11 *Litigation*, 191 F.R.D. 347 (2000 ED NY).

12 Courts regularly grant interim reimbursement of expenses out of funds from partial
13 settlements. In *In re Static Random Access Memory (SRAM) Antitrust Litig.*, Judge Wilken granted
14 full reimbursement of all expenses “reasonably and necessarily incurred” from a settlement fund
15 created by partial settlements. Order Granting Interim Reimbursement of Expenses, No. 07-md-
16 01819 CW (N.D. Cal., July 9, 2010) (Docket No. 1035). Class Counsel’s request for interim
17 reimbursement of expenses is thus appropriate at this time.

18 **B. The Requested Reimbursement of Expenses is Reasonable**

19 Plaintiffs respectfully request reimbursement of litigation costs and expenses incurred in
20 prosecuting this matter through December 31, 2011 in the amounts of \$7,509,134.53 to Class
21 Counsel and \$794,343.58 to the Settling States. These costs and expenses were reasonable and
22 necessary in this litigation, and have been expended for the direct benefit of class members in this
23 action and for the consumers for whom *parens patriae* claims were asserted and all governmental
24 entity purchasers for which the States asserted claims for monetary redress, *See Media Vision*, 913
25 F.Supp. at 1366.

26 i) Class Counsel. The expenses sought by Plaintiffs are of the type customarily approved by
27 courts as proper, reimbursable litigation expenses. *See Media Vision*, 913 F.Supp at 1366. Litigation
28 costs and expenses that are typically determined to be “reasonable,” and therefore reimbursable,

1 include: “(1) witness fees; (2) expert or specialist fees; (3) special master; (4) transcripts of hearings
2 and depositions; (5) copying charges; (6) travel; (7) long-distance and conference telephone; (8)
3 postage; (9) delivery services; (10) computerized legal research; [and] (11) settlement administration
4 costs.” Conte, *Attorney Fee Awards*, § 2:19 (3d ed. 2004). The litigation costs and expenses for
5 which Class Counsel seek reimbursement at this time are as follows:

6 1. Experts/Consultants. Expert expenses account for the majority of the interim
7 reimbursement sought by Class Counsel. Class Counsel have incurred expert costs of \$5,535,230.56
8 through December 2011. Lee Dec., ¶ 6, Exh. A. In complex litigation such as this, courts do “not
9 doubt the necessity for counsel to retain expert assistance...” See *Media Vision*, 913 F.Supp. at
10 1366-67.

11 Class Counsel retained Janet Netz, Ph.D. of AppEcon and William Comanor, Ph.D. of
12 Economic Associates, to analyze 1) the global TFT-LCD market, 2) the alleged TFT-LCD price-
13 fixing conspiracy that is the subject of this litigation, 3) the impact of the price-fixing conspiracy on
14 U.S. consumers, and 4) damages to the IPP Class. Lee Dec., ¶ 6. Dr. Netz and Dr. Comanor
15 performed extensive work in connection with class certification proceedings, preparation of merits
16 reports on liability and damages, expert discovery, and trial preparation. *Id.* Dr. Netz and her staff
17 spent more than 30,000 hours on this case and have charged \$4,654,834.10 for their work. *Id.* Dr.
18 Comanor and his staff have devoted over 1,500 hours to this matter and charged Class Counsel in
19 the amount of \$601,898.24. *Id.* Dr. Netz and Dr. Comanor submitted their expert reports on May
20 25, 2011 and their reply reports on August 22, 2011. *Id.* They have also sat for multiple depositions
21 in this matter. *Id.*

22 Class Counsel have incurred substantial costs in working with other expert economists and
23 consultants to analyze 1) the characteristics of the TFT-LCD industry and the conspiracy, 2) whether
24 the conspiracy had an economic impact on prices of TFT-LCD panels, 2) the pass through of
25 overcharges by direct purchasers to the IPP class, and 3) whether formulaic methods existed to
26 determine the amount of these overcharges, and the rate at which they were passed through to the
27 IPP class. Lee Dec., ¶ 7.

28 The costs incurred by Class Counsel in consulting with these experts is recoverable because

1 their work has been crucial to the prosecution of this action, including certifying the Class,
2 determining overcharge, impact, and pass-through, and calculating damages to the Class. *See Media*
3 *Vision*, 913 F.Supp. at 1366. Expert expenses are routinely billed to clients, and it is thus
4 appropriate for Class Counsel to recover these costs. *In re Omnivision Techs*, 559 F.Supp. 2d 1036,
5 1048-49 (N.D. Cal. 2007).

6 2. Electronic Document Database. Defendants have produced in discovery more than 7.8
7 million documents, totaling more than 40 million pages. Lee Dec., ¶ 10. Plaintiffs loaded these
8 documents into a shared web-based electronic document management system for review and
9 analysis. *Id.* This document management system allowed Class Counsel to review, analyze, and
10 code these documents for use at depositions, in numerous motions, and in preparation for trial. *Id.*
11 Class Counsel were able to do this work from their respective offices because they had access to the
12 database. *Id.* Class Counsel have incurred costs of \$1,083,623.39 in creating, maintaining, and
13 servicing the electronic document database. *Id.* In light of the voluminous discovery produced in
14 this litigation, this database was necessary to effectively prosecute this matter. *See In re Bextra &*
15 *Celebrix Mktg. Sales Practices & Prod. Litig.*, 2006 U.S. Dist. LEXIS 10902 at *55 (N.D. Cal. Feb.
16 27, 2006).

17 3. Mediation / Private Discovery Dispute Resolution. Class Counsel have been required to
18 pay for the services of a private Special Master for discovery disputes. Lee Dec., ¶ 11. In its
19 Pretrial Order No. 4, this Court appointed the Hon. Fern Smith as the private discovery master. Dkt.
20 # 244 (July 27, 2007). Judge Smith served in this role until April 2010. Dkt. # 1679 (April 12,
21 2010). On April 12, 2010, the Court appointed Mr. Martin Quinn, Esq. as the Special Master. *Id.*
22 Class Counsel have paid a total of \$47,084.60 in Special Master fees through December 2011. Lee
23 Dec., ¶ 11.

24 The parties have also incurred significant costs for several highly qualified mediators who
25 successfully negotiated the Proposed Settlements in this matter. Lee Dec., ¶ 12. These mediators
26 include Professor Eric D. Green, the Hon. Daniel Weinstein (Ret.), and Jonathan B. Marks, Esq. *Id.*
27 The mediators have conducted more than 15 mediation sessions, as well as numerous calls and
28 conference calls with the parties. *Id.* Class Counsel have paid a total of \$248,781.32 in mediator

1 costs through December 2011. *Id.* The costs incurred for these mediators were reasonable and
2 necessary in this lengthy and hard-fought case. Additionally, such mediation fees are normally
3 billed to fee-paying clients, and thus are recoverable. *See Frenz v. Quereshi*, 1999 WL 37584 at *6
4 (D. Or. March 11, 1999); *see also Media Vision*, 913 F. Supp. at 1366.

5 4. Court Reporters and Deposition Transcripts. More than 180 depositions have been taken
6 in this case. Lee Dec., ¶ 8. Many of these depositions were multiple days. *Id.* Class Counsel have
7 incurred costs of \$500,827.73 for court reporters and transcripts for depositions through December
8 2011. *Id.* Deposition costs are recoverable “if necessarily obtained for use in the case.” *Media*
9 *Vision*, 913 F.Supp. at 1371. These depositions were necessary to obtain information from key
10 witnesses and experts regarding liability, defenses and damages. Lee Dec., ¶ 8 Accordingly, these
11 expenses are recoverable.

12 Class Counsel have paid a total of \$5,060.95 for transcripts of Court proceedings before this
13 Court through December 2011. Lee Dec., ¶ 9. These transcripts were necessary to review Court
14 proceedings and to ensure that Class Counsel followed the Court’s specific requests. *Id.* These
15 costs are recoverable because they were necessary to pursue the action efficiently and responsibly.
16 These costs are also allowed by statute as taxable costs. *See* 28 U.S.C. § 1920(2).

17 5. Professional Interpreters/Translators. The IPPs have incurred costs of \$88,525.98 for
18 interpreter and translator costs through December 2011. Lee Dec., ¶ 10. Because millions of pages
19 of documents produced in this matter were in Chinese, Japanese, or Korean, Class Counsel were
20 required to expend significant resources to translate these documents. *Id.* Third party vendors and
21 technical staff have been utilized in the translation, analysis, and electronic coding of these
22 documents produced by Defendants. *Id.* Further, most of the witnesses deposed by Class Counsel
23 required the services of professional interpreters during their depositions. Lee Dec., ¶ 8. Because
24 retaining professional interpreting and translation services was necessary to prosecute this action,
25 the expenses incurred in retaining them were reasonable. The costs of such services are taxable by
26 statute. *See* 28 U.S.C. § 1920(6).

27 Thus, Class Counsel’s requested reimbursement of these litigation costs and expenses
28 incurred for the benefit of the IPP Class is appropriate.

1 ii) Settling States. The litigation costs and expenses for which the Settling States seek
2 reimbursement at this time are as follows:

3 1. Experts/Consultants. Expert expenses account for the majority of the interim
4 reimbursement sought by the Settling States at this time. The Settling States have incurred, and are
5 seeking an award of, expert costs of \$ 759,572.76 through December 2011. Schneider Dec., ¶¶9 -
6 11. In complex litigation such as this, courts do “not doubt the necessity for counsel to retain expert
7 assistance...” See *Media Vision*, 913 F.Supp. at 1366-67.

8 The Settling States of Arkansas, Florida, Michigan, Missouri, West Virginia and Wisconsin
9 retained Gautam Gowrisankaran, Ph.D., Professor of Economics at the University of Arizona, to
10 analyze and evaluate the impact that the cartel in the thin film transistor liquid crystal display (TFT-
11 LCD) industry may have had on the Settling States; to determine whether the economic evidence is
12 consistent with the existence of an effective conspiracy among the Defendants; to evaluate any
13 overcharge damages to the Settling States during the period January 1999 through December 2006
14 stemming from the cartel and to estimate any damages borne by the Settling States. Dr.
15 Gowrisankaran, working with and directing the work of staff of ApplEcon, performed extensive
16 work during the time period covered by this Motion for Costs in connection with the analysis of
17 purchase data provided by the Settling States and by third parties, review of other records and
18 discovery produced in the case relating to the characteristics of the TFT-LCD industry and the
19 conspiracy, development of his methodology for evaluating the extent of overcharge and pass
20 through of overcharges to end users in the Settling States, and significant work toward the
21 preparation of a report on liability and damages. Payments to Dr. Gowrisankaran and to ApplEcon
22 for work performed through the end of December 2011 accounted for \$638,079.76 of the States’
23 costs and are reflected in Exhibit A. Schneider Dec., ¶¶9 - 10.

24 The State of California individually incurred expenses from the work performed by an
25 economist retained in its state court action to perform similar work relating to California’s
26 governmental entities and its other claims; these expenses, incurred through December 2011 totaled
27 \$121,493.00 and are included on Exhibit B. Schneider Dec., ¶ 11.

28 The costs incurred by the Settling States in consulting with their respective experts is

1 recoverable because their work has been crucial to the prosecution of these actions, including
2 determining overcharge, impact, and pass-through, and calculating damages to the governmental
3 entities and the consumers for whom the States have asserted *parens patriae* claims. *See Media*
4 *Vision*, 913 F.Supp. at 1366. Expert expenses are also routinely billed to clients, and it is therefore
5 appropriate for the Settling States to recover these costs. *In re Omnivision Techs*, 559 F.Supp. 2d
6 1036, 1048-49 (N.D. Cal. 2007). Moreover, the States are entitled to recover such litigation costs
7 under their respective state laws, e.g., Missouri’s Merchandising Practices Act provides that “the
8 attorney general is entitled to recover in costs, in addition to normal court costs, the cost of the
9 investigation and prosecution” of any enforcement action, and Missouri’s antitrust law provides for
10 recovery of “reasonable attorneys’ fees as determined by the court, together with the costs of the
11 suit. Rev. Stat. Mo. § 407.130 and §§ 4016.121.1(1) and (2).

12 2. Court Reporters & Deposition Transcripts. The Settling States have incurred costs of
13 \$34,770.82 for court reporters and transcripts for 51 depositions and six court hearings through
14 December 2011. Schneider Dec., ¶ 12. Reflected in Exhibit A are costs of \$29,698.50 incurred for
15 the purchase of a large number of deposition and other transcripts purchased by the States through
16 their litigation fund. Included in Exhibit B are additional costs of \$ 5,072.32 were incurred by the
17 separate States for the purchase of several transcripts that were not paid for through the common
18 funds reflected on Exhibit A. Schneider Dec., ¶ 12. Deposition costs are recoverable “if necessarily
19 obtained for use in the case.” *Media Vision*, 913 F.Supp. at 1371. These depositions were necessary
20 to obtain information from key witnesses and experts regarding the conspiracy and to admit key
21 documents into evidence, and are thus recoverable. *Id.*

22 The transcripts were necessary to review Court proceedings and to ensure that the Settling
23 States followed the Court’s order in the MDL litigation. *Id.* These costs are recoverable because
24 they were necessary to prosecute this litigation efficiently and responsibly. These costs are also
25 allowed by statute as taxable costs. *See* 28 U.S.C. § 1920(2).

26 The Settling States’ requested reimbursement of these litigation costs and expenses is thus
27 appropriate.

28 ///

C. The IPP's Have Provided Adequate Notice of This Request for Reimbursement

In compliance with Federal Rule of Civil Procedure 23(h), Plaintiffs have provided notice to parties and class members of this cost and expense reimbursement request. Pursuant to the Court's Order granting preliminary approval of the Settlements, Plaintiffs began implementing the Notice Program and publishing notice of the Settlements on February 13, 2012. Lee Dec., ¶ 13. The notice states that "Class Counsel and the Attorneys General will ask the Court for ... reimbursement of their costs and expenses." Dkt # 4688, Exh. A.

This Motion provides adequate notice to all parties and class members of this request for reimbursement of litigation expenses. Pursuant to the Court's January 26, 2012 Order, this Motion will be made publicly available through the Court's ECF system no less than 30 days prior to the deadline for class members to object to, or opt out of, the Settlements, and shall be posted on the IPPs' settlement website at <https://lcdclass.com>. Lee Dec., ¶ 14. Further, the noticed hearing date of May 18, 2012 for this motion is the same date and time as the Fairness Hearing on the Settlements. Dkt. # 4760.

Notice that Class Counsel and the Settling States would be applying for reimbursement of expenses was also provided to all parties and class members through the Settlement Agreements, which are publicly available on the website <https://lcdclass.com>. These Agreements included provisions that, prior to the hearing on final approval of these settlements, Plaintiffs would move for reimbursement of litigation costs. Scarpulla Dec., Exh. A-G. Specifically, these settlements state: "Settling Class Counsel shall be awarded such fees and reimbursed such costs and expenses from the Settlement Fund as are approved by the Court ..." *Id.*

IV. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the Court grant Class Counsel's and the State Attorneys General's joint request for interim reimbursements of expenses in the amount of \$7,509,134.53 and \$794,343.58, respectively. Class Counsel requests that their reimbursed funds be withdrawn from the Settlement fund and transferred to the Indirect Purchaser Plaintiffs' LCD Litigation Costs Fund maintained by Indirect Purchaser Plaintiffs' Liaison

1 Counsel. The State Attorneys General request that their reimbursed funds be paid to the Office of
2 the Missouri Attorney General in trust for the Settling States.

3 Dated: March 14, 2012

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