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*Chairman of the Executive Committee  
for the Direct Purchaser Plaintiffs*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IN RE OPTICAL DISK DRIVE  
ANTITRUST LITIGATION

Case No. 3:10-md-02143 RS  
MDL No. 2143

This Document Relates to:  
ALL DIRECT PURCHASER ACTIONS

**DECLARATION OF CADIO ZIRPOLI IN  
SUPPORT OF DIRECT PURCHASER  
PLAINTIFFS' MOTION FOR AN AWARD OF  
ATTORNEYS' FEES, REIMBURSEMENT OF  
EXPENSES, AND CLASS  
REPRESENTATIVE INCENTIVE AWARDS**

Date: May 14, 2015  
Time: 1:30 p.m.  
Judge: Honorable Richard Seeborg  
Courtroom: 3, 17th Floor

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1 I, CADIO ZIRPOLI, declare:

2 1. I am a partner at Saveri & Saveri, Inc., which the Court has appointed to act as  
3 Chairman of the Executive Committee for the Direct Purchaser Plaintiffs (“DPPs”) in this action. I  
4 have been involved in almost every aspect of this case since its inception. I submit this declaration  
5 in support of Direct Purchaser Plaintiffs’ Motion for an Award of Attorneys’ Fees, Reimbursement  
6 of Expenses, and Class Representative Incentive Awards. Except as otherwise noted, I make this  
7 declaration of my own personal knowledge, and if called upon to do so, could and would testify  
8 competently to the facts contained herein.

9 2. The purpose of this declaration is to summarize the factual and procedural history of  
10 this litigation, including, but not limited to, the initial filing and investigation of this action, class  
11 certification proceedings, discovery, motion practice, settlement negotiations, and notice.

12 **INTRODUCTION**

13 3. During the course of this litigation, the Executive Committee for the Direct  
14 Purchaser Plaintiffs (“Executive Committee”) have supervised and directed the work performed by  
15 the other class counsel to ensure that the work they have performed has been done as effectively  
16 and efficiently as possible. As set forth in Case Management Order No. 1 (Dkt. No. 33) (“CMO  
17 No. 1”), the Executive Committee is comprised of the following seven firms: Berman DeValerio;  
18 Cotchett Pitre & McCarthy, LLP; Hausfeld LLP; Kaplan Fox & Kilsheimer LLP; Lieff Cabraser  
19 Heimann & Bernstein, LLP; Pearson, Simon & Warshaw, LLP; and Saveri & Saveri, Inc. Guido  
20 Saveri of Saveri & Saveri, Inc. was appointed Chairman of the Executive Committee  
21 (“Chairman”). The Executive Committee as well as the other firms that represent DPPs in this  
22 action are collectively referred to herein as “Class Counsel.”

23 4. DPPs have faced significant risk from the inception of this litigation. Plaintiffs have  
24 faced the challenge of proving that Defendants participated in a price-fixing conspiracy that  
25 spanned six years, from January 1, 2004 until January 1, 2010.

26 5. Since the transfer of the MDL action to this Court on April 7, 2010, over 1,500  
27 entries have been made to the Case No. 10-md-2143 docket on the CM/ECF system. Upon review  
28 of the docket, aside from the peripheral administrative filings and entries unrelated to the class

1 actions, the vast majority of the docket entries are substantively related to the Direct Purchaser  
2 Plaintiff and/or Indirect Purchaser Plaintiff cases (“Class Cases”).

3 6. As a result of these efforts, DPPs have reached three settlements thus far in this case  
4 totaling \$37,900,000 in cash for the benefit of the Class Members. Unless otherwise noted herein,  
5 “Setting Defendants” include: Hitachi-LG Data Storage, Inc. and Hitachi-LG Data Storage Korea,  
6 Inc.; LG Electronics, Inc. and LG Electronics USA (“LG”); and Hitachi, Ltd. (“Hitachi”)  
7 (collectively “HLDS”); Panasonic Corporation and Panasonic Corporation of North America  
8 (collectively “Panasonic”); and NEC Corporation (“NEC”). The settlements amounts are:  
9 \$26,000,000 (HLDS), \$5,750,000 (Panasonic), and \$6,000,000, plus \$150,000 in notice costs  
10 (NEC) (collectively, the \$37,900,000 represents the “Settlement Fund”).

11 7. For their years of as-yet uncompensated hard work on behalf of the Class Members,  
12 including over 56,197.5 hours and a total lodestar of \$24,811,762.75, Class Counsel seek an award  
13 of attorneys’ fees in the amount of 30% of the Settlement Fund, or \$11,370,000. This requested fee  
14 would amount to approximately 46% of Class Counsel’s lodestar. This number is even further  
15 reduced by the fact that Class Counsel have not submitted time from October 2009 until the  
16 appointment of the Executive Committee in March of 2010 (6 months). In addition, Class Counsel  
17 have undertaken significant work since December 31, 2014, the last date for time submitted in  
18 connection with this request for attorneys’ fees.

19 8. DPPs are also seeking incentive awards for the Class Representatives for their  
20 service in representing the Class. DPPs are seeking an award of \$5,000 for each of the three class  
21 plaintiffs named only in the Second Consolidated Amended Complaint,<sup>1</sup> and \$10,000 for the six  
22 class plaintiffs named in the Third Consolidated Amended Complaint.<sup>2</sup> The work performed by the  
23 court-appointed Class Representatives for whom incentive awards are sought is described later in  
24 this Declaration.

25  
26  
27 <sup>1</sup> Univision-Crimson Holding, Inc.; Warren S. Herman; and The Stereo Shop.

28 <sup>2</sup> JLK Systems Group, Inc. and Jeff Kozik; Meijer, Inc. and Meijer Distribution, Inc.; Paul Nordine; Seneca Data Distributors, Inc.; Gregory Starrett; and Ashley Tremblay.

1           9.       The \$37.9 million in settlements recovered for the benefit of the Settlement Classes  
2 is an excellent result. The relevant percentages of sales previously submitted to the Court in  
3 connection with the respective motions for preliminary and final approval of the settlements with  
4 HLDS, Panasonic and NEC are as follows (after accounting for opt-outs):

- 5           •   The \$26,000,000 settlement with HLDS represents approximately 3.42% of sales of
- 6                     ODDs sold by HLDS that remain in the case during the class period alleged in the
- 7                     SCAC.
- 8           •   The \$5,750,000 settlement with Panasonic represents approximately 3.833% of
- 9                     Panasonic’s sales of ODDs left in the TCAC class.
- 10          •   The \$6,000,000 plus \$150,000 in notice costs with represents approximately 3.1% of
- 11                     NEC’s sales of ODDs left in the TCAC class<sup>3</sup>.

12                               **PLEADING STAGE**

13           **A.   Pre-Complaint Investigation and the JPML**

14           10.       Before the initial complaints were filed, DPPs began investigating the ODD industry  
15 to determine what claims, if any, could be brought against one or more of the Defendants. The  
16 background investigation included an analysis of industry documents, review of statements by  
17 company representatives, review of the industry in trade press, domestic and foreign newspapers as  
18 well as Defendants’ public filings. Additionally, DPPs consulted with experts regarding the  
19 structural analysis of the ODD industry and its pricing patterns. This initial investigation and  
20 analysis continued after the initial complaints were filed.

21           11.       The first Direct Purchaser Class Action Complaint was filed on October 27, 2009 in  
22 the Northern District of California and assigned to the Honorable Vaughn R. Walker (Ret.).  
23 Thereafter, eleven additional direct purchaser class action cases were filed; ten in the Northern  
24 District of California and one in the Central District of California.

25 \_\_\_\_\_  
26 <sup>3</sup> For each of these percentage of sales calculations, only the value of the ODD in a finished  
27 product is included – i.e., the value of the other components of a laptop computer, for example, is  
28 not counted.

1           12. For many of the named foreign Defendants, DPPs were required to effectuate  
2 service of process through the Hague Convention. This was a lengthy, time consuming and in  
3 certain instances expensive endeavor requiring the appointment of a special international process  
4 server.

5           13. Class Counsel were instrumental in arguing before the Judicial Panel on  
6 Multidistrict Litigation (“JPML”) for the coordination and transfer to the Northern District of  
7 California of the ODD direct purchaser actions. On April 2, 2010, pursuant to 28 U.S.C. § 1407,  
8 the JPML issued an Order granting Direct Purchaser Plaintiffs’ Motion for Transfer and  
9 Consolidation of the related actions to the Northern District of California, and assigned them to the  
10 Honorable Vaughn R. Walker (Ret.) for consolidated pretrial proceedings. *In re Optical Disk Drive*  
11 *Prods. Antitrust Litig.*, 701 F. Supp. 2d 1382 (J.P.M.L. 2010).

12           **B. Negotiation and Appointment of Leadership Structure**

13           14. In March 2010, prior to transfer of the *In re Optical Disk Drive Products Antitrust*  
14 *Litigation* to the Northern District of California there were twelve direct purchaser complaints on  
15 file. Class Counsel were able to organize themselves and come to agreement on a leadership  
16 structure. On April 29, 2010, DPPs submitted to the Court a proposed leadership structure that was  
17 unanimously supported by all DPPs and unopposed by the Defendants. (Dkt. No. 5). On May 7,  
18 2010 as set forth in CMO No. 1, the Court endorsed DPPs’ leadership proposal, and appointed the  
19 Executive Committee. As set forth in CMO No. 1, the Chairman of the Executive Committee is  
20 tasked with the responsibility of overseeing the litigation, including any subsequent related or tag-  
21 along cases. Among other things, the Chairman is required to make sure the DPP action is  
22 prosecuted in an effective and efficient manner, including the periodic collection of time and  
23 expenses from Class Counsel, coordinating the efficient work of the Executive Committee on all  
24 aspects of the litigation, and coordinating and making assignments regarding briefing, argument of  
25 motions, and discovery.

26           15. On May 18, 2010, the Court issued an order granting a motion by the U.S.  
27 Department of Justice (“DOJ”) to intervene for the purpose of seeking to limit discovery in the  
28 civil actions. (Dkt. No. 62). On June 4, 2010, the Court appointed Hagens, Berman, Sobol, Shapiro

1 LLP as interim lead counsel for the indirect purchaser plaintiff class (“IPP Counsel”). (Dkt. No.  
2 96). On October 7, 2010, the *In re Optical Disk Drive Products Antitrust Litigation*, MDL 2143,  
3 was reassigned to the Honorable Richard Seeborg. (Dkt. No. 245).

4 **C. Filing of the Three Amended Complaints and Opposing Two Rounds of**  
5 **Motions to Dismiss**

6 16. Following the appointment of the Executive Committee, the Court ordered Class  
7 Counsel and IPP Counsel to file consolidated complaints on behalf of their respective classes.  
8 DPPs spent a significant amount of time and resources researching the ODD industry, the products  
9 at issue in the case, and the historical and structural analysis of the market. DPPs engaged  
10 economists to research the financial and statistical sales data to support the allegations of collusion  
11 alleged in the Consolidated Direct Purchaser Class Action Complaint (“CAC”).

12 17. On August 26, 2010, DPPs filed their first CAC. On October 12, 2010, certain  
13 Defendants filed joint and individual motions to dismiss the Direct Purchaser Plaintiffs’ CAC (Dkt.  
14 Nos. 251, 257, 258, 262, and 263), and briefing on these motions was completed on December 10,  
15 2010. On November 11, 2010, Defendants NEC Corporation, BenQ Corporation, and BenQ  
16 America Corp. filed additional motions to dismiss the Direct Purchaser Plaintiffs’ Consolidated  
17 Amended Complaint. (Dkt. No. 313 and 314.) Briefing on these motions was completed on January  
18 6, 2011 (NEC Corporation) and January 12, 2011 (BenQ Corp. and BenQ America Corp.). On  
19 December 17, 2010 and January 12, 2011, Defendant Quanta Storage Inc. filed a motion to dismiss  
20 the Direct Purchaser Plaintiffs’ Consolidated Amended Complaint (Dkt. No. 325.) Briefing on this  
21 motion was completed on January 20, 2011. Following briefing and a hearing on the joint and  
22 individual motions to dismiss, on August 3, 2011, the Court dismissed the CAC with leave to  
23 amend. (Dkt. No. 393).

24 18. Following the dismissal of the CAC, DPPs drafted a more comprehensive Second  
25 Consolidated Direct Purchaser Class Action Complaint (“SCAC”) that utilized information and  
26 documentary evidence provided by the DOJ’s amnesty applicant, along with industry wide  
27 historical pricing and sales data from third parties. The SCAC was filed on September 23, 2011. In  
28 October 2011, again not a single defendant answered the SCAC, instead the parties embarked on a



1 second round of joint and individual motions to dismiss the SCAC (Dkt. Nos. 434, 436, 441, 446,  
2 449, 458, 460, and 463). All Defendants except for the Philips/Lite-On/PLDS group (amnesty  
3 applicant) joined the joint motion to dismiss, including HLDS who on November 8, 2011 plead  
4 guilty to violating the Sherman Act. (Dkt. No. 460). The PLDS entities reached agreement with  
5 DPPs that they did not need to respond to the SCAC until after the Court had ruled on the motions  
6 to dismiss. DPPs conducted exhaustive legal research regarding the class's claims and defenses  
7 thereto in responding to each of the joint and individual motions to dismiss. The individual and  
8 joint motions to dismiss the SCAC were denied on April 19, 2012. (Dkt. No. 531). Defendants  
9 filed their individual Answers to the SCAC between June 4 and August 17, 2012.

10 19. As the case progressed and the investigation uncovered new facts, in March of 2013  
11 DPPs sought leave of Court and were permitted to file a Third Consolidated Direct Purchaser Class  
12 Action Complaint ("TCAC"). (Dkt. No. 782) DPPs made five changes from the SCAC to the  
13 TCAC. *First*, the TCAC modified the proposed litigation class definition to eliminate references to  
14 "ODD Devices" and to clarify that the litigation class is comprised of those who bought stand-  
15 alone external or internal ODDs, or ODDs incorporated only into desktop or laptop computers sold  
16 by Defendants, their affiliates, or their subsidiaries. *Second*, the TCAC dropped Sony Computer  
17 Entertainment America, Inc., as a named defendant, because that entity sold only game consoles  
18 which were no longer products within the definition of the litigation class. *Third*, the TCAC  
19 eliminated references to ODD Devices and a few paragraphs concerning them in the SCAC.  
20 *Fourth*, three named plaintiffs that purchased ODD Devices—Warren Herman, The Stereo Shop,  
21 and the related companies Central New York Univision Video Systems, Inc., Crimson Tech, Inc.,  
22 and Univision Crimson Holding, Inc. were withdrawn as proposed class representatives. *Finally*,  
23 the TCAC added four named plaintiffs: the related companies Meijer, Inc. and Meijer Distribution,  
24 Inc., Ashley Tremblay, Gregory Starrett, and Paul Nordine.

25 20. The parties negotiated a stipulation and proposed order which deemed Defendants'  
26 previously filed answers to the DPPs' SCAC as sufficient for purposes of responding to the DPPs'  
27 TCAC, which the Court signed into Order on April 26, 2013. (Dkt. No. 851).

28

1           **D. Pioneer Complaint**

2           21. During the course of this litigation DPPs developed evidence with respect to the  
3 conspiratorial conduct of the Pioneer entities, and on August 18, 2014, filed a complaint against the  
4 Pioneer entities (*JLK Systems Group, Inc., et al. v. Pioneer Corporation., et al.*, Case No. 3:14-cv-  
5 03748-LB). This action was related to the *In re Optical Disk Drive Action* on August 28, 2014. The  
6 Pioneer Defendants answered DPPs' complaint on March 2, 2015. (Dkt. No. 1533).

7                           **CLASS CERTIFICATION PROCEEDINGS**

8           **A. The Direct Purchasers Plaintiffs Moved for Class Certification and Petitioned  
9 for an Appeal Pursuant to Rule 23(f)**

10           22. On May 29, 2013, the DPPs filed their motion for class certification (Dkt. No. 878)  
11 with an accompanying Expert Report of Gary L. French Ph.D. Regarding Class Certification.  
12 DPPs' moving papers, accompanying declarations, proposed order, and sealing motion comprised  
13 in excess of 3,000 pages. DPPs' motion included 205 exhibits, most of which were identified  
14 through extensive searches of DPPs' electronic database of Defendants' documents, many of which  
15 required certified translations. Defendants filed their Opposition to Class Certification and Motion  
16 to Strike Report of Direct Purchaser Plaintiffs' Expert Dr. Gary French on October 21, 2013, which  
17 comprised hundreds of pages and exhibits. (Dkt. Nos. 1027, 1028, 1030, 1031, 1037, 1038, 1039,  
18 1041.) On February 18, 2014, Direct Purchaser Plaintiffs filed their Reply Brief In Support of Class  
19 Certification (Dkt. No. 1127) with an accompanying Expert Reply Report (Dkt. No. 1128), and  
20 Opposition to Motion to Strike (Dkt. No. 1130). Class Counsel were able to obtain declarations  
21 from both HP and Dell in support of their reply brief in support of class certification.

22           23. DPPs defended Dr. French's deposition and took the deposition of Defendants'  
23 expert Dr. Ordover.

24           24. DPPs spent a significant amount of time and resources obtaining transactional data  
25 from each of the Defendants and third parties. Additionally, DPPs expended great resources  
26 searching Plaintiffs' document database for documents supporting the motion for class  
27 certification.  
28



1 that included an ESI protocol, custodians, search terms, a deposition protocol, and other aspects of  
2 permissible discovery. In an attempt to move the discovery process along in a more efficient  
3 manner, DPPs and IPPs proposed document custodians to each Defendant in their August 13, 2012  
4 Discovery Plan based on their review of the DOJ documents.

5 30. Pursuant to the Court's July 17, 2012 Case Management Order (Dkt. No 606), and  
6 as part of their proposed Discovery Plan, DPPs and IPPs proposed an ESI search term protocol for  
7 any Defendant who intended to use search terms to collect documents. In response, Defendants  
8 objected: (i) to reviewing documents before reaching a final agreement on all search terms; (ii) to  
9 sharing search metrics (i.e., the number of hits, the number of documents searched); (iii) to a  
10 sampling search term results; and (iv) to adding search terms at a later date (with or without good  
11 cause). The parties met and conferred about this dispute on multiple occasions in the following  
12 weeks, but were unable to resolve their disagreements, and on September 17, 2012, Plaintiffs  
13 moved for an order adopting their proposed ESI search term protocol (Dkt. No. 660). The Court  
14 addressed this issue at the October 9, 2012 discovery hearing, and adopted Plaintiffs' proposed ESI  
15 Search Term Protocol (Dkt. No. 660-1) with two modifications (Dkt. No. 708).

16 31. Following the adoption of a Discovery Plan and ESI protocol, the parties spent  
17 several months meeting and conferring over custodians, search terms, deposition protocols,  
18 production of certain transactional data, specific class certification documents, supplemental  
19 interrogatory responses, and narrative discovery responses.

20 **A. Discovery Disputes/Motions to Compel**

21 32. As discussed above, Class Counsel were in constant communication with  
22 Defendants' counsel, attempting to negotiate and reach agreement on discovery disputes without  
23 involving the Court. However, there were several occasions where the parties could not reach  
24 agreement. In those instances, the parties briefed the discovery disputes before Magistrate Judge  
25 Spero.

26 33. Plaintiffs and the HLDS Defendants were unable to reach agreement on appropriate  
27 document custodians, and on September 4, 2012, DPPs and IPPs jointly submitted a motion to  
28 compel the HLDS Defendants to search the records of twelve additional custodians (Dkt. No. 637).

1 On September 7, 2012, the Court issued an order granting Plaintiffs' motion to compel nine  
2 additional custodians. (Dkt. No. 641).

3 34. The parties were unable to reach agreement on a proposed protocol for the location  
4 of depositions of witnesses who reside in foreign countries, despite meeting and conferring on the  
5 issue several times. On September 17, 2012, DPPs and IPPs submitted a joint letter brief to Judge  
6 Spero regarding their dispute concerning the presumptive location for depositions of witnesses  
7 residing in foreign countries (Dkt. No. 647). During the October 9, 2012 discovery hearing, the  
8 Court ordered the parties to continue to meet and confer on the issue, however the parties were  
9 again unable to reach a stipulation, and on October 22, 2012 submitted to the Court a second joint  
10 letter presenting the final position of each party (Dkt. No. 705). On October 24, 2012, Judge Spero  
11 issued an Order re location of Depositions (Dkt. No. 707).

12 35. On September 17, 2012, DPPs and IPPs jointly moved to compel the Sony  
13 Defendants to collect and produce documents from the files of Tomohiko Nagashima. (Dkt. No.  
14 668). The Court granted Plaintiffs' motion to compel with respect to expense reports and telephone  
15 bills. (Dkt. No. 708).

16 36. During the initial phase of discovery, Defendants eventually agreed to search and  
17 produce over one hundred employee files comprising over 2,000 gigabytes, millions of documents,  
18 totaling more than 16 million pages. The documentary evidence was thoroughly analyzed, coded,  
19 and organized by Class Counsel in a web-based, electronic document review platform for use in  
20 drafting briefs, preparing for depositions, responding to discovery, conducting settlement  
21 negotiations, and drafting DPPs' motion for class certification. The web-based database allowed  
22 Class Counsel to run targeted searches in both English and foreign languages and prioritize  
23 Defendants' documents by custodian and topic. Because most Defendants refused to voluntarily  
24 provide the document translations in their possession, DPPs in coordination with IPPs were forced  
25 to spend considerable time, effort, and expense to locate, prioritize, and translate certain foreign  
26 language documents that evidenced the conspiracy alleged.

27 37. In order to manage this large volume of documents in English, Chinese, Japanese  
28 and Korean, DPPs needed an efficient and cost effective way of managing, organizing and coding

1 the documents in order to respond to motions to dismiss, discovery, prepare for class certification,  
2 summary judgment and potentially trial.

3 38. Knowing that document management services can be one of the most significant  
4 costs in a large case, Class Counsel obtained bids from document management services that have  
5 been used in other large antitrust cases. After consultation with industry experts and in consultation  
6 with the Executive Committee, Class Counsel decided to purchase licenses for a web-based,  
7 electronic data and transcript review platform, and internally host the document review on servers  
8 at the Saveri office saving the class potentially hundreds of thousands of dollars.

9 39. Class Counsel worked with an outside IT specialist to load, manage, and maintain  
10 the numerous document productions on servers located at the Saveri office. This saved the Class  
11 the expense of hosting the over sixteen million pages of documents on a document management  
12 service's servers, which would have been very expensive. By hosting the documents on the Saveri  
13 Firm's servers, the only expense to the class was the cost of loading documents and internally  
14 maintaining the database. The IT specialist, in conjunction with Class Counsel, has been able to  
15 handle the several layers of complexity involved in each of the Defendant's ESI.

16 40. DPPs and IPPs set up an ESI protocol that established a uniform format for the  
17 production of ESI which enabled DPPs to run searches through the documents on the electronic  
18 database that was ultimately established. The agreed upon metadata that was required from each  
19 defendant in their productions allowed DPPs to run complex searches in both English and the  
20 various Asian languages. The review platform that DPPs have utilized for the past several years to  
21 host and review the large volume of documents has proven successful to conduct careful and  
22 targeted analysis of the discovery produced to date.

23 41. Members of the Executive Committee met to discuss and plan the document review  
24 process. Based on years of experience and past antitrust electronic cases, Class Counsel set up a  
25 coding system to identify the most probative documents relating to all facets of the litigation. Class  
26 Counsel then utilized junior associates and paralegals to review the documents and code them by  
27 topic.

28

1           42.     The Executive Committee made the decision that no document reviewer could bill  
2 at a rate higher than \$350 per hour for initial document review. This included foreign language  
3 reviewers who typically bill out at a higher rate.

4           43.     The Executive Committee assigned attorneys from many of the Class Counsel firms  
5 to assist in the document review process. Each reviewer was provided with a detailed  
6 memorandum regarding the theory of the case, the existing facts and evidence supporting that  
7 theory, and materials required to assist them in the document review. The attorneys were then  
8 trained on the analytic software and how to manage the documents that were reviewed and coded.

9           44.     During the initial discovery phase through class certification, the document review  
10 required the daily commitment of at least one attorney at the Saveri office who handled the day to  
11 day adjustments to the document review platform, supervision of the review platform, work  
12 assignments, allocation of staffing, searching and assigning documents and conducting quality  
13 control. Since the document review platform was being managed on servers at the Saveri office, it  
14 also involved significant communication with the IT specialist to manage and load the document  
15 productions as they were produced on a rolling basis to correct any load or ESI issues with the  
16 various defendant productions.

17           45.     Although the ESI protocols were negotiated and agreed to by all parties, Class  
18 Counsel experienced numerous issues relating to the loading of data into the database. While many  
19 of the issues were technical in nature, they required extensive meet and confers with Defendants  
20 and consultation with the IT specialist to make sure the data could be properly loaded into the  
21 database.

22           46.     The process of reviewing foreign language documents has proven to be time  
23 consuming and expensive. The foreign language documents were analyzed by lawyers and  
24 paralegals fluent in the respective foreign languages, who then had to determine which documents  
25 were sufficiently relevant to the litigation to require English translations, and in certain cases,  
26 certified translations. In order to save the Class money and for efficiency's sake, DPPs and IPPs  
27 coordinated their efforts with respect to the review, translation and cost of many of the foreign  
28 language documents. Many of these documents required certified translations and have proven to



1 be some of the most important documents introduced at depositions, in responding to motions to  
2 dismiss, and at class certification. Class Counsel have expended significant financial resources to  
3 third-party translation agencies for foreign language document review and certified copies of  
4 translations.

5 47. Additionally, DPPs, in coordination with IPPs, obtained and reviewed thousands of  
6 pages of non-party discovery and obtained a significant volume of transactional data that was  
7 provided to the experts.

8 48. DPPs have responded to several sets of interrogatories and requests for production  
9 of documents served by Defendants. Class Counsel and the Class Representatives have spent  
10 significant time locating responsive information. On several occasions, DPPs were required to meet  
11 and confer with defense counsel and, where appropriate, provide Defendants with supplemental  
12 responses and document productions. In particular, DPPs spent a significant amount of time and  
13 resources responding to contention interrogatories.

14 49. In August 2012, DPPs and IPPs jointly served a detailed Rule 30(b)(6) deposition  
15 notice on each Defendant, seeking information critical to class certification, including topics  
16 related to corporate structure and organization, manufacturing and production, pricing, costs and  
17 profits, and each Defendant's relationship with other entities (such as the investors in joint  
18 ventures). To facilitate efficient and timely responses, the parties negotiated and reached agreement  
19 that each Defendant would provide a narrative response to the Rule 30(b)(6) deposition notice  
20 (Dkt. No. 715), and agreed upon a production schedule that was confirmed by Judge Spero (Dkt.  
21 No. 730). All Defendants provided narrative responses on December 31, 2012, with the exception  
22 on the Sony Defendants (provided responses on January 15, 2013) and the LG Defendants  
23 (provided responses on January 31, 2013). Defendants' responses covered 26 topics and totaled  
24 over 1,100 pages.

25 **B. Depositions Taken and Defended**

26 50. Seventeen depositions have been taken to date related to the Direct Purchaser  
27 Action, of which three took place in San Francisco, eight elsewhere across the country, and six  
28 outside of the United States. Nine of these depositions were of Defendants' witnesses, six were of



1 the Direct Purchaser Class Representatives, one was of Defendants' expert, and one of Direct  
 2 Purchaser Plaintiffs' expert. Class Counsel either took the lead role, assisted in the preparation of,  
 3 attended, or defended, each of these depositions.

4 51. Class Counsel spent significant time preparing and defending each of the Class  
 5 Representatives named in the TCAC for their depositions. A chart of the class representative  
 6 depositions, dates and locations is set forth below:

| <b>Date</b> | <b>Direct Purchaser Class Representative</b> | <b>Witness</b>   | <b>Location</b>  | <b>Exhibits Marked</b> |
|-------------|--|------------------|------------------|------------------------|
| 6/12/2013   | JLK Systems                                  | Jeff Kozik       | Philadelphia, PA | 1-9                    |
| 7/25/2013   | Meijer and Meijer Distribution, Inc.         | David Demartra   | Grand Rapids, MI | 1-12                   |
| 9/6/2013    | Paul C. Nordine                              | Paul C. Nordine  | Chicago, IL      | 1-4                    |
| 6/6/2013    | Seneca Data Distributors                     | Stephen Maser    | Syracuse, NY     | n/a                    |
|             |  | James Petrie     | Syracuse, NY     | 1-6                    |
| 8/28/2013   | Gregory Starrett                             | Gregory Starrett | Charlotte, NC    | 1-4                    |
| 8/28/2013   | Ashley Tremblay                              | Ashley Tremblay  | Seattle, WA      | 1-8                    |

16 52. In addition to preparing for and defending the depositions of the six Class  
 17 Representatives, Class Counsel participated in the depositions of five sets of Defendants'  
 18 employees and former employees between April 2013 and November 2013. Of the nine Defendant  
 19 witnesses deposed, four of the depositions spanned multiple days and required the assistance of a  
 20 translator, and the remaining five deponents asserted their Fifth Amendment right against self-  
 21 incrimination and refused to answer Plaintiffs' questions. The depositions have yielded hundreds of  
 22 deposition exhibits to date, and are summarized in the following chart:

| Defendant Group | Date(s)           | Exhibits Marked | Location                            |
|-----------------|-------------------|-----------------|-------------------------------------|
| HLDS            | April 18, 2013    | 1-14            | Berkeley, California                |
|                 | April 19, 2013    | 15-33           |                                     |
| SONY            | July 10, 2013     | 34-44           | Hong Kong                           |
|                 | July 11, 2013     | 45-62           |                                     |
| HLDS            | July 21, 2013     | 63-71           | San Francisco                       |
|                 | July 22, 2013     | 72-93           |                                     |
|                 | July 23, 2013     | 94-119          |                                     |
|                 | July 24, 2013     | 120-149         |                                     |
| PLDS            | July 31, 2013     | 150-176         | San Francisco                       |
|                 | August 1, 2013    | 177-213         |                                     |
|                 | August 2, 2013    | 214-258         |                                     |
| TSSTK           | October 14, 2013  | 266-302         | Grand Hyatt<br>(Seoul, South Korea) |
| TSSTK           | October 16, 2013  | 303-355         | Grand Hyatt<br>(Seoul, South Korea) |
| QSI             | November 18, 2013 | 356-432         | Grand Hyatt<br>(Taipei, Taiwan)     |
| QSI             | November 20, 2013 | 433             | Grand Hyatt<br>(Taipei, Taiwan)     |
| QSI             | November 21, 2013 | 434-443         | Grand Hyatt<br>(Taipei, Taiwan)     |

53. The TSSTK and QSI deponents thus far in this case have refused to testify at deposition and invoked their Fifth Amendment right against self-incrimination. The silence of these witnesses created further problems for DPPs in establishing liability for their case. Because many of the best documents found by DPPs were authored by these individuals, their refusal to testify made it potentially difficult to authenticate these documents.

#### C. Proffer

54. Members of the Executive Committee have attended proffers by the Antitrust Criminal Penalty Enhancement and Reform Act (“ACPERA”) candidate where they set forth their involvement in the alleged ODD conspiracy and highlighted and explained relevant documents.

#### D. Subpoena of DOJ Tape Recordings

55. On July 11, 2014, DPPs and IPPs issued a subpoena to the DOJ Antitrust Division seeking production of FBI recordings, and verbatim transcriptions thereof, among and between Defendants in this litigation. After meeting and conferring with the DOJ, DPPs and IPPs reached an agreement and negotiated a draft stipulated proposed protective order regarding production of

1 the tapes. On September 3, 2014, DPPs and IPPs jointly filed the stipulated proposed protective  
2 order. Defendant TSST-Korea and interested party “John Doe 1” objected to production of the  
3 tapes. After extensive motion practice, their objections were overruled by this Court. On December  
4 22, 2014, John Doe 1 filed a notice of appeal and an emergency motion for an injunction pending  
5 appeal. In addition, the parties have met and conferred further regarding a revised protective order  
6 for the future production of the tapes and submitted their proposed protective orders to Judge  
7 Spero.

### 8 **SETTLEMENT NEGOTIATIONS**

#### 9 **A. Protracted Settlement Negotiations with Three Defendant Groups**

10 56. Starting in March of 2010, DPPs began preliminary settlement discussions with  
11 certain Defendants with the assistance of a mediator. These sessions did not result in a settlement.  
12 In late 2012, DPPs and counsel for LG Electronics, Inc., and LG Electronics USA, Inc. began to  
13 discuss the possibility of settling the case. After several settlement discussions spanning the course  
14 of several months over the telephone and written correspondence, the parties met in person along  
15 with counsel for Defendants HLDS and Hitachi, Ltd. After lengthy and protracted negotiations,  
16 including the review of industry materials, documents produced to the DOJ, and transactional data,  
17 a settlement was reached with HLDS that included the dismissal of LG and Hitachi for  
18 \$26,000,000. The settlement reached was for dismissal of the claims asserted in the SCAC for the  
19 period of January 1, 2004 until December 31, 2011. This amount represented approximately 3.42%  
20 of HLDS’ sales of ODDs alleged in the SCAC (after accounting for opt-outs).

21 57. Defendants filed a motion requesting the Court deny or defer granting preliminary  
22 approval of the HLDS settlement until after a hearing on class certification of the litigated class.  
23 DPPs filed a reply in support of preliminary approval arguing that the Non-Settling Defendants  
24 lacked standing. The Court agreed with DPPs, and preliminarily and finally approved the HLDS  
25 settlement on September 23, 2013.

26 58. During the course of several months in early 2013, DPPs and counsel for Panasonic  
27 negotiated the terms of a settlement releasing the claims in the TCAC. The negotiations were  
28 informed by documents that had been produced to the DOJ, as well as from the custodial

1 productions, industry material, and transactional data. On August 21, 2013, DPPs settled with  
2 Panasonic for \$5,750,000 for a release of claims asserted in the TCAC. The \$5,750,000 settlement  
3 amount represents approximately 3.833% of Panasonic's sales of ODDs left in the case after opt-  
4 outs. The Court finally approved the Panasonic settlement on May 15, 2014.

5 Beginning in the spring of 2013, DPPs began negotiating the terms of a settlement with  
6 counsel for NEC. Similar to the previous two settlement negotiations, negotiations were informed  
7 by documents produced to the DOJ and from the custodial productions, industry material and  
8 transactional data in the settlement discussions. On February 24, 2014, DPPs settled with NEC for  
9 the claims in the TCAC for \$6,000,000 plus \$150,000 in notice costs. The \$6,150,000 represents  
10 approximately 3.1% of NEC's ODD sales after accounting for opt-outs. The Court finally approved  
11 the NEC settlement on August 14, 2014.

12 59. Class Counsel's efforts during the course of each of the settlement negotiations  
13 included a detailed analysis of the evidence against each Defendant, damages computations and  
14 each of Defendants' potential exposure. In connection with each of the settlements, Class Counsel,  
15 documented the settlements, briefed motions for preliminary and final approval, and worked with  
16 the settlement administrator to provide notice to the classes.

### 17 **RISKS OF THE LITIGATION**

18 60. The skill and quality of legal counsel also support the requested fee award. The  
19 Executive Committee and members of Class Counsel are among the nation's most experienced and  
20 skilled practitioners in the antitrust litigation field, and these firms have successfully litigated these  
21 types of cases on behalf of direct purchasers of price-fixed products throughout the country—  
22 including within this Circuit.<sup>4</sup> Highly skilled counsel was required to successfully represent the  
23 settlement classes and obtain such a favorable recovery due to the caliber of opposing counsel and  
24 the complexity of the issues in this case.

25  
26  
27 \_\_\_\_\_  
28 <sup>4</sup> See, e.g., *DRAM*, MDL No. 1482; *SRAM*, MDL No. 1819; *LCD*, MDL No. 1827; *CRT*, MDL No. 1917.

1           **A. High Caliber of Opposing Counsel**

2           61. DPPs were opposed by attorneys from some of the largest firms in the country with  
3 near limitless resources at their disposal.<sup>5</sup> By way of example of the resources available to the  
4 Defendants: Latham & Watkins (counsel for Toshiba/TSST) employs over 2,100 attorneys in 33  
5 offices worldwide. *See* <http://www.lw.com>. Ropes & Gray (counsel for HLDS) employs over 1,100  
6 attorneys at 11 offices worldwide. *See* <http://www.ropesgray.com>.

7           **B. Complexity and Difficulty of Issues**

8           62. This was a complex case which required Class Counsel to confront many novel  
9 and/or difficult legal and factual issues. Antitrust price-fixing conspiracy cases are notoriously  
10 complex and difficult to litigate. Here, not only did Class Counsel effectively manage the logistics  
11 of litigating such a complex case, with more than 36 plaintiffs' firms, scores of able defense  
12 counsel, and 13 Defendant groups (both foreign and domestic), but as described in detail below,  
13 they successfully tackled many difficult legal and factual issues presented by this case.

14           **C. Defendants Had Tremendous Resources**

15           63. The resources available to the opposing parties are also an important risk factor to  
16 be considered. The enormity of the Defendants' resources is apparent from their publicly available  
17 financial disclosures and the breadth of their business operations. As an example, Samsung Group,  
18 parent of the Samsung Defendants, has \$470.2 billion in assets, and employs over 425,000 people.  
19 *See* [http://www.samsung.com/us/aboutsamsung/samsung\\_group/our\\_performance](http://www.samsung.com/us/aboutsamsung/samsung_group/our_performance).

20           **D. The Inherent Risk of Antitrust Class Actions**

21           64. In reviewing Defendants' vigorous defenses, it was apparent that Class Counsel  
22 took on great risk in prosecuting this large and complex antitrust class action. As an antitrust case  
23 with foreign Defendants, and both components and finished products, this case carried more risks  
24 than non-antitrust cases. Additionally, there is a changing landscape with respect to both antitrust  
25 and class action law. Several significant opinions from the United States Supreme Court and the

26 \_\_\_\_\_  
27 <sup>5</sup> Firms representing Defendants include: Latham & Watkins LLP; Ropes & Gray LLP; Wintson &  
28 Strawn LLP; Baker Botts LLP; Boies Schiller & Flexner LLP; Dickstein Shapiro LLP; Jones Day;  
O'Melveny & Myers LLP; and Drinker Biddle & Reath LLP.

1 Ninth Circuit regarding antitrust class actions were issued during the pendency of this litigation.  
 2 *See, e.g., Comcast Corp. v. Behrend*, 133 S. Ct. 1426 (2013).

3 **E. The Risk of Not Being Able to Establish Liability**

4 **1. DOJ Investigation and Indictments**

5 65. While this litigation received an initial boost from the DOJ's announcement of a  
 6 criminal investigation of the ODD industry, the DOJ's presence soon created an additional risk for  
 7 Plaintiffs. The indictments returned by the DOJ became an obstacle that Class Counsel had to  
 8 overcome throughout this litigation. While Defendant HLDS and four of its employees pled guilty  
 9 to charges brought against them by the DOJ, those guilty pleas only covered Defendants' conduct  
 10 with respect to three large OEMs and not with respect to any other ODD purchasers. Each of the  
 11 Direct Purchaser Complaints alleged a broader conspiracy for a larger class period than what was  
 12 included in the guilty pleas. Defendants consistently argued, both as to liability and damages, that  
 13 any action taken by the HLDS Defendants had no connection to the Class as a whole. Class  
 14 Counsel had to contend with this argument on the motions to dismiss, at class certification, and  
 15 during settlement negotiations.

16 **2. Invocation of Fifth Amendment by Key Witnesses**

17 66. Another barrier to establishing liability was that five of the nine Defendant  
 18 witnesses deposed thus far in this case refused to testify at deposition and invoked their Fifth  
 19 Amendment right against self-incrimination. Several of these individuals were thought to be  
 20 ringleaders of the conspiracy and faced individual indictments for their participation in the  
 21 conspiracy. These individuals held promise for DPPs to uncover the important facts of the  
 22 conspiracy. The silence of these witnesses created further problems for DPPs in establishing  
 23 liability for their case.

24 **CLASS COUNSEL MADE EFFORTS TO ENSURE THE LODESTAR FIGURE IS**  
 25 **ACCURATE**

26 67. Class Counsel have taken steps to insure that the lodestar figure is not improperly  
 27 inflated by: (1) capping the hourly rate for initial document review (even of foreign-language  
 28 documents) at \$350 per hour; (2) not including hours worked on this case during the sixth months

1 that took place prior to the appointment of the Executive Committee; (3) managing the case  
2 efficiently to ensure that tasks were not unnecessarily duplicated by Class Counsel firms; (4)  
3 coordinating with IPP Counsel whenever possible to reduce the work required to prosecute this  
4 action; (5) keeping and collecting contemporaneous records of hours worked pursuant to CMO No.  
5 1; and (6) including hours only through December 31, 2014, despite the significant amount of work  
6 that has been done since then.

### 7 **INCENTIVE AWARDS FOR CLASS REPRESENTATIVES**

8 68. The Class Representatives in this action devoted substantial amounts of time and  
9 resources to assisting in the prosecution of this matter. Their help was essential to the success of  
10 this case. None of the class representatives conditioned, or were asked to condition, their  
11 participation in the litigation upon receiving an incentive award. None of the class representatives  
12 conditioned, or were asked to condition, their approval of any of the settlements upon the promise  
13 or expectation that they would receive any benefit greater than the rest of the class members.

14 69. DPPs are seeking an award of \$5,000 for each of the three class plaintiffs named  
15 only in the SCAC, Univision-Crimson Holding, Inc.; Warren S. Herman; and The Stereo Shop, and  
16 \$10,000 for the six class plaintiffs named in the Third Consolidated Amended Complaint  
17 (“TCAC”), JLK Systems Group, Inc. and Jeff Kozik; Meijer, Inc. and Meijer Distribution, Inc.;  
18 Paul Nordine; Seneca Data Distributors, Inc.; Gregory Starrett; and Ashley T. Walton (née  
19 Tremblay).

20 70. Warren S. Herman conferred with his counsel concerning the factual basis for the  
21 ODD case; he reviewed the SCAC to which he became a party and provided information for  
22 inclusion therein; he produced documents and other information relating to his purchases and  
23 fitness as a class representative and conferred with his counsel regarding proposed settlements,  
24 responses to interrogatories and litigation developments on an ongoing basis.

25 71. Terry Kongelf, the sole proprietor of The Stereo Shop, spent a significant amount of  
26 time reviewing pleadings, working with and assisting Class Counsel, following the progress of the  
27 case, reviewing and responding to discovery requests, reviewing transactional data relevant to The  
28 Stereo Shop’s ODD purchases, gathering and producing documents, requesting copies of ODD-



1 purchase documents from third parties, and participating in discussions with Class Counsel  
2 regarding settlement and case strategy.

3 72. Univision-Crimson Holding, Inc. (“Univision”) reviewed and approved the initial  
4 complaints, major motions, and otherwise kept abreast of litigation developments. Univision also  
5 searched and collected relevant documents in anticipation of formal discovery responses, and  
6 reviewed and approved the first settlement agreement with HLDS.

7 73. Jeff Kozik (“Kozik”) is the sole proprietor of JLK Systems Group, Inc. (“JLK”) in  
8 Moscow, Pennsylvania. Kozik took time away from his business to meet with, and discuss, the  
9 merits of the case with class counsel, including reviewing and approving the consolidated  
10 complaints; the opposition to Defendant’s motion to dismiss, and the briefing related to class  
11 certification. Kozik answered the Defendants’ interrogatories, and gathered and produced  
12 responsive documents to Defendants’ document requests, including searching for and gathering  
13 both hard copy receipts and electronic documents related to his purchases of ODDs. Kozik traveled  
14 to Philadelphia to prepare for and sit for his deposition, and later traveled to San Francisco to  
15 attend the class certification hearing. Kozik was consulted with, and discussed with counsel, the  
16 settlements achieved to date.

17 74. Meijer, Inc. and Meijer Distribution, Inc. (“Meijer”) operates throughout the  
18 Midwestern United States over 200 stores with more than 60,000 employees in Michigan, Illinois,  
19 Indiana, Ohio and Kentucky. Meijer has spent a significant amount of their own time and expense  
20 litigating this case for the absent members of the class. Meijer’s efforts include working closely  
21 with Plaintiffs’ counsel throughout the investigation, prosecution, and the settlement of the claims  
22 in this litigation, including: providing information to prosecute the case; reviewing draft  
23 complaints; responding to interrogatory requests; searching, collecting, and producing documents  
24 and purchase data in response to Defendants’ discovery requests; preparing for and giving a  
25 30(b)(6) deposition, and consulting with Class Counsel regarding, *inter alia*, the preparation of the  
26 TCAC, and the settlements with Panasonic and NEC. All of these efforts required Meijer to turn its  
27 attention away from its daily business.

28



1           75. Paul Nordine (“Nordine”) conferred with his counsel concerning the factual basis  
2 for the ODD case. Nordine reviewed and provided information for inclusion in the TCAC. He later  
3 conferred with counsel concerning the factual basis for naming Pioneer as a Defendant and  
4 reviewed and provided information for inclusion in the Pioneer complaint. During the course of the  
5 litigation Mr. Nordine conferred with his counsel on an ongoing basis regarding proposed  
6 settlements and litigation developments. Mr. Nordine also produced documents and information to  
7 his counsel and to opposing counsel to the extent responsive to Defendants’ discovery requests.  
8 Mr. Nordine conferred extensively with his counsel to prepare for his deposition and was deposed  
9 by counsel for Defendants in Chicago Illinois. He later reviewed his deposition transcript for  
10 accuracy.

11           76. Seneca Data Distributors, Inc. (“Seneca”) is a custom computer manufacturer.  
12 During the class period, Seneca was one of the largest computer manufacturers in North America.  
13 Seneca’s primary business has been to manufacture desktop computers, notebook computers, and  
14 servers. Seneca’s sales have mainly been to businesses in the following markets: digital signage,  
15 digital security and surveillance, digital broadcast, digital health, government and education. In  
16 2013, Seneca employed approximately 150 people. Seneca has spent a significant amount of its  
17 own time and expense litigating this case for the absent members of the class. Seneca has  
18 participated in the action by, *inter alia*, responding to Defendants’ discovery requests, including  
19 multiple interrogatories and document requests; searching through paper and electronic records,  
20 collected relevant documents and electronically-stored information; and producing responsive  
21 materials to Defendants. Seneca provided verified answers to interrogatories concerning, *inter alia*,  
22 its business and ODD transactions. Seneca provided testimony from two witnesses in an all-day  
23 deposition taken of Seneca by Defendants pursuant to Rule 30(b)(6). Finally, Seneca kept abreast  
24 of major litigation developments, including review and prior approval of amended complaints and  
25 settlement agreements.

26           77. Gregory Starrett actively participated in the action by, *inter alia*, preparing for and  
27 attending a one day deposition, reviewing, preparing and producing his invoices and receipts for  
28 his direct purchase of a computer containing an ODD, preparing responses and verified answers to

1 two sets of interrogatories, and consulting extensively with Class Counsel regarding, *inter alia*, the  
2 preparation of the TCAC, the settlements, and class certification motion.

3 78. Ashley T. Walton (née Tremblay) actively participated in the action by, *inter alia*,  
4 reviewing, preparing and producing her invoices and receipts for her direct purchase of a computer  
5 containing an ODD, preparing responses and verified answers to two sets of interrogatories, and  
6 consulting extensively with Class Counsel regarding, *inter alia*, the preparation of the TCAC, the  
7 settlements, and class certification motion. In addition, in preparation for her deposition, Ms.  
8 Walton met with Class Counsel three times—twice telephonically and once in person.

9 79. The total incentive payments to all Class Representatives as requested would equal,  
10 \$75,000, or approximately 0.2% of the Settlement Fund.

11 80. The Settlement Fund would not exist without the efforts of the Class  
12 Representatives, who came forward to challenge the alleged antitrust violations. The Class  
13 Representatives were integral in helping Class Counsel analyze their claims and the evidence that  
14 were ultimately the subject of each of the complaints. The Class Representatives met with counsel  
15 at the outset of the action, responded to interrogatories, searched for and produced documents,  
16 requested and received reports from Class Counsel. Additionally, those named in the TCAC  
17 prepared for depositions with Class Counsel, attended depositions, communicated with Class  
18 Counsel and monitored the status of the case, and, in some cases, prepared to testify at class  
19 certification.

20 **NOTICE TO CLASS MEMBERS AND CLASS MEMBER RESPONSE**

21 81. Following preliminary approval of the settlement with HLDS, each Defendant was  
22 required to provide DPPs and the claims administrator Gilardi & Co. LLC (“Gilardi”) with a list of  
23 known direct purchasers for the SCAC class and their contact information. Class Counsel worked  
24 closely with Gilardi to send direct notice to as many class members as possible. Defendants  
25 provided DPPs with lists of email and U.S. postal addresses for roughly 500,000 email addresses  
26 and 200,000 U.S. postal addresses. Direct purchasers of ODDs and products containing ODDs  
27 include a significant number of large, sophisticated business entities who could be expected to  
28 oppose a fee request if it were unreasonable. The settlement notices contained a description of the

1 fees and expenses being requested by Class Counsel. “At a future time, Interim Lead Counsel will  
 2 ask the Court for attorneys’ fees not to exceed one-third (33.3%) of this or any future Settlement  
 3 Fund plus reimbursement of their costs and expenses . . . .” *See, e.g.*, Declaration of Markham  
 4 Sherwood in Support of Final Approval of Class Action Settlement with HLDS (Aug. 29, 2013)  
 5 (Dkt. No. 986-3), Ex. 1 at p. 4 (“Sherwood Decl.”).

6 82. The HLDS notice plan was implemented by the settlement administrator Gilardi &  
 7 Co., LLC. Sherwood Decl., ¶¶ 3–8. Specifically, Gilardi printed and mailed 436,488 notices to  
 8 class members through U.S. Mail and electronically mailed notices to 274,874 unique electronic  
 9 mail addresses of class members on May 31, 2013. Sherwood Decl., ¶¶ 4–5. Gilardi also published  
 10 notice in the June 4, 2013 national edition of the *Wall Street Journal*. Sherwood Decl., ¶ 8, Ex. B.  
 11 Gilardi also maintains the case website, at which class members can view and print the Class  
 12 Notice, the Settlement Agreement, the Preliminary Approval Order, and the Order Modifying  
 13 Schedule. Sherwood Decl., ¶ 6. Gilardi also established a toll-free telephone number to answer  
 14 Class members’ questions in both English and Spanish. Sherwood Decl. ¶ 7.

15 83. Following preliminary approval of both the Panasonic and NEC settlements counsel  
 16 sent two additional notices to class members defined by the definition in the TCAC. Again class  
 17 members were informed that Class Counsel would be seeking up to a third of the Settlement Fund  
 18 in attorney’s fees and reimbursement of costs. No objections were received to either the Panasonic  
 19 or NEC settlements. *See* Declaration of Ross Murray in Support of Final Approval of Class Action  
 20 Settlement with Panasonic ¶ 9 (April 24, 2014) (Dkt. No. 1220-2); Declaration of Ross Murray in  
 21 Support of Final Approval of Class Action Settlement with NEC Corporation ¶ 9 (July 24, 2014)  
 22 (Dkt. No. 1358-2).

23 84. From the direct notice to the more than 700,000 class members **only four** objections  
 24 were received to the HLDS settlement. Two additional letters were sent to the Court (see Dkt. Nos.  
 25 1134, 1278). One sought exclusion from the NEC settlement, and the other (received three weeks  
 26 after the deadline to object to the Panasonic settlement) objected generally to lawsuits against  
 27 Japanese companies.

28 85. The objections to the HLDS settlement and letters are as follows:

**Objection of William Curtis Kristy III**

86. Mr. Kristy's objection was that the percentage of fees that would eventually be sought by Counsel for Plaintiffs is too high. This objection was not yet ripe at the time of the HLDS settlement approval process, as the Court was not asked to rule on the amount of attorneys' fees that would awarded in connection with the settlement approval motion. Mr. Kristy may renew his objection now that it is the proper time. Class Counsel have requested that the claims administrator send notice of this fee request to Mr. Kristy.

**Objections of Glen Steven Scott**

87. Mr. Scott raised three points in his objection to the Settlement.

88. *First*, Mr. Scott objected to the exclusion of purchasers at the retail level from the class, *i.e.*, indirect purchasers. Exclusion of indirect purchasers from the direct purchaser settlement class was required by *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977). Any retail-level purchasers that are excluded from the class due to their status as indirect purchasers are class members in the related indirect purchaser case. Thus, those excluded purchasers will not be without recourse for the alleged wrongs in this lawsuit, as they are represented in the related indirect purchaser action.

89. *Second*, Mr. Scott objected to the potential that Class Counsel will somehow be compensated twice for the same expense. This concern was unfounded. Class Counsel, as required, has accounted for all expenses to be reimbursed. This accounting ensures that Class Counsel are only compensated once for each expense incurred. *See* Declaration of R. Alexander Saveri in Support of Direct Purchaser Plaintiffs' Request for Reimbursement of Litigation Expenses From the Litigation Fund.

90. *Third*, Mr. Scott objected to the exclusion of certain devices from the class definition in the TCAC. The contents of the TCAC were irrelevant to the fairness of the HLDS Settlement, particularly because the HLDS Settlement was based upon the class definition in the SCAC, not the TCAC.

**Objections of Jeanne Giles**

91. Ms. Giles raised five points in her objection to the Settlement.

1           92.     *First*, Ms. Giles objected that the notice was incomprehensible to a layperson. This  
2 objection lacked merit, as the notice is drafted so as to be as simplified as possible without  
3 distorting the information described therein. In addition, the Notice provided in clear language a  
4 telephone number that could be called to obtain further clarification regarding the HLDS  
5 Settlement.

6           93.     *Second*, Ms. Giles objected that the notice was premature because not all parties had  
7 settled. However, it is a standard practice to seek preliminary approval of class action settlements  
8 in large antitrust cases such as this so that the settling parties can be dismissed from the case and  
9 the Class will not be burdened with pursuing claims against Defendants that have settled.

10          94.     *Third*, Ms. Giles objected that the public record documents on PACER are not free.  
11 Plaintiffs do not control the cost of using PACER.

12          95.     *Fourth*, Ms. Giles objected that Defendants should not be allowed to settle if they  
13 have done wrong as this would allow them to escape being found guilty of wrongdoing at trial.  
14 Again, this type of objection is too general to be of help to the Court in determining the fairness of  
15 the Settlement. In addition, whether Defendants committed any acts of wrongdoing is not the only  
16 factor that will determine whether Plaintiffs will succeed at trial against Defendants. The HLDS  
17 Settlement provides the Class with a substantial recovery that would be by no means guaranteed if  
18 the case were eventually brought to trial, even if it can be proven that Defendants committed acts  
19 of wrongdoing.

20          96.     *Fifth*, Ms. Giles' fifth objection was the converse of her fourth objection, *i.e.*, that  
21 Class Counsel should not be allowed to collect fees for frivolous claims. As with her fourth  
22 objection, this type of objection is too general to be of help to the Court in determining the fairness  
23 of the Settlement.

24           **Objection of John W. Davis**

25          97.     Mr. Davis's sole objection was that he believed the notice did not provide him  
26 sufficient time to evaluate the proposed settlement. The reason for the delay in Mr. Davis's receipt  
27 of the Notice of the Settlement was that the address provided by Defendants for Mr. Davis was no  
28 longer up to date, and the Notice that was originally sent to Mr. Davis was returned to Gilardi as

