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

11  
12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN FRANCISCO DIVISION**

15  
16 IN RE OPTICAL DISK DRIVE  
ANTITRUST LITIGATION

Case No. 3:10-md-02143 RS

MDL No. 2143

17  
18 This Document Relates to:  
19 ALL DIRECT PURCHASER ACTIONS

**DECLARATION OF DIANA L. MOSS**

1 I, Diana L. Moss, declare as follows:

2 1. I am the President of the American Antitrust Institute (AAI). I am over 21 years of  
3 age and am not a party to the above-captioned action. I make this Declaration in connection with  
4 Direct Purchaser Plaintiffs' Motion for an Order Authorizing Distribution of Remaining Settlement  
5 Funds and Cy Pres Distribution of Future Remaining Funds in the above-captioned matter. I have  
6 personal knowledge of the facts set forth below, and if called as a witness, could and would testify  
7 competently and to those facts.

8 2. This declaration provides background information on AAI and its accomplishments  
9 and explains the nexus between AAI's work and the interests of the class.

10 **Background and Accomplishments**

11 3. Founded in 1998, AAI is an independent, nonprofit organization devoted to  
12 promoting competition that protects consumers, businesses, and society. We serve the public  
13 through research, education, and advocacy on the benefits of competition and the use of antitrust  
14 enforcement as a vital component of national and international competition policy.<sup>1</sup> AAI has been  
15 described as "the nation's leading antitrust think tank"<sup>2</sup> and a "titan in the antitrust arena."<sup>3</sup> AAI's  
16 staff consists of dedicated legal and economic experts in competition policy with wide experience  
17 in government, industry, and private practice. Our volunteer Advisory Board consists of more than  
18 130 members with diverse backgrounds and political views, and includes many of the leading  
19 scholars and other experts in the field of antitrust and competition policy.

20 4. AAI has generated a substantial body of policy studies and academic scholarship,  
21 publishing over 100 articles and reports on important antitrust issues. We regularly host academic

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23 <sup>1</sup> AAI is organized as a nonprofit corporation under the laws of the District of Columbia and is tax  
24 exempt under I.R.C. § 501(c)(3). It is supported by a variety of funding sources, including cy pres  
25 grants, contributions from supporters, foundation grants, and revenue generated from sponsorships  
of conferences, symposia, and other educational and research activities. Details of AAI's finances  
are set forth in its IRS Form 990s, which are available at GuideStar.org.

26 <sup>2</sup> Reply Brief for Appellant at \*1, *Mylan Pharmaceuticals Inc. v. Warner Chilcott Pub. Ltd. Co.*,  
27 No. 15-2236, 2016 WL 539005 (3d Cir. Feb. 9, 2016).

28 <sup>3</sup> *Conrad v. Jimmy John's Franchise, LLC*, No. 3:18-cv-00133-NJR-RJD, 2019 U.S. Dist. LEXIS  
94411, \*7 (S.D. Ill. May 21, 2019) (Rosenstengel, C.J.).

1 conferences, seminars, and symposia, which attract government enforcers, scholars, and members  
2 of the plaintiffs' and defense bars. In a given year, we typically host an annual policy conference in  
3 June, an annual private-enforcement conference in November, and 1-3 roundtable programs  
4 focused on discrete industries or challenging legal and economic issues. Commissioners of the  
5 Federal Trade Commission (FTC), and Assistant Attorneys General of the Antitrust Division of the  
6 Department of Justice (DOJ) have appeared at AAI conferences, as has the head of the European  
7 Commission's competition agency.

8           5.       AAI has filed more than one hundred amicus briefs spanning every federal circuit  
9 court and numerous state courts, many of which have been cited by the courts. In *Pacific Bell*  
10 *Telephone Co. v. linkLine Communications, Inc.*, 555 U.S. 438 (2009), the Supreme Court  
11 permitted AAI to participate in oral argument as amicus curiae—the only time to our knowledge  
12 that a non-governmental third party has been invited to do so. And in seven of the last eight  
13 antitrust cases it has decided, the Supreme Court has largely adopted the position advocated by  
14 AAI's amicus brief or cited approvingly to the brief.<sup>4</sup> AAI also advocates in support of competition  
15 and consumers before the DOJ, the FTC, other federal agencies, state agencies, and internationally  
16 on a wide range of issues.

17           6.       AAI has developed and published a number of volumes on competition law and  
18 policy. For example, we published presidential transition reports to the 44th and 45th presidents of  
19 the United States. Each report was the outgrowth of a year-long project that identified major  
20 competition enforcement issues across a variety of topics and industries to assist the incoming  
21 administration in developing antitrust policy. *See* THE AMERICAN ANTITRUST INSTITUTE  
22 TRANSITION REPORT TO THE 45TH PRESIDENT OF THE UNITED STATES (2016); THE NEXT ANTITRUST  
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24 <sup>4</sup> *See NCAA v. Alston*, 141 S. Ct. 2141 (2021); *Apple v. Pepper*, 139 S. Ct. 1514 (2019); *Oneok,*  
25 *Inc. v. Learjet, Inc.*, 135 S. Ct. 1591 (2015); *N.C. State Bd. of Dental Exam'rs v. FTC*, 135 S. Ct.  
26 1101 (2015); *FTC v. Actavis, Inc.*, 133 S.Ct. 2223 (2013); *FTC v. Phoebe Putney Health Sys., Inc.*,  
27 133 S.Ct. 1003 (2013); *American Needle, Inc. v. NFL*, 560 U.S. 183 (2010); *see also Google LLC*  
28 *v. Oracle Am., Inc.*, 141 S. Ct. 1183, 1204 (2021) (following position advocated by AAI in  
copyright case and citing and quoting AAI's brief); *AMG Capital Mgmt., LLC v. FTC*, 141 S. Ct.  
1341, 1351 (2021) (rejecting position advocated but citing approvingly to considerations raised in  
AAI's brief).

1 AGENDA: THE AMERICAN ANTITRUST INSTITUTE’S TRANSITION REPORT ON COMPETITION POLICY  
2 TO THE 44TH PRESIDENT (2008).

3 7. In 2010, AAI coordinated with over 60 legal experts in 22 countries to publish THE  
4 INTERNATIONAL HANDBOOK ON PRIVATE ENFORCEMENT OF COMPETITION LAW (Albert A. Foer &  
5 Jonathan W. Cuneo eds., 2010). The international handbook is a comprehensive survey of the law  
6 and practice of private antitrust enforcement around the world. The international handbook was  
7 followed in 2012 by the publication of PRIVATE ENFORCEMENT OF ANTITRUST LAW IN THE UNITED  
8 STATES: A HANDBOOK (Albert A. Foer & Randy M. Stutz eds., 2012). This volume provides a  
9 detailed, step-by-step examination of how a private antitrust case is put together in the United  
10 States.<sup>5</sup>

11 8. AAI contributed significantly to the work of the bipartisan Antitrust Modernization  
12 Commission, which singled out AAI and the American Bar Association for their contributions. *See*  
13 *Antitrust Modernization Commission, Report and Recommendations xi* (2007) (acknowledging  
14 that the two organizations “expended extraordinary resources in support of the Commission’s  
15 work” and “submitted several thoughtful comments to the Commission, which provided significant  
16 insights for the Commission’s consideration”).

17 **The Nexus of AAI’s Work with the Goals of *Cy Pres* and the Interests of the Class**

18 9. I understand that it is an appropriate use of *cy pres* funds to promote research,  
19 education, and advocacy activities that indirectly benefit the victims of antitrust violations by  
20 improving the administration of the antitrust laws. *See, e.g.,* Albert A. Foer, *Enhancing*  
21 *Competition Through the Cy Pres Remedy: Suggested Best Practices*, 24 ANTITRUST 86 (Spring  
22 2010) (discussing authorities).

23 10. Accordingly, AAI has been considered a qualified *cy pres* recipient in a number of

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25 <sup>5</sup> Professor Spencer Waller described the book as follows: “One of the most practical and strategic  
26 looks at the formulation and conduct of private treble damage litigation available. It is practically  
27 unique in going beyond the substance of the antitrust law and giving the reader a peek behind the  
28 curtain as to how private antitrust litigation actually functions. It will prove to be of great value to  
students and practitioners, both inside and outside the United States, who want to understand what  
really occurs in and outside the courtroom.” Spencer Waller, Book Review, *Private Enforcement of*  
*Antitrust Laws in the United States: A Handbook*, 36 WORLD COMP. 347 (2013).

1 antitrust class actions.<sup>6</sup> As Judge Gleeson of the Eastern District of New York noted in approving a  
 2 *cy pres* award to AAI in a multibillion dollar antitrust settlement, “AAI has made significant  
 3 contributions to the development and enforcement of the antitrust laws and will no doubt make  
 4 effective use of the funds it receives.” *In re Visa Check/Mastermoney Antitrust Litig.*, No. 96-CV-  
 5 5238, 2011 WL 5029841, \*9 (E.D.N.Y. Oct. 24, 2011); *see also In re Publication Paper Antitrust*  
 6 *Litig.*, 3:04 MD 1631, 2009 WL 2351724, \*2 (D. Conn. July 30, 2009) (“Because the plaintiffs’  
 7 claims here are based on antitrust injury, the next best use for the settlement funds is to disburse  
 8 those funds to charitable institutions designed to guard against antitrust injury and protect  
 9 consumers.”).

10 11. Unrestricted *cy pres* awards have supported a variety of AAI’s education, research,  
 11 and advocacy activities. In addition, AAI has received *cy pres* awards earmarked for particular  
 12 purposes. For example, utilizing a *cy pres* grant from the California Vitamin Cases Consumer  
 13 Settlement Fund, AAI produced an award-winning educational documentary, *Fair Fight in the*  
 14 *Marketplace*. *See* Fair Fight Film, <https://www.antitrustinstitute.org/education-andfilm/>. The film  
 15 has aired widely on public television and been used in high school and college curricula.

16 12. AAI’s work has particular relevance to the class in this price-fixing case.<sup>7</sup> Among  
 17 other things, AAI has advocated to ensure that Section 1 of the Sherman Act affords adequate  
 18 cartel deterrence and victim compensation.<sup>8</sup> And it has conducted extensive work on the damaging

19 \_\_\_\_\_  
 20 <sup>6</sup> *See Seaman v. Duke Univ.*, No. 1:15-CV-462 (M.D. N.C. Sept. 24, 2019) (“AAI is an  
 obvious choice as the *cy pres* recipient; it has been chosen as such in a number of other cases.”).

21 <sup>7</sup> *See La. Wholesale Drug Co. v. Abbott Labs. (In re Terazosin Hydrochloride Antitrust Litig.)*, No.  
 22 99-MDL-1317-SEITZ, 2016 U.S. Dist. LEXIS 101399, at \*10 (S.D. Fla. Aug. 1, 2016) (“[T]he  
 23 mission of the AAI, which is to promote competition that protects consumers, businesses, and  
 society, is directly related to the underlying antitrust violations at issue.”).

24 <sup>8</sup> *See, e.g., AAI Asks Ninth Circuit to Open Courthouse Doors to Antitrust Conspiracy Victims*  
 (May 12, 2020); *Senior Fellow John M. Connor Unpacks the Auto-Parts Supercartel in New AAI*  
 25 *White Paper – Makes Major Observations About Cartel Enforcement*, Am. Antitrust Inst. (July 16,  
 2019); *AAI Warns Supreme Court Against Shielding Foreign Export Cartels from Antitrust*  
 26 *Scrutiny*, Am. Antitrust Inst. (Mar. 5, 2018); *AAI Asks Eleventh Circuit to Preserve Full Damages*  
*for Overcharges* (Feb. 1, 2017); *AAI Urges Less Restrictive Approach to Evaluating*  
 27 *Circumstantial Evidence in Price Fixing Cases*, Am. Antitrust Inst. (July 26, 2016); *AAI Continues*  
 28 *to Request U.S. Sentencing Commission Double Cartel Fines*, Am. Antitrust Inst. (July 17, 2015);  
*AAI Asks DOJ to Strengthen Agreements in Criminal Antitrust Pleas*, Am. Antitrust Inst. (Dec. 30,

