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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

**DIRECT PURCHASER PLAINTIFFS’
NOTICE OF MOTION AND MOTION FOR
ORDER AUTHORIZING DISTRIBUTION
OF SETTLEMENT FUNDS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

20
21
22 Date: September 12, 2019
23 Time: 1:30 p.m.
24 Judge: Hon. Richard Seeborg
25 Courtroom: 3

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on September 12, 2019, at 1:30 p.m., or as soon thereafter as counsel can be heard, before the Honorable Richard Seeborg, United States District Judge, at the United States Courthouse, 450 Golden Gate Avenue, Courtroom 3, San Francisco, California, Direct Purchaser Plaintiffs (“Plaintiffs”) will move this Court for an Order authorizing the distribution of settlement proceeds obtained in the Direct Purchaser Actions to class members who submitted valid claims.

Plaintiffs request that the Court enter an Order authorizing payment of all claims approved by the Settlement Administrator—less funds reserved for claims administration costs, taxes and other issues—from the Net Settlement Funds according to the *pro rata* allocation plan previously approved by the Court. Plaintiffs further request that the Court enter an Order authorizing payment to the Settlement Administrator for claims administration costs incurred.

This Motion is based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities in Support Thereof, the Declaration of Rachel Christman re Claims Processing and Distribution of the Net Settlement Funds (“Christman Declaration” or “Christman Decl.”), the [Proposed] Order Granting Direct Purchaser Plaintiffs’ Motion for an Order Authorizing Distribution of Settlement Funds, submitted herewith, as well as the complete files and records in this case, and upon such argument at the hearing on this motion and in further pleadings as may be presented to the Court.¹

¹ After Plaintiffs file this Motion, this Notice of Motion and Motion, the Memorandum of Points and Authorities in Support Thereof, the Declaration of Rachel Christman re Claims Processing and Distribution of the Net Settlement Funds, and the [Proposed] Order Granting Direct Purchaser Plaintiffs’ Motion for an Order Authorizing Distribution of Settlement Funds will be posted on the ODD settlement website (www.ODDDirectPurchaserAntitrustSettlement.com) maintained by the Settlement Administrator.

STATEMENT OF ISSUES TO BE DECIDED

1
2 1. Whether to adopt and approve the Settlement Administrator’s recommendations
3 regarding the ineligibility (Exhibit B to the Christman Declaration) and eligibility (Exhibit D to the
4 Christman Declaration) of the claims.

5 2. Whether to authorize payment of all claims approved by the Settlement
6 Administrator from the Net Settlement Funds according to the *pro rata* Plan of Allocation
7 previously approved by the Court.

8 3. Whether the Settlement Administrator shall be reimbursed for costs and expenses
9 incurred in the amount of \$235,764.80.

10 4. Whether to reserve in the Net Settlement Funds \$117,863.63 for the payment of
11 additional claims administration costs, and \$250,000.00 for potential tax liability and other issues.

MEMORANDUM OF POINTS AND AUTHORITIES

12
13 **I. INTRODUCTION**

14 Direct Purchaser Plaintiffs (“Plaintiffs”) settled this action with all named Defendants
15 resulting in settlement proceeds of \$74,900,000, plus accrued interest.² This Court has granted final
16 approval of each of the settlement agreements and the time for appeal has expired. All settlement
17 payments have been made and were placed in interest-earning escrow accounts. Notice of the
18 settlements was sent to class members, certain class members opted out, and potential class
19 members submitted claims to the settlement proceeds.

20 The Settlement Administrator has completed an extensive, fair, and reasonable review of

21 ² The “Settling Defendants” are: Qisda Corporation (formerly known as BenQ Corporation); BenQ
22 Corporation; BenQ America Corporation; Hitachi-LG Data Storage, Inc.; Hitachi-LG Data Storage
23 Korea, Inc.; NEC Corporation; Panasonic Corporation; Panasonic Corporation of North America;
24 Philips & Lite-On Digital Solutions Corp.; Philips & Lite-On Digital Solutions U.S.A., Inc.;
25 Pioneer Electronics (USA) Inc.; Pioneer North America, Inc.; Pioneer Corporation; Pioneer High
26 Fidelity Taiwan Co., Ltd.; Quanta Storage Inc.; Sony Corporation; Sony Optiarc Inc. (formerly
27 known as Sony NEC Optiarc Inc.); Sony Electronics Inc.; Sony Optiarc America Inc. (formerly
28 known as Sony NEC Optiarc America Inc.); Samsung Electronics Co., Ltd.; Samsung Electronics
America, Inc.; Toshiba Corporation; Toshiba America Information Systems, Inc.; Toshiba
Samsung Storage Technology Corporation; Toshiba Samsung Storage Technology Korea
Corporation; TEAC Corporation; and TEAC America, Inc. (together with Hitachi, Ltd.;
Koninklijke Philips Electronics N.V.; Lite-On It Corp.; LG Electronics, Inc.; LG Electronics USA;
and Quanta Storage America Inc., “Defendants”).

1 each submitted claim. As of August 2, 2019, the Net Settlement Funds, which include the
 2 settlement proceeds plus interest, less Court-ordered attorneys’ fees, costs and expenses, and
 3 incentive awards to Class Representatives, total approximately \$47,931,511.35. Declaration of
 4 Rachel Christman re Claims Processing and Distribution of the Net Settlement Funds (“Christman
 5 Declaration” or “Christman Decl.”) ¶ 27. After payment of unreimbursed claims administration
 6 costs of \$235,764.80 and reserving funds for additional estimated administration costs of
 7 \$117,863.63, *id.* ¶ 28, as well as \$250,000.00 for potential tax liability and other issues, Plaintiffs
 8 propose distribution now of \$47,327,650.10. *Id.* ¶ 32, Ex. D.

9 Plaintiffs request that the Court enter the Proposed Order, submitted herewith, which
 10 authorizes payment of all claims approved by the Settlement Administrator—less funds reserved for
 11 claims administration costs, taxes and other issues—from the Net Settlement Funds according to the
 12 *pro rata* Plan of Allocation previously approved by the Court.

13 **II. STATEMENT OF RELEVANT FACTS**

14 **A. Background of the Settlements**

15 Plaintiffs brought this action alleging that Defendants participated in a conspiracy from
 16 2004 until at least January 1, 2010 to fix, raise, maintain, and stabilize the prices of Optical Disk
 17 Drives (“ODDs”) sold in the United States. Defendants denied Plaintiffs’ allegations and asserted
 18 numerous affirmative defenses. In exchange for the release of Plaintiffs’ claims, Plaintiffs reached
 19 ten separate settlement agreements with Settling Defendants. The settlements total \$74,900,000.
 20 On September 20, 2013, May 15, 2014, August 14, 2014, and April 14, 2016, the Court held final
 21 approval hearings on the settlements; determined that each settlement was fair, adequate, and
 22 reasonable; approved each settlement; approved a *pro rata* Plan of Allocation; and dismissed the
 23 litigation with prejudice against Settling Defendants.³ The Court also found that the notice given to
 24

25 ³ See ECF Nos. 1006 (HLDS Final Approval Order), 1266 (Panasonic Final Approval Order); 1389
 26 (NEC Final Approval Order), 1842 (BenQ, Pioneer, PLDS, QSI, Sony, TEAC, and TSST Final
 27 Approval Order) (together, “Final Approval Orders”); ECF Nos. 1007 (Hitachi Final Judgment of
 28 Dismissal), 1008 (LG Final Judgment of Dismissal), 1009 (HLDS Final Judgment of Dismissal),
 1267 (Panasonic Final Judgment of Dismissal); 1390 (NEC Final Judgment of Dismissal), 1843
 (BenQ Final Judgment of Dismissal), 1844 (Pioneer Final Judgment of Dismissal), 1846 (PLDS
 Final Judgment of Dismissal), 1847 (QSI Final Judgment of Dismissal), 1848 (Sony Final

1 the class regarding the settlements was the best notice practicable under the circumstances, and that
 2 such notice provided due and adequate notice of the proceedings and satisfied the requirements of
 3 due process. *See supra*, n.3. The Final Approval Orders and the Final Judgments entered provide
 4 that the Court retains jurisdiction over distribution of the settlement fund. *See id.*

5 **B. Notice to Class Members Regarding the Settlements**

6 The Settlement Administrator sent notices to class members regarding the settlements and
 7 created a settlement website which contained the Notices and other relevant information and
 8 documents, including the settlement agreements. *See* Amended Declaration of Markham Sherwood
 9 re Dissemination of HLDS Notice to Class Members and Requests for Exclusion (ECF No. 958)
 10 (“Sherwood Decl.”); Declaration of Kathleen Wyatt re Dissemination of Panasonic Notice to Class
 11 Members and Requests for Exclusion (ECF No. 1111) (“Wyatt Decl.”); Declaration of Ross
 12 Murray in Support of Final Approval of Class Action Settlement with Panasonic (ECF No. 1220-
 13 2); Declaration of Ross Murray re Dissemination of NEC Notice to Class Members and Requests
 14 for Exclusion (ECF No. 1339); Declaration of Ross Murray in Support of Final Approval of Class
 15 Action Settlement with Defendant NEC Corporation (ECF No. 1358-2) (“Murray Decl.”);
 16 Declaration of Rachel Christman re Dissemination of BenQ, Pioneer, PLDS, QSI, Sony, TEAC,
 17 TSST Notice to Class Members and Requests for Exclusion (ECF No. 1809); Declaration of
 18 Rachel Christman re Dissemination of BenQ, Pioneer, PLDS, QSI, Sony, TEAC, TSST Notice to
 19 Class Members and Claims Process (ECF No. 1825) (“Christman Notice Decl.”). All of the
 20 Notices informed class members that the Plan of Allocation provides for distribution of the Net
 21 Settlement Funds on a *pro rata* basis. Sherwood Decl., Ex. A at 3 (HLDS Settlement to be
 22 allocated on a *pro rata* basis based on the dollar value of each class member’s purchase(s) of either
 23 ODDs or ODD Devices between January 1, 2004 and December 31, 2011 in proportion to the total
 24 claims filed); Wyatt Decl., Ex. A at 2, 3 (Panasonic Settlement to be allocated on a *pro rata* basis
 25 based on the dollar value of each class member’s purchase(s) of ODDs between January 1, 2004
 26 and January 1, 2010 in proportion to the total claims filed); Murray Decl., Ex. A at 3 (same for
 27 _____
 28 Judgment of Dismissal), 1849 (TEAC Final Judgment of Dismissal), 1850 (TSST Final Judgment
 of Dismissal) (together, “Final Judgments”).

1 NEC Settlement); Christman Notice Decl., Ex. A at 2 (same for BenQ, Pioneer, PLDS, QSI, Sony,
2 TEAC and TSST Settlements).

3 C. The Claims Process

4 Potential class members were provided notice of two separate periods to submit claims.
5 Christman Decl. ¶¶ 4(d) – 4(e). During the second claims period, potential class members were also
6 permitted to amend their previous claims. *See* Christman Notice Decl., Ex. A at 2.

7 The first claims period occurred following final approval of the HLDS, Panasonic, and
8 NEC settlements. On March 23, 2015, pursuant to the Court’s March 2, 2015 Order Approving the
9 Notice to the Class, Approving Proof of Claim Form, Setting a Schedule for Claims, and
10 Scheduling a Hearing for Attorneys’ Fees, Costs, and Incentive Awards (ECF No. 1532) (“Order
11 Approving Notice & Claim Form”), the Settlement Administrator mailed, via U.S. Postal Service,
12 Proof of Claim forms to 446,751 potential class members, and electronically mailed a notification
13 to 176,866 entities and individuals providing a link to
14 www.ODDDirectPurchaserAntitrustSettlement.com where they could submit a claim electronically
15 or download a printable copy of the Proof of Claim form. Declaration of Ross Murray Regarding
16 Dissemination of Notice and Proof of Claim Forms to Potential Class Members ¶¶ 6–7 (ECF No.
17 1570-1) (“Murray Claims Decl.”); Christman Decl. ¶¶ 4(d), 5. Summary notice was also provided
18 by publication in the *Wall Street Journal*. Murray Claims Decl. ¶ 8; Christman Decl. ¶ 5. Potential
19 class members had ninety (90) days to submit a Proof of Claim form; the deadline was June 22,
20 2015. Order Approving Notice & Claim Form at 1.

21 The second claims period occurred following final approval of the remaining settlements.
22 On or before January 7, 2016, the Settlement Administrator mailed notice to the 258,778 remaining
23 unique names and addresses on the class list informing potential class members of a second
24 opportunity to submit claims, or to amend their previous claims. *See* Christman Decl. ¶ 4(e);
25 Christman Notice Decl. ¶ 4, Ex. A at 2. Summary notice was also provided by publication in the
26 *Wall Street Journal*. Christman Decl. ¶ 5; Christman Notice Decl. ¶ 7, Ex. B. Potential class
27 members had sixty (60) days, or until March 7, 2016, to submit a new or amended Proof of Claim
28 form. *See* Revised Order Granting Settlement Class Certification and Preliminary Approval of

1 Class Action Settlements with BenQ, Pioneer, PLDS, QSI, Sony, TEAC, and TSST ¶¶ 9, 23 (ECF
2 No. 1758); Christman Decl. ¶ 7.

3 The Settlement Administrator responded to inquiries and communications from claimants
4 by postal mail to an established Post Office Box, by email to a monitored account, and by
5 telephone calls to a dedicated toll-free telephone number. Christman Decl. ¶ 5. The Settlement
6 Administrator also created and maintained a settlement website
7 (www.ODDDirectPurchaserAntitrustSettlement.com), which made available the settlement
8 agreements, the Preliminary and Final Approval Orders, the Final Judgments, the Notices,
9 Summary Notices, and a downloadable Proof of Claim form. *Id.* In addition, claimants could
10 submit their Proof of Claim forms through the website from March 23 through June 22, 2015, and
11 from January 7 through March 7, 2016. *See* Murray Claims Decl. ¶ 7 & Ex. A; Order Approving
12 Notice & Claim Form at 1; Christman Notice Decl. ¶ 5 & Ex. A. The format of the Proof of Claim
13 form was designed to be clear and simple so that potential claimants could easily fill out the form
14 and provide information required in support of their claims. Christman Decl. ¶ 7.

15 The Settlement Administrator received and processed 28,146 Proof of Claim forms,
16 including 1,647 received after the March 7, 2016 deadline. *Id.* ¶ 8. The total value of claims
17 received—expressed in terms of ODD Dollars, or the portion of an ODD Product attributable to the
18 ODD it contains, *see id.* n.3—exceeded \$13 billion. *Id.* ¶ 8. For quality control purposes, each
19 paper and electronic Proof of Claim form submitted was given a unique claim number and entered
20 into a database. *Id.*

21 The Settlement Administrator reviewed each submitted Proof of Claim form, including late
22 submissions, to determine whether it was valid and included all required information. *Id.* ¶ 10.
23 Many Proof of Claim forms included the following deficiencies: (a) missing purchase information;
24 (b) missing signature; (c) ineligible purchases; or (d) missing or insufficient proof of authority to
25 file on behalf of the claimant. *Id.* The Settlement Administrator sent a “Notice of Deficient Claim”
26 to such claimants, advising them of the deficiency and requesting a correction. *Id.* ¶ 11. The
27 Settlement Administrator reviewed and corrected deficiencies that were provided, but did not
28 perform any further outreach to insufficient responses unless requested by the claimant. *Id.*

1 The Settlement Administrator also reviewed all filed claims to determine if any were
2 duplicative, or if any competing claims were submitted by different entities on behalf of the same
3 claimant. *Id.* ¶ 10. As part of its review, the Settlement Administrator removed identical claims
4 and consolidated partial duplicates. *Id.* ¶ 12. Where competing claims were filed, the Settlement
5 Administrator defaulted to the claim filed by the claimant (where a competing claim had been
6 filed by a Third Party Filer), or reached out to both parties to identify the master and duplicate
7 claims. *Id.* The Settlement Administrator resolved all complete duplicate, partial duplicate and
8 competing claims. *Id.*

9 The Settlement Administrator also reviewed all filed claims for potential fraud. *Id.* ¶ 13. It
10 flagged claims where certain criteria were met, including: a) multiple claims filed using a single IP
11 address; b) multiple claims filed with a pattern of slight variance in the claim name, email address,
12 and/or mailing address; and c) claims filed by individuals who have been previously identified as
13 fraudulent filers in other cases administered by the Settlement Administrator. *Id.* Claims
14 determined to be fraudulent were rejected and sent a “Notice of Rejected Claim.” *Id.* Claims
15 identified as potentially fraudulent were sent a “Request for Documentation.” *Id.* Where no
16 response was provided, the potentially fraudulent claim was rejected without further outreach. *Id.*
17 Where a response was provided, the Settlement Administrator reviewed the response and made a
18 determination. *Id.*

19 The Settlement Administrator sent a total of 2,954 notifications and requests regarding
20 3,093 claims on a rolling basis as determinations were made. *Id.* ¶ 14. To the extent multiple
21 claims could be addressed in a single notification or request (for entities who filed claims on
22 behalf of multiple claimants), or where a notification or request served multiple purposes (for
23 example, outlining a deficiency and also requesting documentation), they were consolidated. *Id.*
24 The deadline to respond or dispute for each notification or request has passed. *Id.*

25 All claims were subject to review and/or audit by the Settlement Administrator. *See id.*
26 ¶ 15. All claims exceeding \$100,000 in ODD Dollars, which constituted 99.45% of the total dollar
27 value of all claims, were audited and are referred to as “Top Claims.” *Id.* ¶ 16. In total, 259 Top
28 Claims were audited. *Id.* ¶ 20. For the claims selected for audit, the purchase data provided by

1 Defendants was compared to the purchase amounts submitted by the claimants. *Id.* ¶¶ 17–18, 20.
2 The Settlement Administrator approved Top Claims that were consistent with sales records
3 produced by Defendants. *Id.* ¶ 17. For Top Claims that were greater than the amounts reflected in
4 Defendants’ records, or were not contained therein, the Settlement Administrator requested and
5 reviewed documentation submitted by the claimant to determine whether each claim was valid. *Id.*
6 ¶¶ 18–19. Where claimants did not respond to requests for documentation, they were notified that
7 their claims were adjusted to the amount reflected in the Defendant data or, if there was no such
8 data, that the claim was denied. *Id.* ¶ 18. As a result of the review and audit, the Top Claims were
9 reduced from 259 claims (valued at \$12,991,850,552.05 in ODD Dollars) to 170 claims (valued at
10 \$7,827,408,156.81 in ODD Dollars). *Id.* ¶ 20.

11 Claims below \$100,000 in ODD Dollars, referred to as “Basic Claims,” representing
12 0.16% of all ODD Dollars claimed, were reduced from 27,887 claims (valued at \$20,733,309.73
13 in ODD Dollars) to 25,246 claims (valued at \$12,806,369.15 in ODD Dollars). *Id.* ¶ 21.

14 In sum, after the completion of audits, document review, communications with claimants,
15 and processing of late claims, the total purchases by all approved claimants was \$7,840,620,146.96
16 in ODD Dollars, approximately \$5,171,963,714.82, or 39.75%, less than the total purchases
17 claimed in ODD Dollars in the Proof of Claim forms as initially submitted. *Id.* ¶ 24. A total of
18 2,722 claims were ineligible. *Id.* ¶ 25, Ex. B. The rejected claims break down as follows:

- 19 • 636 claims were rejected because the claimant’s response to the Notice of Deficient
20 Claim and/or the Request for Documentation did not provide sufficient information or
21 documentation to substantiate the claim, or the claimant did not respond;
- 22 • 442 claims were rejected because third party agencies filed incomplete claims, where
23 the claims did not provide sufficient information to calculate a claimed amount and
24 where the third party agencies did not provide such information when requested;
- 25 • 421 claims were rejected because the claim was deemed to be fraudulent;
- 26 • 34 claims were rejected because the entirety of the purchases claimed were either
27 indirect purchases of ODDs manufactured by the Defendants, or were ODDs
28 manufactured by a non-defendant;

- 1 • 3 claims were rejected because the entirety of the purchases claimed were made outside
- 2 of the HLDS and non-HLDS Class Periods;
- 3 • 2 claims were rejected because the entirety of the purchases claimed were from outside
- 4 of the United States;
- 5 • 1 claim was rejected because the entirety of the purchases claimed were not ODDs; and
- 6 • 1 claim was rejected because the claimant had opted out of the NEC Settlement, and
- 7 included only claimed purchases of Sony/NEC products.

8 *Id.*; see also *id.* ¶ 6.

9 After the completion of processing and auditing claims, the Settlement Administrator
 10 notified all Top Claims and all rejected claims (both Basic and Top) of the final determination of
 11 their claims. *Id.* ¶ 26. Attached as Exhibit D to the Christman Declaration is a list of the 25,424
 12 approved claimants and their proposed *pro rata* payments from the Net Settlement Funds based on
 13 the dollar amount each class member paid to Defendants for direct purchases of ODDs and certain
 14 computers containing ODDs (and, as to the HLDS Settlement, additional ODD Devices) during the
 15 two class periods. *Id.* ¶¶ 9, 24, 30–31.

16 **D. Payment of Administration Costs and Reserving Additional Funds**

17 As of August 2, 2019, approximately \$47,931,511.35 remains in the Net Settlement Funds,
 18 which includes the settlement proceeds plus accrued interest, less Court-ordered attorneys' fees,
 19 costs and expenses, and incentive benefits to Class Representatives. *Id.* ¶ 27. In addition, from
 20 March 18, 2015 through January 31, 2019, the Settlement Administrator has incurred claims
 21 administration costs in the amount of \$235,764.80 that, with the exception of notice-related costs,
 22 have not yet been paid. *Id.* ¶ 28, Ex. C. The Settlement Administrator has also submitted an
 23 estimated budget of \$117,863.63 for all remaining claims administration costs—including
 24 distributing, processing and tracing settlement award checks, website updates and fees, and
 25 communications with claimants—from February 1, 2019 through the completion of final
 26 distribution. *Id.* Plaintiffs also recommend reserving \$250,000.00 of the Net Settlement Funds for
 27
 28

1 potential tax liability and other issues that may arise. *Id.* ¶ 29.⁴ Thus, Plaintiffs recommend
 2 distributing \$47,327,882.92 which is equal to the current Net Settlement Funds of \$47,931,511.35,
 3 less \$235,764.80 to be paid for claims administration costs incurred and billed, and less
 4 \$367,863.63 to be held in reserve of which \$117,863.63 is for further unpaid administration costs
 5 and \$250,000 is for potential tax liability and other issues. *See id.* ¶¶ 27–29.⁵

6 **III. ARGUMENT**

7 Plaintiffs request an Order authorizing the distribution of the Net Settlement Funds to the
 8 approved claimants in the amounts set forth in Exhibit D of the Christman Declaration. Entry of an
 9 Order permitting a distribution of the Net Settlement Funds to all approved claimants is proper and
 10 appropriate at this time. The Court has already finally approved a *pro rata* Plan of Allocation. ECF
 11 No. 1006 ¶ 11 (HLDS); ECF No. 1266 ¶ 12 (Panasonic); ECF No. 1389 ¶ 12 (NEC); ECF No.
 12 1842 ¶ 12 (BenQ, Pioneer, PLDS, QSI, Sony, TEAC, and TSST). As set forth in the Notices, the
 13 Settlement Funds will be allocated on a *pro rata* basis based on the dollar value of each class
 14 member's purchase(s) of ODDs in proportion to the total claims filed. In determining the *pro rata*
 15 allocation of the Settlement Funds, purchases of stand-alone ODDs are valued at 100% of their
 16 purchase price. *See* Christman Decl. ¶ 8 n.3; Christman Notice Decl., Ex. A at 2. For purchases of
 17 electronic devices containing an ODD (i.e., desktop computers or laptop computers), the *pro rata*
 18 calculation factors in the proportionate value of the ODD contained in the product. *Id.* The
 19 resulting percentages are multiplied by the Net Settlement Funds (total settlements minus all costs,
 20 attorneys' fees, and expenses) to determine each claimant's *pro rata* share of the Settlement Funds.
 21 Sherwood Decl., Ex. A at 3; Wyatt Decl., Ex. A at 3; Murray Decl., Ex. A at 3; Christman Notice
 22 Decl., Ex. A at 2. Attached as Exhibit E to the Christman Declaration is a schedule of all claimants
 23 with each approved claimant's strict *pro rata* share of each Net Settlement Fund.

24 _____
 25 ⁴ To the extent this reserve is not required, these funds would be combined with the funds from
 26 uncashed checks and distributed in like manner in accordance with instructions provided by the
 Court for uncashed checks. *Id.* ¶ 29 n.5.

27 ⁵ Of the \$47,327,882.92 total funds available for the proposed distribution, *id.* ¶ 29, \$232.82 would
 28 not be distributed at this time due to rounding issues. *Id.* ¶ 33. These funds would be distributed at
 a later date. *See supra*, n.4.

1 Distribution of the Net Settlement Funds, as set forth in Exhibit D to the Christman
2 Declaration, is fair, adequate, and reasonable. The *pro rata* Plan of Allocation approved by the
3 Court will compensate class members based on the extent of their injuries. *See In re Citric Acid*
4 *Antitrust Litig.*, 145 F. Supp. 2d 1152, 1154 (N.D. Cal. 2001). Distribution of the Net Settlement
5 Funds is appropriate at this time because final judgment has been entered and the time to appeal the
6 settlement agreements has expired. *See Newberg on Class Actions*, § 11:33 (4th ed. Nov. 2005).
7 The proposed plan of distribution provides for a payment to all class members with valid claims,
8 and sets a “floor” payment of \$10.00 for all approved claimants, as described below.

9 In addition, the proposed distribution is appropriate because the Settlement Administrator
10 has completed a fair, reasonable, and adequate review of the claims. Courts give “great deference”
11 to decisions of an impartial settlement administrator who facilitates the implementation of a
12 settlement agreement. *See United States v. Int’l Bhd. of Teamsters, Chauffeurs, Warehousemen &*
13 *Helpers of Am., AFL-CIO*, 905 F.2d 610, 616 (2d Cir. 1990). The Settlement Administrator
14 established quality control measures to ensure that each claim was properly tracked and notified
15 claimants of any deficiencies, including incomplete claim forms, duplicate claims, unsupported
16 claim amounts, and claims that did not satisfy the class definitions. Christman Decl. ¶¶ 8–16, 22. If
17 emails, Proof of Claim forms, or deficiency letters were returned as undeliverable, the Settlement
18 Administrator attempted to obtain updated addresses and re-mailed them where possible. *Id.* ¶ 26;
19 Murray Claims Decl. ¶¶ 5–7.

20 Second, claimants had adequate opportunity to cure any deficiencies by providing
21 additional information or documentation. *See* Christman Decl. ¶¶ 19, 22. The Settlement
22 Administrator processed late claims, and also considered late responses to requests for information
23 if they resolved the deficiencies or provided necessary documentation for a claim. *Id.* ¶¶ 8, 22.
24 Additionally, where possible, the Settlement Administrator used data provided by Settling
25 Defendants if a claimant could not locate supporting documentation regarding purchases. *See id.*
26 ¶¶ 17–18, 20.

27 Third, the Settlement Administrator and Class Counsel spent a significant amount of time
28 working with claimants and/or their counsel to resolve claim disputes. *Id.* ¶¶ 16, 22.

1 Fourth, the claims process resulted in significant savings to the class. At the start of the
 2 claims process, the value of all claims received was in excess of \$13 billion in ODD Dollars. *Id.*
 3 ¶ 8. After the completion of audits, document review, communications with claimants, and
 4 processing of late claims, the Settlement Administrator determined that total purchases by
 5 approved claimants was approximately \$7.8 billion in ODD Dollars, over \$5.1 billion less than the
 6 total value of the original Proof of Claim forms submitted. *Id.* ¶ 24.

7 Finally, Class Counsel recommend that the Court set a “floor” of \$10.00 for payments to all
 8 approved claimants. Of the 25,424 valid claims submitted, *id.*, approximately 24,591 approved
 9 claimants would receive payments of less than \$10.00 under a strict *pro rata* distribution (“Small
 10 Claimants”). *Id.* ¶ 32.⁶ Issuing checks for amounts less than \$10.00 would result in administrative
 11 costs greater than the amount of the payment. *See id.* ¶ 32. In addition, claimants would have little
 12 incentive to cash such checks, resulting in additional administrative costs to track and account for
 13 uncashed checks. *Id.*

14 Other courts in this District have set either a floor payment or a minimum threshold
 15 payment, thereby adjusting the *pro rata* plan of allocation. For example, in the *DRAM* indirect
 16 purchaser action, Judge Hamilton approved a \$10.00 “floor” payment for small claimants. *In re*
 17 *Dynamic Random Access Memory (DRAM) Antitrust Litig.*, No. C 06-4333 PJH, 2013 WL
 18 12333442, at *80–81, *91 n.250 (N.D. Cal. Jan. 8, 2013), *report and recommendation adopted sub*
 19 *nom. In re Dynamic Random Access Memory Antitrust Litig.*, No. C 06-4333 PJH, 2014 WL
 20 12879520 (N.D. Cal. June 27, 2014) (noting the court’s broad powers in ensuring an equitable
 21 distribution of settlement proceeds and affirming the fairness, reasonableness and adequacy of plan
 22 of distribution that “adjusts all claimants’ *pro rata* ‘payments’ by raising all of the claims . . . of
 23 less than \$10.00 up to \$10.00”).

24 In other cases, including securities matters, courts have set minimum thresholds for
 25 payment, such that claimants who submitted claims worth less than the threshold amount would
 26 not receive any payment at all. *See, e.g., In re MGM Mirage Sec. Litig.*, 708 F. App’x 894, 897 (9th

27 ⁶ 19,747 of the 24,591 approved Small Claimants, or approximately 80%, would receive less than
 28 \$1.00 under a strict *pro rata* allocation. *See id.*, Ex. E.

1 Cir. 2017) (affirming district court finding that “that smaller checks, such as those under \$10, in
2 many instances are never cashed”).⁷ In such cases where some claimants with valid claims recover
3 nothing, Courts have nonetheless found the plan of distribution fair, adequate, and reasonable. *See*
4 *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 461 (9th Cir. 2000), *as amended* (June 19, 2000)
5 (finding the district court did not abuse its discretion in approving a plan of distribution that left a
6 large portion of the class without recovery).

7 Although the proposed \$10.00 payment is greater than the value of some individuals’
8 claims, such a threshold would conserve administration funds and therefore provide a greater net
9 benefit to the class overall because:

- 10 • Checks of less than \$10.00 are less likely to be cashed, Christman Decl. ¶ 32;
- 11 • The value of some checks issued according to a strict *pro rata* distribution would be
12 less than the administration costs to issue and mail the check, *id.*; and
- 13 • Uncashed checks often result in additional delays as well as administration costs related
14 to tracking uncashed, expired checks and reissuing checks to replace them, *id.*

15 In sum, distributing the Net Settlement Funds to all approved claimants, as set forth above,
16 is fair, reasonable, and adequate.

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22 ⁷ Under Ninth Circuit Rule 36-3, *MGM* is not precedential; however, it has been relied upon as
23 persuasive authority in this District. *See Hefler v. Wells Fargo & Co.*, No. 16-CV-05479-JST, 2018
24 WL 6619983, at *11 n.13 (N.D. Cal. Dec. 18, 2018). *See also, e.g., Sullivan v. DB Invs., Inc.*, 667
25 F.3d 273, 328 (3d Cir. 2011) (\$10 threshold); *Destefano v. Zynga, Inc.*, No. 12-CV-04007-JSC,
26 2016 WL 537946, at *15 (N.D. Cal. Feb. 11, 2016) (\$10 threshold); *In re Gilat Satellite Networks,*
27 *Ltd.*, No. CV-02-1510 CPS SMG, 2007 WL 2743675, at *7 (E.D.N.Y. Sept. 18, 2007) (\$5
28 threshold); *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 463 (S.D.N.Y. 2004) (\$10
threshold); *In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, No. 02 MDL 1484JFK,
2007 WL 4526593, at *4 (S.D.N.Y. Dec. 20, 2007) (\$50 threshold); *Mehling v. N.Y. Life Ins. Co.*,
248 F.R.D. 455, 463 (E.D. Pa. 2008) (\$50 threshold).

1 **IV. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully request an Order authorizing the
3 distribution of the Net Settlement Funds as set forth in Exhibit D of the Christman Declaration.

4
5 Dated: August 2, 2019

/s/ R. Alexander Saveri

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