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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

This Document Relates to:

DIRECT PURCHASER CLASS ACTIONS

Case No. 3:10-md-02143 RS

MDL No. 2143

DIRECT PURCHASER PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF FINAL APPROVAL OF CLASS ACTION SETTLEMENTS WITH BENQ, PIONEER, PLDS, QSI, SONY, TEAC, AND TOSHIBA/SAMSUNG

Date: April 14, 2016
Time: 1:30 p.m.
Judge: Honorable Richard Seeborg
Courtroom: 3, 17th Floor

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I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 23(e) and the Court's Revised Order Granting Settlement Class Certification and Preliminary Approval of Class Action Settlements with BenQ, Pioneer, PLDS, QSI, Sony, TEAC, and TSST (Dec. 15, 2015) (Dkt. No. 1758) ("Preliminary Approval Order"), Direct Purchaser Plaintiffs ("Plaintiffs") submit this memorandum in support of final approval of the Class settlements reached with Defendants BenQ, Pioneer, PLDS, QSI, Sony, TEAC, and Toshiba/Samsung (collectively "Settling Defendants"). The Court previously granted final approval of settlements with HLDS, Panasonic, and NEC. Final approval of the current settlements would resolve this action, with the exception of settlement administration.

The settlements with Settling Defendants ("Settlements") provide for cash payments to the class totaling $37 million for a release of class members' claims against Settling Defendants concerning any "act or omission" alleged in the action or that could have been alleged in the action. Settlement Agreements ¶¶ 3, 6, 13.

On December 15, 2015, the Court certified the settlement classes ("Settlement Classes") and preliminarily approved the Settlements. Preliminary Approval Order ¶¶ 2–5. In addition, the Court set deadlines for: (1) class members to be provided notice of the Settlements; and (2) class members to opt-out of the settlement classes or object to the Settlements. The Court set April 14, 2016 as the date for the final approval hearing. *Id*. ¶¶ 9–14.

Plaintiffs have complied in every respect with the Court's Preliminary Approval Order. Notice has been given to class members and there are no objections to final approval of the Settlements (or to Class Counsel's fee application).[1] As with the first settlements, class participation is high: class members accounting for over 75% of the sales in the case have submitted claims.

Plaintiffs respectfully request the Court grant final approval of the Settlements, and the plan of allocation, on the grounds that they are fair, adequate, and reasonable to the class.

[1] One purported objection was sent to Plaintiffs' counsel, but never filed as required by the Preliminary Approval Order. Declaration of R. Alexander Saveri in Support of Final Approval of Class Action Settlements with BenQ, Pioneer, PLDS, QSI, Sony, TEAC, and Toshiba/Samsung and Plaintiffs' Second Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Class Representative Incentive Awards ¶ 25 & Ex. 8 ("Saveri Decl."). The "objection" has since been withdrawn. *See* Dkt. No. 1815.

II. FACTUAL AND PROCEDURAL HISTORY

This Multi-District Litigation arises from an alleged conspiracy to fix the prices of Optical Disc Drives ("ODDs"). ODDs are devices used to read and record information—such as data, music, and video—that is stored on optical discs, including CDs, DVDs, and Blu-Ray discs. Plaintiffs allege that Defendants' price-fixing conspiracy began as early as January 2004 and continued until at least January 2010. Plaintiffs allege that the conspiracy has been carried out through agreements to fix prices and restrict output and has been facilitated in a variety of ways, including bid-rigging, market allocation, and the use of trade associations. Saveri Decl. ¶ 9.

The Court has already finally approved settlements of (1) $26,000,000 with the HLDS Defendants (Hitachi-LG Data Storage, Inc., Hitachi-LG Data Storage Korea, Inc., LG Electronics, Inc., LG Electronics USA, and Hitachi, Ltd.) (September 23, 2013, Dkt. No. 1006); (2) $5,750,000 with the Panasonic Defendants (Panasonic Corporation and Panasonic Corporation of North America) (May 15, 2014, Dkt. No. 1266), and (3) $6,150,000 with NEC Corporation ("NEC") (August 14, 2014, Dkt. No. 1389).

As the Court is aware, this litigation is at an advanced stage. Plaintiffs' allegations have survived two rounds of motions to dismiss. Plaintiffs, along with the Indirect Purchaser Plaintiffs, have conducted substantial discovery. On May 29, 2013, Plaintiffs filed a motion for class certification, which the Court denied on October 3, 2014. Dkt. No. 1444.

On February 9, 2015, the Court granted Plaintiffs' leave to file a revised motion for class certification. Dkt. No. 1518. The Court ordered the parties to participate in settlement conferences before Magistrate Judge Corley. Saveri Decl. ¶ 11.

Beginning in April, 2015, Judge Corley conducted seven separate sets of settlement negotiations between Plaintiffs and each of the remaining defendants. Among other things, the settlement process involved (1) the submission of extensive and detailed settlement briefs; (2) in-person settlement conferences conducted by Judge Corley; and (3) continuing settlement discussions with Judge Corley by telephone. Ultimately, after months of negotiation, Judge Corley facilitated the settlement of Plaintiffs' case against all seven remaining defendant groups. *Id.* Judge Corley was instrumental not only in helping the parties reach agreement on the amounts Defendants were to pay

in settlement, but also with regard to various issues that arose during the process of drafting and negotiating the terms of the settlement agreements, including, for example, the class definition and the scope of the release. *Id.* ¶ 12. The parties executed final agreements between June, 2015 and September, 2015. *Id.* ¶ 13.

Plaintiffs have hired Gilardi & Co., LLC ("Gilardi") to serve as the Settlement Administrator. On January 7, 2016, Gilardi mailed notice to each of the class members identified by Defendants. Declaration of Rachel Christman Regarding Dissemination of Notice to Potential Class Members and Claims Submitted ¶ 4 (March 24, 2016) ("Christman Decl."). Gilardi mailed 258,778 notices. *Id.* Also on January 7, 2016, the Summary Notice was published in the *Wall Street Journal*. *Id.* ¶ 7. A website was also established at www.ODDDirectPurchaserAntitrustSettlement.com, which contains, *inter alia*, copies of the settlement agreements, class notices, and the Preliminary Approval Order. *Id.* ¶ 5. The postmark deadline for requests for exclusion from the settlement classes was February 22, 2016. Gilardi received twenty-three (23) requests for exclusion from the settlement classes. *Id.* ¶ 8. The deadline to file objections to the Settlements was February 22, 2016. As noted, Gilardi received one purported objection (forwarded by class counsel), which was later withdrawn. *Id.* ¶ 9; Dkt. No. 1815. No objections were filed with the Court. *See* ECF Docket; Saveri Decl. ¶ 25 & Ex. 8. Neither the purported Objector or her purported counsel was promised or received any consideration from the class or class counsel in return for the withdrawal of the purported objection. Saveri Decl. ¶ 25.

III. THE TERMS OF THE SETTLEMENTS

Plaintiffs executed substantially similar settlement agreements with each group of Settling Defendants in the following amounts:

DEFENDANT GROUP	AMOUNT
BenQ	$875,000
Pioneer	$4,200,000
PLDS	$15,000,000
QSI	$400,000
Sony	$6,000,000
TEAC	$1,325,000
Toshiba/Samsung	$9,200,000
Total:	**$37,000,000**

Saveri Decl. ¶ 15. As required by the Settlement Agreements, the settlement funds have been (or will be) paid into separate escrow accounts for the benefit of class members. Settlement Agreements ¶ 15 (BenQ and Toshiba/Samsung), 16 (Pioneer, PLDS, QSI, Sony, and TEAC); Saveri Decl. ¶ 16.[2]

Each settlement requires the certification of an identical nationwide class of direct purchasers of ODDs from January 1, 2004 until at least January 1, 2010 ("Settlement Classes"). ODDs are defined to mean any device which uses laser light (or electromagnetic wavelength) to read and/or write data to or from an optical disc. ODDs consist of both internal drives built to be incorporated or inserted into electronic devices and external drives that attach to a notebook or desktop computer or other electronic device by means of an external interface, such as a Universal Serial Bus ("USB") connection. Settlement Agreements ¶ 2.[3] The class definition is identical to the settlement classes certified by the Court in connection with the Panasonic and NEC settlements. Saveri Decl. ¶ 17. *See, e.g.*, Dkt. No. 1221. It is also the same as the proposed class Plaintiffs sought to certify in their class motion. *See* Dkt. No. 878; Saveri Decl. ¶ 17.[4]

Upon the Settlements becoming final, Plaintiffs and Class members will relinquish any claims they have against Settling Defendants based, in whole or in part, on matters alleged or that might have been alleged in this litigation. Settlement Agreements ¶ 13. The releases exclude claims for, *inter alia*, product defects or personal injury. *Id.*

[2] The PLDS settlement provides for a reduction of the settlement amount by $3 million—from $15 million to $12 million—if class members representing more than 65% of purchases request exclusion. Saveri Decl. ¶ 19 & Ex. 3, ¶ 18(a). This condition did not come to pass, and PLDS has deposited the full $15 million into the escrow account. Saveri Decl. ¶ 19.

[3] ODDs include the following optical disc formats: (a) compact discs ("CDs"), such as CD-ROMs or CD-recordable/rewritable discs ("CD-R/RWs"); (b) digital versatile discs ("DVDs"), such as DVD-ROMs or DVD-recordable/rewritable discs ("DVD±R/RWs"); (c) Blu-ray products, such as Blu-ray discs ("BDs") and Blu-ray-recordable/rewritable discs ("BDR"/"BD-RWs"); (d) High Definition DVDs ("HD-DVDs"); and (e) Super Multi-Drives or other combination drives that read from and/or write to various types of the foregoing media. *Id.*

[4] The Settlements also (1) require Settling Defendants to cooperate in the prosecution of the case against any remaining defendant by, *inter alia*, producing trial witnesses and additional discovery (Settlement Agreements ¶¶ 23-25 (BenQ and Toshiba/Samsung), 24–26 (Pioneer, PLDS, QSI, Sony, and TEAC)); and (2) provide that Settling Defendants' sales remain in the case for purposes of computing damages against any remaining defendant. *Id.* ¶ 13; Saveri Decl. ¶ 18. Some of the Settlements also provide that up to $750,000 of each may be used for expenses incurred in the continued prosecution of the Action. Settlement Agreements ¶¶ 22(a) (Toshiba/Samsung), 23(a) (Pioneer, PLDS, Sony, and TEAC). As noted above, however, the Settlements resolve this action in its entirety. Therefore, these provisions will have a practical effect only if the Court declines to approve one or more of the Settlements.

The Settlements become final upon: (i) the Court's approval of the Settlements pursuant to Rule 23(e) and the entry of final judgments of dismissal with prejudice as to Settling Defendants; and (ii) the expiration of the time for appeal or, if an appeal is taken, the affirmance of the judgments with no further possibility of appeal. *Id.* ¶ 11.

Subject to the approval and direction of the Court, the settlement payments, plus accrued interest thereon, will be used to: (i) make a distribution to Class members in accordance with a proposed plan of allocation (*id.* ¶¶ 20-21 (BenQ and Toshiba/Samsung), 21-22 (Pioneer, PLDS, QSI, Sony, and TEAC)); (ii) pay Class Counsel's attorneys' fees, costs, and expenses as may be awarded by the Court (*id.* ¶¶ 21-22 (BenQ and Toshiba/Samsung), 22-23 (Pioneer, PLDS, QSI, Sony, and TEAC)); (iii) pay Notice costs and costs incurred in the administration and distribution of the settlement[5]; and (iv) pay taxes associated with any interest earned on the escrow accounts (*id.* ¶¶ 16(f) (BenQ and Toshiba/Samsung), 17(f) (Pioneer, PLDS, QSI, Sony, and TEAC)).

Finally, Settling Defendants have no right to terminate the settlements, regardless of how many class members request exclusion. *See* Settlement Agreements. Saveri Decl. ¶ 19.

IV. ARGUMENT

A class action may not be dismissed, compromised, or settled without the approval of the Court. Judicial proceedings under Federal Rule of Civil Procedure 23 have led to a defined procedure and specific criteria for class action settlement approval. The Rule 23(e) final approval is a three step process:

1. Certification of a settlement class and preliminary approval of the proposed settlement;
2. Dissemination of notice of the settlement to all affected class members; and
3. A formal fairness hearing, also called the final approval hearing, at which class members may be heard regarding the settlement, and at which counsel may introduce evidence and present argument concerning the fairness, adequacy, and reasonableness of the settlement.

[5] Each settlement also provides that notice and administration costs up to a certain amount are non-refundable (*id.* ¶¶ 18(a) (BenQ ($300,000) & Toshiba/Samsung ($300,000)), 19(a) (Pioneer ($200,000), PLDS ($300,000), QSI ($50,000), Sony ($300,000), and TEAC ($300,000)).

This procedure safeguards class members' due process rights and enables the Court to fulfill its role as the guardian of class interests. *See* William B. Rubenstein, 4 *Newberg on Class Actions* § 13.10 (5th ed. 2014).

A. The Class Action Settlement Classes.

The Court here completed the first step in the settlement approval process when it granted preliminary approval of the Settlement.

The Court certified a Settlement Class consisting of:

> All individuals and entities who, during the period from January 1, 2004 until at least January 1, 2010 (the "Class Period") purchased one or more Optical Disk Drives in the United States directly from the Defendants, their subsidiaries, or their affiliates. Excluded from the Class are Defendants and their parents, subsidiaries, affiliates, and all governmental entities. As used herein the term "Optical Disc Drive" includes (a) a drive sold by a Defendant or its subsidiary or affiliate as a separate unit that is to be inserted into, or incorporated in, an electronic device; (b) a drive sold by a Defendant or its subsidiary or affiliate as a separate unit that is to be attached to an electronic device through an external interface such as a Universal Serial Bus connection; and (c) an internal drive sold as a component of a laptop or desktop computer by a Defendant or its subsidiary or affiliate.

Preliminary Approval Order ¶ 4. As noted, this is the same class definition that was finally approved in connection with the Panasonic and NEC settlements. (Dkt. Nos. 1266, 1389.)

B. The Court-Approved Notice Program Satisfies Due Process and Has Been Fully Implemented.

The second step in the settlement approval process has also been completed. In accordance with the Preliminary Approval Order, class members have been notified of the Settlements via first-class mail and publication. Christman Decl. ¶ 4.

When a proposed class action settlement is presented for court approval, the Federal Rules require:

> [T]he best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B).

A settlement notice is a summary, not a complete source of information. *See, e.g.*, *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1153 (8th Cir. 1999); *In re "Agent Orange" Prod. Liability Litig.*, 818 F.2d 145, 170 (2d Cir. 1987), *cert. denied*, 484 U.S. 1004 (1988); *Mangone v. First USA Bank*, 206 F.R.D. 222, 233 (S.D. Ill. 2001). In this Circuit, a general description of the proposed settlement suffices. *Churchill Vill. L.L.C. v. Gen. Elec. Co.*, 361 F.3d 566, 575 (9th Cir. 2004); *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1374-75 (9th Cir. 1993); *Mendoza v. United States*, 623 F.2d 1338, 1351 (9th Cir. 1980), *cert. denied sub nom. Sanchez v. Tuscon Unified Sch. Dist.*, 450 U.S. 912 (1981).

The content of the Court-approved notices complies with the requirements of Rule 23(c)(2)(b). Both the summary and long-form notices clearly and concisely explain in plain English the nature of the action and the terms of the Settlements. They provide a clear description of who is a member of the class and the binding effects of class membership. They explain how to exclude oneself from the class, how to object to the Settlements, how to obtain copies of papers filed in the case, and how to contact Class counsel. *See* Christman Decl., Exs. A, B. The notices also explain that they provide only a summary of the Settlements and that the settlement agreements are on file with the District Court and also available online at: www.ODDDirectPurchaserAntitrustSettlement.com. *See id.* Every provision of the Settlements was and is available to each class member.

The notice plan was implemented by the settlement administrator Gilardi & Co., LLC. Christman Decl. ¶¶ 3–7. Specifically, Gilardi printed and mailed 258,778 notices to class members through U.S. Mail on January 7, 2016. *Id.* ¶ 4. Gilardi also published notice in the January 7, 2016 national edition of the *Wall Street Journal*. *Id.* ¶ 7, Ex. B. Gilardi also maintains the case website where class members can view and print the Class Notice, the Settlement Agreements, and the Preliminary Approval Order. *Id.* ¶ 5. Gilardi also established a toll-free telephone number to answer Class members' questions in both English and Spanish. *Id.* ¶ 6.

The notice program is identical the programs that were finally approved by this Court in connection with the HLDS, Panasonic, and NEC settlements. Dkt. Nos. 1006, 1266, 1389. In addition, it is similar to the programs implemented in other direct purchaser antitrust class

actions—namely direct notice to class members whose addresses can be reasonably obtained along with publication once in the national edition of the *Wall Street Journal*, together with appropriate postings on the Internet. This notice program is also similar to those approved and employed in the direct purchaser *DRAM*, *SRAM*, *CRT*, and *LCD* class actions in this District. Saveri Decl. ¶ 23. It is plain in this context that the notice given constitutes valid, due and sufficient notice to class members, and constitutes the best notice practicable under the circumstances.

C. The Settlements Are "Fair, Adequate and Reasonable" and Should Be Granted Final Approval.

The law favors the compromise and settlement of class action suits. *See, e.g.*, *Churchill Village*, 361 F.3d at 576; *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). "[T]he decision to approve or reject a settlement is committed to the sound discretion of the trial judge because he is 'exposed to the litigants and their strategies, positions and proof.'" *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1988) (quoting *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 626 (9th Cir. 1982)). In exercising such discretion, courts should give "proper deference to the private consensual decision of the parties." *Hanlon*, 150 F.3d at 1027.

> [T]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.

Id. (citation omitted).

It is well established in the Ninth Circuit that "voluntary conciliation and settlement are the preferred means of dispute resolution." *Officers for Justice*, 688 F.2d at 625. "[T]here is an overriding public interest in settling and quieting litigation" and this is "particularly true in class action suits." *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); *see also Utility Reform Project v. Bonneville Power Admin.*, 869 F.2d 437, 443 (9th Cir. 1989). In evaluating a proposed class action settlement, the Ninth Circuit has recognized that:

> [T]he universally applied standard is whether the settlement is fundamentally fair, adequate and reasonable. The district court's ultimate determination will necessarily involve a balancing of several factors which may include, among others, some or all of the following: the strength of plaintiffs' case; the risk, expense, complexity, and

> likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.

Officers for Justice, 688 F.2d at 625 (citations omitted); *accord Torrisi*, 8 F.3d at 1375.

The court is entitled to exercise its "sound discretion" when deciding whether to grant final approval. *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661 F.2d 939 (9th Cir. 1981); *Torrisi*, 8 F.3d at 1375. "Where, as here, a proposed class settlement has been reached after meaningful discovery, after arm's length negotiation, conducted by capable counsel, it is presumptively fair." *M. Berenson Co. v. Faneuil Hall Marketplace, Inc.*, 671 F. Supp. 819, 822 (D. Mass. 1987).

1. The Settlements Provide Considerable Relief for the Class.

The consideration for the Settlements is substantial and provides considerable relief for the Class. The Settlements provide for cash payments totaling $37 million. *See* Saveri Decl. ¶ 15; Settlement Agreements ¶¶ 3, 6. The payments required by the settlements before the court represent from 0.8% (Sony) to 1.4% (QSI) of what Plaintiffs' contend is each defendant's total sales to class members during the class period.[6] The previous settlements ranged from approximately 3% to 3.83 % of sales. Since those settlements, however, the Court has denied Plaintiffs' motion for class certification. It has also become clear that Plaintiffs face a risk that they will not be able to prove that Defendants' alleged price fixing extended beyond the bid-rigging described in the guilty pleas of certain Defendants. In this context, it is plain that the Settlements—though smaller as a percentage of Defendants' sales than previous settlements—are within the range of reasonableness. Indeed, in light of the substantial risks to the class of further litigation, they constitute excellent recoveries. The Settlement also compares favorably to settlements finally approved in other price-fixing cases. *See, e.g.*, *Fisher Bros. v. Mueller Brass Co.*, 630 F. Supp. 493, 499 (E.D. Pa. 1985) (recoveries equal to .1%, .2%, .3%, .65%, .88%, 2%, and 2.4% of defendants' total sales).

[6] The amount of Defendants' sales is a matter of dispute.

2. The Class Members' Positive Reaction Favors Final Approval.

In determining the fairness and adequacy of a proposed settlement, the Court also should consider "the reaction of the class members to the proposed settlement." *Churchill Village*, 361 F.3d at 575; *Hanlon*, 150 F.3d at 1026. "It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004); *see also, In re Fleet/Norstar Sec. Litig.*, 935 F. Supp. 99, 107 (D.R.I. 1996).

The reaction of the class supports final approval. There are no objections to the Settlements. While one purported objection was received, it has been withdrawn. Saveri Decl. ¶ 25 & Ex. 8; Dkt. No. 1815. In addition, only twenty-three class members have opted out of the class. *See* Christman Decl. ¶ 8. Of the twenty-three requests for exclusion received, thirteen were from individuals; ten came from business entities on behalf of themselves and their various subsidiaries. *See id.*, Ex. C. Class members overwhelmingly support the settlements. The reaction of the class is even more significant because the class contains sophisticated business entities with significant claims. Christman Decl. ¶ 12; *see* section VI, below.

3. The Settlements Eliminate Significant Risk to the Class.

While Plaintiffs believe their case is strong, the Settlements eliminate significant risks they would face if the action were to proceed. As noted, class certification and proof that the alleged conspiracy extended beyond the bid-rigging described in the guilty pleas pose significant risk to the class. In addition, Defendants would strongly contest many other issues in this complex case. *See, e.g., Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 118 (2d Cir. 2005) ("'Indeed, the history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at trial, or on appeal.'") (quoting *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 475 (S.D.N.Y. 1998)); *In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 283 (S.D.N.Y. 1999); *Larsen v. Trader Joe's Co.*, No. 11-cv-05188-WHO, 2014 WL 3404531, at *4 (N.D. Cal. July 11, 2014) ("Avoiding such unnecessary and unwarranted expenditure of resources and time would benefit all parties, as well

as conserve judicial resources. Accordingly, the high risk, expense, and complex nature of the case weigh in favor of approving the settlement.") (citation omitted); *In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503, 510 (E.D.N.Y. 2003), *aff'd* 396 F.3d 96 (2d Cir. 2005) ("The potential for this complex litigation to result in enormous expense, and to continue for a long time, was great."); *In re Austrian and German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000), *aff'd sub nom. D'Amato v. Deutsche Bank*, 236 F.3d 8 (2d Cir. 2001) ("Most class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them.").

Thus, the Settlements are in the best interest of the Class because they eliminate the risks of continued litigation, while at the same time creating a substantial cash recovery.

4. The Settlements Are the Product of Arm's-Length Negotiations Between the Parties and the Recommendation of Experienced Counsel Favors Approval.

As the Court is aware, this case has been vigorously litigated. Class Counsel have analyzed millions of documents produced by Defendants and others. They have conducted an independent investigation of the facts and analyzed Defendants' sales and pricing data. Plaintiffs' were well prepared for their negotiations with Settling Defendants.

Settlement negotiations with each of the seven groups of Settling Defendants occurred over a span of several months and involved face to face meetings, and were informed by expert analysis and the fruits of years of discovery. The negotiations were vigorously contested, thorough and conducted in the utmost good faith. They were guided by an experienced and effective settlement judge. Saveri Decl. ¶ 20. In these circumstances, there can be little doubt that the negotiations were conducted at arm's length by informed parties. This fact also supports final approval. *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution.").

Counsel's judgment that the Settlements are fair and reasonable is also entitled to great weight. *See Nat'l Rural Telcomms. Coop.*, 221 F.R.D. at 528 ("'Great weight' is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation."); *accord Bellows v. NCO Fin. Sys.*, No. 3:07-dv-01413-W-AJB, 2008 U.S. Dist. LEXIS

103525, at *22 (S.D. Cal. Dec. 2, 2008); *Wilkerson v. Martin Marietta Corp.*, 171 F.R.D. 273, 288–89 (D. Colo. 1997).

For all of these reasons, the Settlements are "fair, adequate and reasonable." Accordingly, final approval should be granted.

D. The Plan of Allocation Is "Fair, Adequate and Reasonable" and Therefore Should Be Approved.

The Class Notice outlined the following proposed plan for allocating the settlement proceeds:

> The Settlement Funds will be allocated on a *pro rata* basis based on the dollar value of each class member's purchase(s) of ODDs in proportion to the total claims filed. In determining the *pro rata* allocation of Settlement Funds, purchases of stand-alone ODDs will be valued at 100% of their purchase price. For purchases of electronic devices containing an ODD (desktop computers or laptop computers), the *pro rata* calculation will factor in the proportionate value of the ODD contained in the product. The resulting percentages will be multiplied by the net Settlement Fund (total settlements minus all costs, attorneys' fees, and expenses) to determine each claimant's *pro rata* share of the Settlement Fund.

See Christman Decl., Ex. A, at 3.

A plan of allocation of class settlement funds is subject to the "fair, reasonable and adequate" standard that applies to approval of class settlements. *In re Citric Acid Antitrust Litig.*, 145 F. Supp. 2d 1152, 1154 (N.D. Cal. 2001). A plan of allocation that compensates class members based on the type and extent of their injuries is generally considered reasonable. *In re Computron Software, Inc.*, 6 F. Supp. 2d 313, 321 (D.N.J. 1998). Here the proposed distribution will be based on the amount of each class member's purchases, with no class member being favored over others. This type of distribution has frequently been determined to be fair, adequate, and reasonable. *See In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, No. M-02-1486 PJH, Dkt. No. 2093, p.2 (Oct. 27, 2010) (Order Approving Pro Rata Distribution); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. MDL 3:07-md-1827 SI, 2011 WL 7575004, at *4 (N.D. Cal. Dec. 27, 2011) (In approving a *pro rata* allocation, Judge Illston noted that "a *pro-rata* allocation has been used in many antitrust cases including in this District."); *In re Vitamins Antitrust Litig.*, No. 99-197 TFH, 2000 WL 1737867, at *6 (D.D.C. Mar. 31, 2000) ("Settlement distributions, such as this one, that

apportions funds according to the relative amount of damages suffered by class members, have repeatedly been deemed fair and reasonable."); *In re Lloyds' Am. Trust Fund Litig.*, No. 96 Civ.1262 RWS, 2002 WL 31663577, at *19 (S.D.N.Y. Nov. 26, 2002) ("*pro rata* allocations provided in the Stipulation are not only reasonable and rational, but appear to be the fairest method of allocating the settlement benefits."); *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 135 (S.D.N.Y. 1997), *aff'd* 117 F.3d 721 (2d Cir. 1997) ("*pro rata* distribution of the Settlement on the basis of Recognized Loss will provide a straightforward and equitable nexus for allocation and will avoid a costly, speculative and bootless comparison of the merits of the Class Members' claims").

This plan of allocation is essentially identical to the plans of allocation that the Court finally approved in connection with the HLDS, Panasonic, and NEC settlements. Dkt. Nos. 1006, 1266, 1389. Plaintiffs respectfully submit that it remains "fair, adequate and reasonable" and that the Court should approve it again.

V. EXCLUSIONS & OBJECTIONS

Class members were advised of the right to be excluded from the Settlement Classes, which could be accomplished through mailing a request for exclusion to the Settlement Administrator no later than February 22, 2016. As noted, twenty-three (23) requests for exclusion were received from Class members. Christman Decl. ¶ 8, Ex. C. One purported objection was submitted, then withdrawn. *Id.* ¶ 9; Dkt. No. 1815.[7]

VI. CLAIMS PROCESS

On July 16, 2015, Plaintiffs filed a report detailing the results of the initial claim process. Dkt. No. 1652. Pursuant to the Preliminary Approval Order, the claims process was reopened. The deadline to submit claims in the reopened claim period was March 7, 2016. Pursuant to the Preliminary Approval Order, "[c]laims submitted in connection with the HLDS, Panasonic, and NEC settlements will automatically be included in this second round of claim submission." The claims administrator, Gilardi & Co., LLC ("Gilardi"), is currently in the process of auditing the claims to ensure that the claims meet the requirements set forth in the claim form (e.g., that they

[7] As noted above, 258,778 Class Notices were mailed to class members throughout the United States and 5,151 (approximately 2%) were returned undeliverable. Christman Decl. ¶ 4. *See also Procedural Guidelines for Class Action Settlements—Final Approval*, U.S.D.C., N.D. Cal. (March 22, 2016), http://www.cand.uscourts.gov/ClassActionSettlementGuidance ("*Guidelines*") ¶ 1.

are within the class period(s), that they are direct purchases from a defendant or a subsidiary of a defendant, etc.). Christman Decl. ¶ 10. To date, 27,025 claims have been submitted. *Id.* ¶ 11.

DPPs' current analysis—informed by the transactional data that was produced by the Defendants—indicates that claims constitute over 75% of the total purchases of the class as defined in the Settlements.[8] Saveri Decl. ¶ 26. Twelve of the top thirteen purchasers—Microsoft, Best Buy, ASI Computer Technologies, Private Label PC, MA Laboratories, Bell Microproducts (now known as Avnet, Inc.), Wal-Mart, Fry's, Foxconn, Office Depot, D&H Distributing, and Tech Data—submitted claims. *Id.*; Christman Decl. ¶ 12. These companies account for nearly 53% of class purchases as shown in the Defendants' transactional data. Saveri Decl. ¶ 26. Another of the top thirteen, Circuit City, submitted a claim against the previous settlements, but then filed its own action against the remaining defendants after the Court denied Plaintiffs' class certification motion. *Id.* It has requested exclusion from the settlement classes before the Court. *Id.* In addition, seventeen other top-forty purchasers[9] have submitted claims, accounting for another 14% of class purchases. *Id.*; Christman Decl. ¶ 12. The high level of participation in the claims process by class members underscores the fact that the Settlements provide important and meaningful benefits to the class.

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[8] This calculation is based upon transactional information provided by Defendants. DPPs' experts used this information to make a list of class members and their purchases. The data used in the calculation include purchases of ODDs, desktop computers, and laptop computers from January 1, 2004 through January 1, 2010, consistent with the class definition for the Settlements. Saveri Decl. ¶ 26. Because the audit process is ongoing, the amounts of some claims may change.

[9] Magnell Associate, Inc. (also known as Newegg); ABS Computer Technologies; CompUSA (now known as Old Comp, Inc.); Memorex Products, Inc. (now known as Imation); Wistron Infocomm; KL Fenix Corporation; Micro Electronics; SED International; Staples; Intcomex (also known as Incomex); Wintec Industries; Office Max; Leadertech Systems of Chicago; Arrow Electronics; IBM; and ASUS.

VII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter an order granting the relief requested by this memorandum: (i) granting final approval of the Settlements; and (ii) granting Final Judgments of Dismissal with prejudice as to BenQ, Pioneer, PLDS, QSI, Sony, TEAC, and Toshiba/Samsung.

Dated: March 24, 2016

Respectfully submitted,

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