

1 Guido Saveri (22349)
 guido@saveri.com
2 R. Alexander Saveri (173102)
 rick@saveri.com
3 Cadio Zirpoli (179108)
 cadio@saveri.com
4 Travis L. Manfredi (281779)
 travis@saveri.com
5 SAVERI & SAVERI, INC.
6 706 Sansome Street
7 San Francisco, CA 94111
8 Telephone: (415) 217-6810
 Facsimile: (415) 217-6813

9 *Chairman of the Executive Committee*
10 *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

**REPLY BRIEF IN SUPPORT OF DIRECT
PURCHASER PLAINTIFFS' SECOND
MOTION FOR AN AWARD OF
ATTORNEYS' FEES, REIMBURSEMENT
OF EXPENSES, AND CLASS
REPRESENTATIVE INCENTIVE AWARDS**

20
21 Date: April 14, 2016
22 Time: 1:30 p.m.
23 Judge: Hon. Richard Seeborg
Courtroom: 3

1 **I. INTRODUCTION**

2 The Direct Purchaser Plaintiffs (“DPPs”) submit this reply in support of their Second
3 Motion for an Award of Attorneys’ Fees, Reimbursement of Expenses, and Class Representative
4 Incentive Awards (Feb. 18, 2016) (Dkt. No. 1802) (“Fee Motion”). The class members have been
5 notified of the Fee Motion, the deadline to file objections to the Fee Motion has passed, and there
6 are no objections.

7 **II. NOTICE TO THE CLASS REGARDING THE FEE MOTION**

8 DPPs have complied with all of the requirements set forth in the Court’s Revised Order
9 Granting Settlement Class Certification and Preliminary Approval of Class Action Settlements
10 with BenQ, Pioneer, PLDS, QSI, Sony, TEAC, and TSST (Dec. 15, 2015) (Dkt. No. 1758)
11 (“Order”):

- 12 • As ordered (Order ¶ 20), on February 18, 2016, DPPs filed their Fee Motion. *See*
13 Fee Motion.
- 14 • As ordered (Order ¶ 9), on January 7, 2016, Gilardi sent notice to class members by
15 direct mail. Declaration of Rachel Christman Regarding Dissemination of Notice to
16 Potential Class Members and Claims Process ¶ 4 (March 24, 2016) (“Christman
17 Decl.”).
- 18 • Gilardi also created an online claim form to allow class members to submit claims
19 electronically. Christman Decl. ¶ 5.
- 20 • As ordered (Order ¶ 9), on January 7, 2016, Gilardi caused the notice to be
21 published in the *Wall Street Journal*. Christman Decl. ¶ 7.
- 22 • As ordered (Order ¶ 20)—and in accordance with *In re Mercury Interactive Corp.*
23 *Securities Litigation*, 618 F.3d 988, 994–95 (9th Cir. 2010)—on February 18, 2016,
24 21 days prior to the date to object, Gilardi caused the Fee Motion and all supporting
25 documents to be posted to the notice website
26 (<http://www.odddirectpurchaserantitrustsettlement.com>). Christman Decl. ¶ 5.

27 In compliance with *Procedural Guidelines for Class Action Settlements—Final Approval*,
28 U.S.D.C., N.D. Cal. (March 22, 2016),
<http://www.cand.uscourts.gov/ClassActionSettlementGuidance> (“*Guidelines*”) ¶ 2, the Fee Motion
was accompanied by declarations from all of the firms that performed work on behalf of DPPs in
this action setting forth detailed lodestar information for the work done in this case. *See* Dkt Nos.

1 1802-1, 1802-4–1802-27.

2 **III. CLASS RESPONSE TO THE FEE MOTION**

3 The deadline for class members to file any comments or objections was March 10, 2016.
4 Order ¶ 21. No comments or objections were filed. Christman Decl. ¶ 9. *See also* Docket in *In re*
5 *Optical Disk Drive Antitrust Litig.*, Case No. 10-md-2143 RS. Plaintiffs received a document titled
6 “Formal Objection of Debbie Bosse to Proposed Settlements and Notice of Intent to Appear.”
7 Declaration of R. Alexander Saveri in Support of Final Approval of Class Action Settlements with
8 BenQ, Pioneer, PLDS, QSI, Sony, TEAC, and Toshiba/Samsung and Plaintiffs’ Second Motion for
9 an Award of Attorneys’ Fees, Reimbursement of Expenses, and Class Representative Incentive
10 Awards ¶ 25 & Ex. 8 (“Saveri Decl.”). This document was never filed as required by the
11 Preliminary Approval Order. *Id.* Counsel has since withdrawn the document. *See* Dkt. No. 1815.
12 Neither the purported Objector or her purported counsel was promised or received any
13 consideration from the class or class counsel in return for the withdrawal of the purported
14 objection. Saveri Decl. ¶ 25.

15 **IV. REPORT ON THE CLAIM PROCESS**

16 On July 16, 2015, Plaintiffs filed a report detailing the results of the initial claim process. Dkt.
17 No. 1652. Pursuant to the Preliminary Approval Order, the claims process was reopened. The new
18 deadline to submit claims was March 7, 2016. Pursuant to the Preliminary Approval Order, “[c]laims
19 submitted in connection with the HLDS, Panasonic, and NEC settlements will automatically be
20 included in this second round of claim submission.” The claims administrator, Gilardi & Co., LLC
21 (“Gilardi”), is currently in the process of auditing the claims to ensure that the claims meet the
22 requirements set forth in the claim form (e.g., that they are within the class period(s), that they are
23 direct purchases from a defendant or a subsidiary of a defendant, etc.). Christman Decl. ¶ 10.

24 Over 27,000 claims were submitted, totaling over \$12.75 billion in ODD dollars.¹ Christman

25 ¹ As explained in the claim form, products containing ODDs have been assigned certain dollar
26 values to account for the portion of the product’s price attributable to the ODD inside (with the
27 exception of PCs and laptops, which are valued at 3.5% of their purchase price). To determine each
28 class member’s pro rata portion, their purchase data has been converted to “ODD Dollars” based
upon these valuations. *See* Exhibit B to the Declaration of Ross Murray Regarding Dissemination
of Notice and Proof of Claim Forms to Potential Class Members (Apr. 23, 2015) (Dkt. No. 1570-1).

1 Decl. ¶ 11.

2 DPPs' current analysis—informed by the transactional data that was produced by the
3 Defendants—indicates that claims constitute over 75% of the total purchases of the class as defined
4 in the Settlements.² Saveri Decl. ¶ 26. Twelve of the top thirteen purchasers—Microsoft, Best Buy,
5 ASI Computer Technologies, Private Label PC, MA Laboratories, Bell Microproducts (now known
6 as Avnet, Inc.), Wal-Mart, Fry's, Foxconn, Office Depot, D&H Distributing, and Tech Data—
7 submitted claims. *Id.*; Christman Decl. ¶ 12. These companies account for nearly 53% of class
8 purchases as shown in the Defendants' transactional data. Saveri Decl. ¶ 26. Another of the top
9 thirteen, Circuit City, submitted a claim against the previous settlements, but then filed its own
10 action against the remaining defendants after the Court denied Plaintiffs' class certification motion.
11 *Id.* It has requested exclusion from the settlement classes before the Court. *Id.* In addition,
12 seventeen other top-forty purchasers³ have submitted claims, accounting for another 14% of class
13 purchases. Saveri Decl. ¶ 26; Christman Decl. ¶ 12.

14 If the Court grants the Fee Motion, DPPs expect that over \$24.5 million from the
15 Settlements before the Court will be distributed to the class. The total amount to be distributed
16 from all of the settlements obtained by DPPs would be over \$46 million. Saveri Decl. ¶ 27. If
17 claims are consistent with Defendants' transactional data, four class members would receive over
18 \$1,000,000 from the Settlements before the Court; eight would receive over \$1,000,000 overall. *Id.*
19 Over forty additional class members would receive over \$100,000 from the Settlements; over sixty
20 would receive over \$100,000 overall. *Id.* There will be no reversion to settling defendants of any

22 ² This calculation is based upon transactional information provided by Defendants. DPPs' experts
23 used this information to make a list of class members and their purchases. The data used in the
24 calculation include purchases of ODDs, desktop computers, and laptop computers from January 1,
25 2004 through January 1, 2010, consistent with the class definition for the Settlements (which is
26 also the class definition that was used in the DPP class certification motion). Saveri Decl. ¶ 26.
27 Because the audit process is ongoing, the amounts of some claims may change.

28 ³ 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. Christman Decl. ¶ 12.

1 amount, regardless of the outcome of the claims process. *See id.* ¶ 21 & Exs. 1–7. The average
2 claimant’s pro rata award from the Settlements would be approximately \$900, and approximately
3 \$1,700 overall.⁴

4 DPPs respectfully submit that the progress of the claims process supports their fee
5 application. First, the claims received include those of sophisticated class members with large
6 claims. Several of these companies—e.g., Best Buy, Office Depot, Tech Data—have chosen to opt
7 out of other recent class actions involving electronic products—e.g., *LCD*, *CRT*—in favor of filing
8 their own actions. Saveri Decl. ¶ 28. Their participation in the settlement here and the lack of
9 objections to the fee application demonstrates the reasonableness of the fee application. “When a
10 class is comprised of sophisticated business entities that can be expected to oppose any request for
11 attorney fees they find unreasonable, the lack of objections ‘indicates the appropriateness of the
12 [fee] request.’” *In re Remeron Direct Purchaser Antitrust Litig.*, No. Civ.03-0085 FSH, 2005 WL
13 3008808, at *13 n.1 (D.N.J. Nov. 9, 2005). Second, the claims received demonstrate very strong
14 overall participation of the class. This shows that the Settlements have benefited the class.

15 **V. CONCLUSION**

16 For the foregoing reasons and the reasons set forth in the Fee Motion, DPPs respectfully
17 request that the Court grant Plaintiffs’ Second Motion for an Award of Attorneys’ Fees,
18 Reimbursement of Expenses, and Class Representative Incentive Awards.⁵

19
20 ⁴ \$24,500,000 ÷ 27,000 class members = \$907. \$46,000,000 ÷ 27,000 class members = \$1,703.

21 ⁵ In their reply brief submitted in support of their first Fee Motion, Plaintiffs reported that no
22 objections “were filed or sent to the claims administrator.” Reply Brief in Support of Direct
23 Purchaser Plaintiffs’ Motion for an Award of Attorneys’ Fees, Reimbursement of Expenses, and
24 Class Representative Incentive Awards, p. 1:25–26. This assertion was based on the Declaration of
25 Ross Murray regarding Dissemination of Notice and Proof of Claim Forms to Potential Class
26 Members. *Id.* Mr. Murray is an officer of Gilardi & Co., LLC (“Gilardi”), the claims administrator
27 Plaintiffs hired to administer the ODD settlements and notice process.

28 On March 11, 2016, Gilardi notified Plaintiffs that one claimant—Jon Shastid—had attached a
letter to his claim form requesting that the Court reduce the amount of fees awarded to Class
Counsel. A copy of Mr. Shastid’s claim—dated March 30, 2015—and his letter are attached as
Exhibit 9 to the Saveri Declaration. The letter was not styled as an objection and was not filed as
required by the Court’s Preliminary Approval Order. Saveri Decl. ¶ 29. Mr. Shastid did not appear
at the hearing on the fee motion or otherwise follow up on his letter in any way, as far as Class
Counsel are aware.

Plaintiffs submit that Mr. Shastid’s letter does not constitute a proper objection, and, therefore,
that the statement referred to above is correct. Out of an abundance of caution, however, Plaintiffs

1 Dated: March 24, 2016

/s/ R. Alexander Saveri

2 Guido Saveri (22349)
3 R. Alexander Saveri (173102)
4 Cadio Zirpoli (179108)
5 Travis L. Manfredi (281779)
6 SAVERI & SAVERI, INC.
7 706 Sansome Street
8 San Francisco, CA 94111
9 Telephone: (415) 217-6810
10 Facsimile: (415) 217-6813

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

11 Joseph J. Tabacco Jr.
12 Christopher T. Heffelfinger
13 Todd A. Seaver
14 BERMAN DeVALERIO
15 One California Street, Suite 900
16 San Francisco, CA 94111
17 Tel: 415-433-3200
18 Fax: 415-433-6382
19 jtabacco@bermandevalerio.com
20 cheffelfinger@bermandevalerio.com
21 tseaver@bermandevalerio.com

22 Joseph W. Cotchett
23 Steven N. Williams
24 Adam J. Zapala
25 COTCHETT, PITRE & McCARTHY, LLP
26 840 Malcolm Road, Suite 200
27 Burlingame, CA 94010
28 Tel: 650-697-6000
Fax: 650-697-0577
jcotchett@cpmlegal.com
swilliams@cpmlegal.com
azapala@cpmlegal.com

wish to advise the Court of the existence of the letter.

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Michael P. Lehmann
Christopher L. Lebsock
HAUSFELD LLP
44 Montgomery Street, Suite 3400
San Francisco, CA 94104
Tel: 415-633-1909
Fax: 415-358-4980
mlehmann@hausfeldllp.com
clebsock@hausfeldllp.com

Robert N. Kaplan
KAPLAN FOX & KILSHEIMER, LLP
850 Third Avenue, 14th Floor
New York, NY 10022
Tel: 212-687-1980
Fax: 212-687-7714
rkaplan@kaplanfox.com

Eric B. Fastiff
Brendan P. Glackin
LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Tel: (415) 956-1000
Fax: (415) 956-1008
efastiff@lchb.com
bglackin@lchb.com

Bruce L. Simon
Aaron Sheanin
PEARSON SIMON & WARSHAW, LLP
44 Montgomery Street
Suite 2450
San Francisco, CA 94104
Tel: 415-433-9000
Fax: 415-433-9008
bsimon@pswlaw.com
asheanin@pswlaw.com

*Executive Committee of Direct Purchaser
Plaintiffs' Counsel*