

1 Jeff D. Friedman (173886)
Shana E. Scarlett (217895)
2 HAGENS BERMAN SOBOL SHAPIRO LLP
715 Hearst Avenue, Suite 202
3 Berkeley, CA 94710
Telephone: (510) 725-3000
4 Facsimile: (510) 725-3001
jefff@hbsslaw.com
5 shanas@hbsslaw.com

6 Steve W. Berman (*Pro Hac Vice*)
HAGENS BERMAN SOBOL SHAPIRO LLP
7 1918 Eighth Avenue, Suite 3300
Seattle, WA 98101
8 Telephone: (206) 623-7292
Facsimile: (206) 623-0594
9 steve@hbsslaw.com

10 *Lead Counsel for*
Indirect Purchaser Class

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

16 IN RE OPTICAL DISK DRIVE PRODUCTS
ANTITRUST LITIGATION

No. 3:10-md-2143 RS

17
18 NOTICE OF UNOPPOSED MOTION
AND MOTION FOR PRELIMINARY
19 APPROVAL OF SETTLEMENTS WITH
20 PANASONIC, NEC, SONY AND HLDS
DEFENDANT FAMILIES AND
DISSEMINATION OF CLASS NOTICE

21 Date: July 21, 2016
22 Time: 1:30 p.m.
23 Dept: Courtroom 3, 17th Floor
Judge: Hon. Richard Seeborg

24 DATE ACTION FILED: Oct. 27, 2009

25 This Document Relates to:

26 ALL INDIRECT PURCHASER ACTIONS
27
28

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on July 21, 2016 at 1:30 pm or as soon thereafter as the matter may be heard by the Honorable Judge Richard Seeborg of the United States District Court of the Northern District of California, San Francisco Division, located at 450 Golden Gate Avenue, San Francisco, CA 94102, Indirect Purchaser Plaintiffs will and hereby do move the Court pursuant to Federal Rules of Civil Procedure 23 for an order:

- 1) preliminarily approving proposed class action settlements with Panasonic, NEC, Sony and HLDS defendant families;
- 2) certifying the settlement classes;
- 3) appointing Hagens Berman Sobol Shapiro LLP as Class Counsel; and
- 4) approving the manner and form of notice and proposed plan of allocation to class members.

This motion is based on this Notice of Motion and Motion for Preliminary Approval of Settlements with Panasonic, NEC, Sony and HLDS defendant families, the following memorandum of points and authorities, the accompanying settlement agreements, the pleadings and the papers on file in this action and such other matters as the Court may consider.

IPPs file this motion on shortened time pursuant to this Court’s Order re Indirect Purchasers’ Motion for Preliminary Approval of Settlements with NEC and Panasonic at 2 (ECF No. 1773) (“Plaintiffs may renew their motion for preliminary approval by submitting the further materials listed above, and by re-setting a hearing date on at least 14 days’ notice.”).

TABLE OF CONTENTS

1

2 I. INTRODUCTION 1

3 II. PROCEDURAL HISTORY 2

4 III. SUMMARY OF SETTLEMENT TERMS 3

5 A. The Settlement Class 3

6 B. The Settlement Consideration 4

7 C. Release of Claims 4

8 D. Notice and Implementation of the Settlement 4

9 E. Plan of Distribution 4

10 IV. ARGUMENT 5

11 A. The Court’s Role in Approving a Class Action Settlement 5

12 1. The Settlements Are the Result of Arm’s-Length Negotiations 5

13 2. The Settlements Have No Obvious Deficiencies When Considered
14 in Relation to the IPPs’ Case 7

15 3. The Settlements Do Not Provide Preferential Treatment for
16 Segments of the Class or the Class Representatives 8

17 a. All Class Members Will Recover Their *Pro Rata* Share of
18 the Settlement 9

19 b. The Service Awards for Class Representatives Reflect the
20 Work They Have Undertaken on Behalf of the Class 10

21 4. The Settlements Fall Within the Range of Possible Approval 10

22 B. The Proposed Settlement Class Satisfies Rule 23 11

23 1. Rule 23(a): Numerosity 11

24 2. Rule 23(a): The Case Involves Questions of Law or Fact Common
25 to the Class 11

26 3. Rule 23(a): Plaintiffs’ Claims Are Typical of the Claims of the
27 Class 12

28 4. Rule 23(a): Plaintiffs Will Fairly and Adequately Represent the
Interests of the Class 13

5. Rule 23(b)(3): Common Questions of Fact or Law Predominate 13

C. The Court Should Reaffirm the Appointment of Class Counsel 15

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

D. The Proposed Class Notice and Plan for Dissemination Meets the
Strictures of Rule 23 15

E. Proposed Schedule for Dissemination of Notice and Final Approval..... 17

V. CONCLUSION 17

TABLE OF AUTHORITIES

Page(s)

CASES

Amchem Prods., Inc. v. Windsor,
521 U.S. 591 (1997) 13

Churchill Vill., LLC v. Gen. Elec.,
361 F.3d 566 (9th Cir. 2004) 16

Collins v. Cargill Meat Solutions Corp.,
274 F.R.D. 294 (E.D. Cal. 2011) 5

Fraley v. Facebook, Inc.,
2012 U.S. Dist. LEXIS 116526 (N.D. Cal. Aug. 17, 2012) 5, 10

Gaudin v. Saxon Mortg. Servs., Inc.,
2015 U.S. Dist. LEXIS 159020 (N.D. Cal. Nov. 23, 2015) 9

Haley v. Medtronic, Inc.,
169 F.R.D. 643 (C.D. Cal. 1996) 11

Hanlon v. Chrysler Corp.,
150 F.3d 1011 (9th Cir. 1998) 11, 12, 13

In re Bluetooth Headset Prods. Liability Litig.,
654 F.3d 935 (9th Cir. 2011) 6

In re Catfish Antitrust Litig.,
826 F. Supp. 1019 (N.D. Miss. 1993) 12

In re Citric Acid Antitrust Litig.,
145 F. Supp. 2d 1152 (N.D. Cal. 2001) 9

In re Citric Acid Antitrust Litig.,
1996 WL 655791 (N.D. Cal. Oct. 2, 1996) 12

In re Dynamic Random Access Memory (DRAM) Antitrust Litig.,
2006 WL 1530166 (N.D. Cal. June 5, 2006) 12

In re High-Tech Emp. Antitrust Litig.,
2015 U.S. Dist. LEXIS 118051 (N.D. Cal. Sept. 2, 2015) 9

In re Indus. Diamonds Antitrust Litig.,
167 F.R.D. 374 (S.D.N.Y. 1996) 14

1 *In re Online DVD-Rental Antitrust Litig.*,
 2 779 F.3d 934 (9th Cir. Cal. 2015) 10
 3 *In re Rubber Chems. Antitrust Litig.*,
 4 232 F.R.D. 346 (N.D. Cal. 2005) 13
 5 *In re Tableware Antitrust Litig.*,
 6 484 F. Supp. 2d 1078 (N.D. Cal. 2007).....5, 10
 7 *In re Urethane Antitrust Litig.*,
 8 768 F.3d 1245 (10th Cir. 2014)..... 14
 9 *Kleen Prods. LLC v. Int’l Paper*,
 10 306 F.R.D. 585 (E.D. Ill. 2015)..... 14
 11 *Noll v. eBay, Inc.*,
 12 2015 U.S. Dist. LEXIS 123147 (N.D. Cal. Sept. 15, 2015).....9
 13 *Officers for Justice v. San Fran. Civ. Serv. Comm’n*,
 14 688 F.2d 615 (9th Cir. 1982).....5
 15 *Slaven v. BP America, Inc.*,
 16 190 F.R.D. 649 (C.D. Cal. 2000)..... 11
 17 *Williams v. Vukovich*,
 18 720 F.2d 909 (6th Cir. 1983).....5
 19 *Zepeda v. Paypal, Inc.*,
 20 2015 U.S. Dist. LEXIS 150577 (N.D. Cal. Nov. 5, 2015).....5, 8, 10

FEDERAL RULES

21 Federal Rule of Civil Procedure 23*passim*

SECONDARY AUTHORITIES

22 Manual for Complex Litigation (Fourth) § 21.632, 320-21 (2004)5
 23
 24
 25
 26
 27
 28

I. INTRODUCTION

1 Indirect Purchaser Plaintiffs (“IPPs”) seek preliminary approval under Federal Rule of Civil
2 Procedure 23 of settlements with four defendant families: Panasonic, NEC, Sony and HLDS.¹
3 Settlements with these four defendant families total \$124.5 million – an average of 31 percent of the
4 indirect purchaser class’s estimated damages for this group of defendants.
5

6 IPPs previously moved for preliminary approval of the Panasonic and NEC settlements,
7 which this Court denied without prejudice to resubmitting after the ruling on class certification and
8 the outcome of a Rule 23(f) petition.² The Ninth Circuit has now denied defendants’ petition for
9 interlocutory appeal pursuant to Rule 23(f).

10 These settlements represent the first four settlements with IPPs. The recovery to the class is
11 outstanding for this stage of the case – the class has been certified, but discovery has not yet closed.
12 The proposed settlements require certification by this Court of a settlement class – the same class
13 included in IPPs’ revised motion for class certification – purchasers of computers and stand-alone
14 ODDs in 24 jurisdictions. The proposed settlements here were reached with the assistance of
15 Magistrate Judge Corley, after extensive negotiations between experienced and informed counsel,
16 and easily meet the standards for preliminary approval.

17 IPPs propose a comprehensive notice program designed by an experienced notice
18 administrator – Gilardi & Co. LLC. Direct notice will be sent to class members wherever possible –
19 IPPs have collected approximately 25 million email addresses, with more yet to be produced by third
20 parties. Supplementing a direct notice campaign, IPPs propose a robust online publication campaign
21 that will ensure over 70 percent of class members receive notice. The proposed class notices provide
22 class members with notice both of the certification of the class, and also the four settlements.
23

24 ¹ “Panasonic” refers to Panasonic Corporation and Panasonic Corporation of North America. “NEC”
25 refers to NEC Corporation. “Sony” refers to Sony Corporation; Sony Optiarc Inc. (formerly known as Sony
26 NEC Optiarc Inc.); and Sony Optiarc America Inc. “HLDS” refers to Hitachi-LG Data Storage, Inc. and
27 Hitachi-LG Data Storage Korea, Inc. (collectively “HLDS”). *See* Declaration of Jeff D. Friedman in Support
28 of Motion for Preliminary Approval of Settlements with Panasonic, NEC, Sony and HLDS Defendant
Families (“Friedman Decl.”), Exs. A, B, C and D, respectively.

² *See* Order re Indirect Purchasers’ Motion for Preliminary Approval of Settlements with NEC and
Panasonic, ECF No. 1773.

1 settlement.⁵

2 **Settlement History with NEC:** With Magistrate Judge Corley acting as a broker, counsel for
3 NEC and IPPs reached agreement on the terms of a settlement on September 4, 2015. The settlement
4 agreement was signed on October 14, 2015. Each class representative has approved the terms of this
5 settlement.⁶

6 **Settlement History with Sony:** Again with the assistance of Magistrate Judge Corley, IPPs
7 and Sony met numerous times over the past two years attempting to reach agreement on the terms of
8 a settlement. An agreement was finally reached on May 9, 2016. The terms of the Sony agreement
9 were discussed with and approved by each class representative.⁷

10 **Settlement History with HLDS:** IPPs and HLDS have met numerous times over the past
11 few years trying to reach a settlement. HLDS and the IPPs reached agreement on terms on May 10,
12 2016. A final settlement agreement was signed on June 24, 2016. Each class representative has
13 reviewed and approved the terms of the HLDS settlement.⁸

14 III. SUMMARY OF SETTLEMENT TERMS

15 A. The Settlement Class

16 The proposed settlement classes mirror the class certified by this Court. That class is as
17 follows:

18 All persons and entities who, as residents of Arizona, California,
19 District of Columbia, Florida, Hawaii, Kansas, Maine, Massachusetts,
20 Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New
21 Hampshire, New Mexico, New York, North Carolina, Oregon,
22 Tennessee, Utah, Vermont, West Virginia and Wisconsin and during
23 the period April 2003 to December 2008, purchased new for their own
24 use and not for resale: (i) a computer with an internal ODD; (ii) a
stand-alone ODD designed for internal use in computers; or (iii) an
ODD designed to be attached externally to a computer. ODD refers to
a DVD-RW, DVD-ROM, or COMBO drive manufactured by one or
more Defendants or their coconspirators. Excluded from the class are
any purchases of Panasonic-branded computers.⁹

25 ⁵ Friedman Decl., ¶ 2.

26 ⁶ *Id.*, ¶ 3.

27 ⁷ *Id.*, ¶ 4.

28 ⁸ *Id.*, ¶ 5.

⁹ *Id.*, Ex. A, ¶ A(1); Ex. B, ¶ A(1); Ex. C, A(1); Ex. D, ¶ A(1).

1 **B. The Settlement Consideration**

2 Settlements with the four defendant families total \$124.5 million for the indirect purchaser
3 class. The individual contributions are as follows:

Defendant Family	Contribution to Settlement Fund
Panasonic	\$16.5 million
NEC	\$6.5 million
Sony	\$28.5 million
HLDS	\$73 million
Total	\$124.5 million

4
5
6
7
8 **C. Release of Claims**

9 Plaintiffs and class members will release all federal and state-law claims against the
10 Panasonic, NEC, Sony and HLDS defendants if the settlements become final, relating to the conduct
11 alleged in plaintiffs' complaint, including "claims under foreign antitrust or competition laws . . . that
12 relate to or arise out of the sale of any of the ODDs or any of the products containing ODDs"¹⁰ that
13 are the subject of the complaint. The release does not preclude plaintiffs from pursuing their claims
14 against the other defendants.¹¹ The settlements release only those claims of class members who will
15 recover under the terms of the settlement. The HLDS settlement also releases claims against LG
16 Electronics, Inc., LG Electronics USA, Inc., and Hitachi, Ltd. (related companies to HLDS).

17 **D. Notice and Implementation of the Settlement**

18 IPPs submit proposed notices and a plan for the dissemination of notice.¹² IPPs have obtained
19 approximately 25 million email addresses for potential class members. The direct notice campaign
20 will be supplemented with an online campaign and publication notice. The notice administrator,
21 Gilardi & Co. LLC, estimates that over 70 percent of class members will receive notice.

22 **E. Plan of Distribution**

23 IPPs propose to distribute the funds *pro rata* to class members based on: (1) the number of
24 ODDs purchased by the class member; and (2) the number of valid claims filed.¹³ There will be no

25
26 ¹⁰ *Id.*, Ex. A, ¶ 13; Ex. B, ¶ 13; Ex. C, ¶ 12; Ex. D, ¶ 13.

¹¹ *Id.*, Ex. A, ¶ 13; Ex. B, ¶ 13; Ex. C ¶ 12; Ex. D ¶ 12.

¹² See Declaration of Alan Vasquez ("Vasquez Decl."), ¶ 5; Exs. 1-7, concurrently filed herewith.

¹³ Friedman Decl., ¶ 6.

1 reversion of unclaimed funds to any defendant. To the extent that money is not able to reasonably
 2 distributed to class members, IPPs propose that the money escheat to the federal or state
 3 governments.

4 IV. ARGUMENT

5 A. The Court's Role in Approving a Class Action Settlement

6 Federal Rule of Civil Procedure 23(e) requires judicial approval of any compromise or
 7 settlement of class action claims. Approval of a settlement is a multi-step process, beginning with
 8 preliminary approval, which then allows notice to be given to the class and objections to be filed,
 9 after which there is a motion for final approval and fairness hearing.¹⁴ Preliminary approval is thus
 10 not a dispositive assessment of the fairness of the proposed settlement, but rather determines whether
 11 it falls within the “range of possible approval.”¹⁵ Preliminary approval establishes an “initial
 12 presumption” of fairness,¹⁶ such that notice may be given to the class and the class may have a “full
 13 and fair opportunity to consider the proposed [settlement] and develop a response.”¹⁷

14 Preliminary approval of a settlement and notice to the proposed class is appropriate if the
 15 proposed settlement: (1) appears to be the product of serious, informed, non-collusive negotiations;
 16 (2) has no obvious deficiencies; (3) does not improperly grant preferential treatment to class
 17 representatives or segments of the class; and (4) falls within the range of possible approval.¹⁸ The
 18 “initial decision to approve or reject a settlement proposal is committed to the sound discretion of the
 19 trial judge.”¹⁹

20 1. The Settlements Are the Result of Arm's-Length Negotiations

21 These settlements arise out of extended, informed, arm's-length negotiations between counsel

22
 23 ¹⁴ See Manual for Complex Litigation (Fourth) § 21.632, 320-21 (2004). All internal citations and
 quotations omitted and all emphasis added, unless otherwise indicated.

24 ¹⁵ *Id.*; see also *Collins v. Cargill Meat Solutions Corp.*, 274 F.R.D. 294, 301-302 (E.D. Cal. 2011).

25 ¹⁶ *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007).

26 ¹⁷ *Williams v. Vukovich*, 720 F.2d 909, 921 (6th Cir. 1983).

27 ¹⁸ See *Zepeda v. Paypal, Inc.*, No: C 10-2500 SBA, 2015 U.S. Dist. LEXIS 150577, at *14 (N.D. Cal.
 Nov. 5, 2015); *Fraley v. Facebook, Inc.*, No. C 11-1726 RS, 2012 U.S. Dist. LEXIS 116526, at *4 n.1 (N.D.
 Cal. Aug. 17, 2012) (same); *Tableware*, 484 F. Supp. 2d at 1079 (same).

28 ¹⁹ *Officers for Justice v. San Fran. Civ. Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982).

1 for the parties. The parties reached agreement after six years of litigation, discovery and investigation
2 and multiple conferrals of counsel and the parties concerning settlement constructs and amounts. In
3 addition to these non-collusive negotiations between sophisticated sets of counsel, the negotiations
4 between IPPs and the Panasonic, NEC and Sony defendants were assisted by Magistrate Judge
5 Corley, a neutral mediator.²⁰

6 The settlements themselves also bear no signs of collusion or conflict. In its opinion in *In re*
7 *Bluetooth*, the Ninth Circuit admonished that courts must, at the final approval stage, ensure that the
8 settlement, taken as a whole, is free of collusion or any indication that the pursuit of the interests of
9 the class counsel or the named plaintiffs “infected” the negotiations.²¹ The Ninth Circuit has pointed
10 to three factors as troubling signs of a potential disregard for the class’s interests during the course of
11 negotiation: (a) when class counsel receive a disproportionate distribution of the settlement; (b) when
12 the parties negotiate a “clear sailing” arrangement that provides for the payment of attorneys’ fees
13 separate and apart from class funds; or (c) when the parties arrange for fees not awarded to plaintiffs’
14 counsel to revert to the defendants rather than the class.²²

15 Here, none of those signs are present. The proposed settlements are common funds, all-in
16 settlements with no possibility of reversion. The funds will be used to cover costs and fees and
17 compensate the class based on a *pro rata* formula. There is no ‘clear sailing’ provision, no payment
18 of fees separate and apart from the class funds, and no “kicker” provision like the one in *In re*
19 *Bluetooth* which would allow unawarded fees to revert to the defendants. The proposed class notices
20 inform class members that class counsel will make a request for attorneys’ fees up to 25 percent of
21 the settlement fund.²³ In short, these settlements are entitled to a presumption of fairness.

25 ²⁰ See *In re Bluetooth Headset Prods. Liability Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (finding the
26 presence of a neutral mediator “a factor weighing in favor of a finding of non-collusiveness”).

27 ²¹ *Id.* at 946-48.

28 ²² *Id.* at 947.

²³ Vasquez Decl., Exs. 2, 3 & 4.

1 **2. The Settlements Have No Obvious Deficiencies When Considered in Relation to**
 2 **the IPPs' Case**

3 The proposed settlements easily clear the hurdles for preliminary approval. This Court is
 4 aware of the risk faced by the class of no recovery – this Court has already once denied a motion for
 5 class certification. These settlements represent an outstanding recovery for the class – ensuring
 6 \$124.5 million in recovery for the class, while preserving IPPs' claims against large defendants such
 7 as PLDS and TSST.

8 At class certification, plaintiffs' damages expert estimated that nationwide, indirect purchaser
 9 damages totaled \$1.67 billion for the period of April 2003 through December 2008.²⁴ Because only
 10 24 jurisdictions were certified, representing approximately 50 percent of the population, the best
 11 estimate of damages is approximately \$840 million.²⁵ Considering each of these defendants' market
 12 share, the percent of recovery is as follows:

Defendant Family	Contribution to Settlement Fund	Percent Share of ODD Market	Damages Attributed to Defendant Family	Percent Recovery for IPPs
Panasonic	\$16,500,000	12%	\$100,784,612.82	16%
NEC/Sony (Joint Venture)	\$35,000,000	10%	\$83,987,177.35	42%
HLDS	\$73,000,000	26%	\$218,366,661.11	33%
Total	\$124,500,000	48%	\$403,138,451.28	31%

13 These settlements represent recovery of 31 percent of the damages attributable to the market
 14 share of these defendants, and 15 percent of total damages (\$840 million) suffered by indirect
 15 purchasers. But of course, six defendant families remain in this case from which IPPs believe they
 16 will recover either further settlements or an award after trial.

17 Further supporting preliminary approval, the IPP settlements exceed those already approved
 18 by this Court in the direct purchaser action: Panasonic (\$5,750,000); NEC (\$6,150,000); Sony
 19
 20
 21

22

 23 ²⁴ See Declaration of Dr. Kenneth Flamm in Support of Indirect Purchaser Plaintiffs' Revised Motion for
 24 Class Certification at 133, ECF No. 1808-4.

25 ²⁵ These population estimates are based on the United State Census Bureau's Annual Estimates of the
 26 Resident Population for the United States, Regions, States and Puerto Rico, April 1, 2000 to July 1, 2006,
 27 available at: http://www.census.gov/popest/data/historical/2000s/vintage_2006/index.html.

1 (\$6,000,000); and HLDS (\$26,000,000), totaling \$43,900,000 for these defendant families.²⁶ In fact,
2 the current IPP settlements of \$124.5 million exceed the total settlement amount (\$74.9 million)
3 recovered by the DPPs in this action. Given this Court's approval of these DPP settlements, IPPs'
4 settlements do not have any obvious deficiencies.

5 IPPs did not enter into these settlement agreements without a thorough understanding of the
6 strengths and weaknesses of their case. This case has been extensively litigated over the past six
7 years. The parties conducted comprehensive discovery; defendants have collectively produced over
8 2.8 million documents which included four different languages (English, Japanese, Korean and
9 Chinese). Plaintiffs have deposed 23 of defendants' current and former employees regarding their
10 role in this conspiracy.²⁷ Plaintiffs have served 58 written interrogatories, 33 requests for admission,
11 deposed defendants' economists (Drs. Burtis and Ordovery) twice each, and deposed 10 third
12 parties.²⁸ The parties have submitted two sets of expert declarations regarding class certification,
13 including IPPs' fully developed multi-variate regression analysis to isolate the overcharge due to
14 defendants' cartel, and IPPs' pass-through analysis of 278 million different transactions in the
15 consumer market.²⁹ Weighing the developed stage of litigation against the risk that IPPs face in this
16 litigation, there are no obvious deficiencies regarding the settlement.

17 **3. The Settlements Do Not Provide Preferential Treatment for Segments of the**
18 **Class or the Class Representatives**

19 The third factor to be considered by this Court in determining whether the settlements should
20 be preliminarily approved is whether the settlement grants preferential treatment to class
21 representatives or segments of the class.³⁰
22
23

24 ²⁶ See , ECF No. 1724 at 3, 4.

25 ²⁷ Friedman Decl., ¶ 7.

26 ²⁸ *Id.*

27 ²⁹ Reply in Support of Revised Motion for Class Certification on Behalf of Indirect Purchaser Class at 14-
15, filed Under Seal, Sept. 18, 2015.

28 ³⁰ *Zepeda*, 2015 U.S. Dist. LEXIS 150577, at *14.

1 **a. All Class Members Will Recover Their *Pro Rata* Share of the Settlement**

2 A plan of distribution of class settlement funds is subject to the “fair, reasonable and
3 adequate” standard that applies to approval of class settlements.³¹ A plan of distribution that
4 compensates class members based on the type and extent of their injuries (including on a *pro-rata*
5 basis) is generally considered reasonable.³²

6 IPPs propose to compensate members of the state classes according to a plan of distribution
7 which provides for a *pro rata* share of the settlement fund based on: (1) the number of ODDs
8 purchased by the class member; and (2) the number of valid claims filed.³³ There will be no
9 reversion of unclaimed funds to any defendant.

10 The proposed claims form requests class members to identify the total number of products
11 containing an ODD purchased between April 2003 through December 2008 (laptops, desktops or
12 stand-alone ODDs).³⁴ Although a class member will not be required to submit proof of purchase, the
13 claims form informs class members to retain all purchase documentation until the claim is closed.
14 For large claims, proof of purchase may be required.³⁵ IPPs also believe, given the size of the
15 settlement to date, that automatic distribution of money for those class members for whom receipts
16 are directly available from vendors (such as Best Buy, HP and Dell), is appropriate. IPPs are working
17 with the third parties and the claims administrator to understand the number of class members for
18 whom automatic distribution will be possible. IPPs do not contemplate distributing funds from this
19 set of settlements, however, at this time.

20
21
22 ³¹ *In re Citric Acid Antitrust Litig.*, 145 F. Supp. 2d 1152, 1154 (N.D. Cal. 2001).

23 ³² *Gaudin v. Saxon Mortg. Servs., Inc.*, No. 11-cv-01663-JST, 2015 U.S. Dist. LEXIS 159020, at *23
24 (N.D. Cal. Nov. 23, 2015) (“Such a plan ‘fairly treats class members by awarding a pro rata share’ to the class
25 members based on the extent of their injuries.”) (Internal citation omitted.); *Noll v. eBay, Inc.*, No. 5:11-cv-
04585-EJD, 2015 U.S. Dist. LEXIS 123147, at *10, *50 (N.D. Cal. Sept. 15, 2015) (approving *pro-rata*
26 distribution as fair and reasonable); *In re High-Tech Emp. Antitrust Litig.*, No. 11-CV-02509-LHK, 2015 U.S.
27 Dist. LEXIS 118051, at *29-*30 (N.D. Cal. Sept. 2, 2015) (approving *pro-rata* distribution of fractional share
28 based upon class member’s total base salary as fair and reasonable).

26 ³³ Friedman Decl., ¶ 6.

27 ³⁴ Vasquez Decl., Ex. 7.

28 ³⁵ *Id.*

1 **b. The Service Awards for Class Representatives Reflect the Work They**
 2 **Have Undertaken on Behalf of the Class**

3 Collectively, the settlements contemplate service awards for the class representatives totaling
 4 \$4,500. Each of the Panasonic, Sony and HLDS settlement agreements allow for service awards up
 5 to \$1,500 for each representative.³⁶ As the Ninth Circuit has recognized, service awards “that are
 6 intended to compensate class representatives for work undertaken on behalf of a class ‘are fairly
 7 typical in class action cases.’”³⁷

8 The representatives of the IPP classes have been actively involved in the litigation of this
 9 case. With the exception of the four newly added representatives on whom defendants have not
 10 served discovery (Ms. Duryea, Ms. Tecce, Mr. Tufa and Mr. Tindall), each representative has
 11 responded to over 42 interrogatories and 45 document requests.³⁸ Defendants have deposed each
 12 representative at length – sometimes by the most senior attorney representing the defendant. The
 13 depositions of the class representatives have been long and tedious, with some depositions lasting
 14 over four hours for the simple purchase of a computer. One deposition transcript – the deposition of
 15 Minnesota representative Anbessa Tufa – was only 16 pages less in length than the 2015 deposition
 16 transcript of plaintiffs’ economist, Dr. Kenneth Flamm.

17 In the face of this extraordinary service and perseverance, IPPs request the awards of \$4,500
 18 for each class representative.

19 **4. The Settlements Fall Within the Range of Possible Approval**

20 To grant preliminary approval, this Court must decide that the settlements fall within the
 21 range of possible approval.³⁹ The amount of the recovery for the class (\$124.5 million) certainly falls
 22 within a reasonable range given that the class faced the possibility of no recovery if class
 23 certification was again denied. Moreover, recovery of an estimated 31 percent of damages
 24 attributable to these defendant families represents an outstanding recovery by any measurement.

25 ³⁶ Ex. A, ¶ 24; Ex. C, ¶ 23; Ex. D, ¶ 27.

26 ³⁷ *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. Cal. 2015).

27 ³⁸ Friedman Decl., ¶ 8.

28 ³⁹ *See Zepeda*, 2015 U.S. Dist. LEXIS 150577, at *14; *Fraley*, 2012 U.S. Dist. LEXIS 116526, at *4 n.1; *Tableware*, 484 F. Supp. 2d at 1079.

1 **B. The Proposed Settlement Class Satisfies Rule 23**

2 Certification is appropriate where the proposed class and the proposed class representatives
3 meet the four prerequisites of Rule 23(a) – numerosity, commonality, typicality, and adequacy of
4 representation. In addition, certification of a class action for damages requires a showing that
5 “questions of law or fact common to class members predominate over any questions affecting only
6 individual members, and that a class action is superior to other available methods for fairly and
7 efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

8 This Court has already found that classes similar in composition to the proposed classes here
9 satisfy all of the elements of Rule 23(a). IPPs’ revised motion for class certification demonstrates
10 that the proposed class satisfies all of the elements of Rule 23(b)(3). Plaintiffs review this evidence
11 briefly.

12 **1. Rule 23(a): Numerosity**

13 The first requirement for maintaining a class action is that its members are so numerous that
14 joinder would be “impracticable.” Fed. R. Civ. P. 23(a)(1). Here, the class consists of millions of
15 members nationwide. Numerosity is established.

16 **2. Rule 23(a): The Case Involves Questions of Law or Fact Common to the Class**

17 The second requirement of Rule 23 is the existence of common questions of law or fact. Fed.
18 R. Civ. P. 23(a)(2). This requirement is to be “construed permissively,”⁴⁰ and a single issue has been
19 held sufficient to satisfy the commonality requirement.⁴¹ Here, issues of law and fact are common to
20 the class. Some examples of these common questions of law and fact are as follows.

21 1. Whether defendants shared the common object of the conspiracy – to restrain the
22 prices of ODDs. Evidence of this common object includes:

23 a. Over 2,452 examples of collusive activity between the defendants, covering
24 customers which comprise 71 percent of U.S. purchases of ODDs.⁴²

25 ⁴⁰ *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998).

26 ⁴¹ *Slaven v. BP America, Inc.*, 190 F.R.D. 649, 655 (C.D. Cal. 2000); *Haley v. Medtronic, Inc.*, 169 F.R.D.
27 643, 647 (C.D. Cal. 1996).

28 ⁴² Declaration of Jeff D. Friedman in Further Support of Indirect Purchaser Plaintiffs’ Motion for Class
Certification (“Friedman II”), Ex. 151, filed Under Seal, Feb. 18, 2014.

- b. Three separate government enforcement agencies have found the ODD cartel violate antitrust laws (including the U.S. Department of Justice, Taiwanese Fair Trade Commission, and the European Commission).⁴³
- c. Over 1,267 phone calls between competitors based on phone records.⁴⁴
- d. Recordings of conversations between competitors made during the DOJ's criminal investigation into the ODD cartel.⁴⁵

2. Whether this conspiracy took place between April 2003 through December 2008;
3. Whether defendants' conduct resulted in an overcharge on ODDs;
4. Whether the overcharge was passed-through to indirect purchasers.

Similar common questions have been routinely found to satisfy the commonality requirement in other antitrust class actions.⁴⁶

3. Rule 23(a): Plaintiffs' Claims Are Typical of the Claims of the Class

The "claims . . . of the representative parties [must be] typical of the claims . . . of the class." Fed. R. Civ. P. 23(a)(3). "Under the rule's permissive standards, representative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical."⁴⁷ Typicality is easily satisfied in cases involving allegations of horizontal price-fixing because "in instances wherein it is alleged that the defendants engaged in a common scheme relative to all members of the class, there is a strong assumption that the claims of the representative parties will be typical of the absent class members."⁴⁸ In this case, the claims of the representative plaintiffs are typical of the claims of the class members because they all indirectly purchased – at inflated prices – ODDs or computers containing ODDs manufactured by the defendants.

⁴³ Declaration of Jeff D. Friedman in Support of Indirect Purchaser Plaintiffs' Motion for Class Certification, May 29, 2013, ECF No. 884 ("Friedman I"), Exs. 2-6; Friedman II, Exs. 136-38; Declaration of Jeff D. Friedman in Support of Revised Motion for Class Certification on Behalf of Indirect Purchaser Class, filed Under Seal, May 20, 2015 ("Friedman III"), Ex. 236.

⁴⁴ Friedman II, Ex. 151.

⁴⁵ Friedman III, Exs. 247-249.

⁴⁶ *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, No. M 02-1486 PJH, 2006 WL 1530166, at *3 (N.D. Cal. June 5, 2006) ("the very nature of a conspiracy antitrust action compels a finding that common questions of law and fact exist").

⁴⁷ *Hanlon*, 150 F.3d at 1020.

⁴⁸ *In re Catfish Antitrust Litig.*, 826 F. Supp. 1019, 1035 (N.D. Miss. 1993); *In re Citric Acid Antitrust Litig.*, No. 95-1092, 1996 WL 655791, at *3 (N.D. Cal. Oct. 2, 1996).

1 **4. Rule 23(a): Plaintiffs Will Fairly and Adequately Represent the Interests of the**
 2 **Class**

3 The final requirement of Rule 23(a) is that the representative plaintiffs will fairly and
 4 adequately represent the interests of the class. This requires only that a class member does not have
 5 interests that are antagonistic to or in conflict with the interests of the class.⁴⁹ Here, class
 6 representatives have been actively involved in the litigation of this case. Each class representative
 7 has reviewed the terms of the settlements with these defendants and has given their approval.⁵⁰ The
 8 interests of all plaintiffs and class members are aligned because they all suffered similar injury in the
 9 form of higher ODD prices and the prices of computers containing ODDs due to the conspiracy, and
 10 all class members seek the same relief. By proving their own claims, plaintiffs will necessarily be
 11 proving the claims of their fellow class members.

12 **5. Rule 23(b)(3): Common Questions of Fact or Law Predominate**

13 Predominance, under Rule 23(b)(3), “is a test readily met in certain cases alleging consumer
 14 or securities fraud or violations of the antitrust laws.”⁵¹ The weight of authority holds that in
 15 horizontal price-fixing cases like this one, the predominance requirement is readily met. The
 16 existence of a conspiracy is the overriding issue common to all plaintiffs, sufficient to satisfy the
 17 Rule 23(b)(3) predominance requirement.⁵² The second element of plaintiffs’ claims, proof of
 18 impact, similarly predominates. It is seemingly beyond dispute at this point in the case that HP and
 19 Dell formed the baseline of prices in the industry.⁵³ “Courts have long held that a plaintiff can
 20 demonstrate antitrust impact by showing that the conspiracy caused an increase to the standard
 21
 22

23 ⁴⁹ *Hanlon*, 150 F.3d at 1020.

24 ⁵⁰ Friedman Decl., ¶¶ 2-5.

25 ⁵¹ *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997).

26 ⁵² *See, e.g., In re Rubber Chems. Antitrust Litig.*, 232 F.R.D. 346, 352 (N.D. Cal. 2005) (“[T]he great
 27 weight of authority suggests that the dominant issues in cases like this are whether the charged conspiracy
 28 existed and whether price-fixing occurred.”).

29 ⁵³ Declaration of Dr. Kenneth Flamm in Support of Indirect Purchaser Plaintiffs’ Revised Motion for
 30 Class Certification, ¶ 25, filed Under Seal May 20, 2015 (“Flamm III”); Declaration of Dr. Janusz Ordoover in
 31 Support of Defendants’ Opposition to Class Certification, ¶ 95, filed Under Seal Oct. 21, 2013.

1 market price of the product at issue.”⁵⁴

2 Documents in this case reflect a stable pricing structure for ODDs through the market.
 3 Distributors (those entities that functioned as intermediaries between the manufacturers of ODDs and
 4 end-retailers) testified to common prices across the industry.⁵⁵ Defendants’ price lists to distributors
 5 confirm this pricing structure.⁵⁶ Retailers also confirmed they had price protections in place with
 6 their vendors which required vendors to provide the same prices for sales of ODDs (and computers)
 7 as to competitors – further standardizing prices across the industry.⁵⁷ And defendants’ own
 8 documents confirm that they set prices for OEMs such as HP and Dell, and a fixed price for
 9 distributors (or “distys”) over the OEM price.⁵⁸ IPPs presented multiple economic analyses
 10 (including multiple version of the Nobel-prize winning Granger causality analysis) to demonstrate
 11 that prices in this industry moved together.⁵⁹ And IPPs presented a multivariate regression analysis
 12 which demonstrated impact on both HP and Dell, and other customers.⁶⁰ This model measures by
 13 product and customer type, on a monthly basis, the overcharges experienced by the direct purchasers,
 14 and then traces the overcharge through to the indirect purchaser class taking into account differences
 15 in the pass-through level at different levels in the distribution chain.⁶¹ IPPs measure damages to class
 16 members for the April 2003 through December 2008 period totaling \$840 million with a weighted
 17 average overcharge during the class period of 13.6 percent.⁶² Issues common to the classes

18
 19 ⁵⁴ See *Kleen Prods. LLC v. Int’l Paper*, 306 F.R.D. 585, 595 (E.D. Ill. 2015). See also *In re Urethane*
 20 *Antitrust Litig.*, 768 F.3d 1245, 1254 (10th Cir. 2014) (“The inference of class-wide impact is especially
 21 strong where, as here, there is evidence that the conspiracy artificially inflated the baseline for price
 negotiations.”); *In re Indus. Diamonds Antitrust Litig.*, 167 F.R.D. 374, 383 (S.D.N.Y. 1996) (“[I]f a plaintiff
 proves that the alleged conspiracy resulted in artificially inflated list prices, a jury could reasonably conclude
 that each purchaser who negotiated an individual price suffered some injury.”).

22 ⁵⁵ Friedman III, Ex. 200 at 60.

23 ⁵⁶ Friedman III, Exs. 201- 221 (examples of defendants’ price lists for distributor Synnex).

24 ⁵⁷ See Friedman III, Ex. 222 at 25-26; Ex. 223 at 175-176.

25 ⁵⁸ See, e.g., Friedman III, Exs. 224-227.

26 ⁵⁹ Flamm III, ¶¶ 12-24; Declaration to Dr. Kenneth Flamm in Further Support of Revised Motion for Class
 Certification on Behalf of Indirect Purchaser Class (“Flamm IV”), ¶¶ 70-94, filed Under Seal, Sept. 18, 2015.

27 ⁶⁰ Flamm III, ¶¶ 39-57.

28 ⁶¹ *Id.*, Ex. 3.

⁶² *Id.*

1 predominate in this case.

2 **C. The Court Should Reaffirm the Appointment of Class Counsel**

3 At the outset of this case, Judge Walker appointed Hagens Berman Sobol Shapiro LLP
4 (“Hagens Berman”) as Interim Lead Counsel for the indirect purchaser class.⁶³ Hagens Berman
5 requests that this appointment be reaffirmed. Under Rule 23, the appointment of class counsel, to
6 “fairly and adequately represent the interests of the class” is required.⁶⁴ In making this determination,
7 the Court must consider counsels’: (1) work in identifying or investigating potential claims;
8 (2) experience in handling class actions or other complex litigation, and the types of claims asserted
9 in the case; (3) knowledge of the applicable law; and (4) resources committed to representing the
10 class.⁶⁵ Here, Hagens Berman has spent an extraordinary amount of time pursuing discovery from
11 these multinational corporations across four languages, including multiple discovery motions, and
12 discovery disputes which have been elevated even to the Ninth Circuit Court of Appeals.⁶⁶ Hagens
13 Berman is recognized as one of the country’s foremost experts in antitrust law and class action
14 litigation. Hagens Berman has worked tirelessly on behalf of the class of indirect purchasers and will
15 continue its quest in resolving this case and administering the settlement. Hagens Berman requests
16 that it be allowed to continue representing the class.

17 **D. The Proposed Class Notice and Plan for Dissemination Meets the Strictures of Rule 23**

18 Rule 23(e)(1) requires that a court approving a class action settlement must “direct notice in a
19 reasonable manner to all class members who would be bound by the proposal.” In addition, for Rule
20 23(b)(3) class, the Rule requires the court to “direct to class members the best notice that is
21 practicable under the circumstances, including individual notice to all members who can be
22 identified through reasonable effort.”⁶⁷ A class action settlement notice “is satisfactory if it generally
23

24 ⁶³ Order, June 4, 2010, ECF No. 96.

25 ⁶⁴ Fed. R. Civ. P. 23(g)(1)(A), (B).

26 ⁶⁵ Fed. R. Civ. P. 23(g)(1)(A).

27 ⁶⁶ Opinion (Denying John Doe’s Motion to Quash Subpoena to DOJ), *In re Optical Disk Drive Antitrust Litig.*, No. 14-17502 (9th Cir. Sept. 10, 2015), ECF No. 58-1.

28 ⁶⁷ Fed. R. Civ. P. 23(c)(2)(B).

1 describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to
2 investigate and to come forward and be heard.”⁶⁸

3 The proposed plan of notice is supported by an experienced notice and claims administrator –
4 Gilardi & Co. LLC – who has worked cooperatively with counsel to develop the proposed plan of
5 notice. Gilardi submits a declaration in support of the proposed notice plan attesting to its adequacy
6 and constitutionality.⁶⁹ The proposed forms of notice provides all information required by Rule
7 23(c)(2)(B) to the settlement class, in language that is plain and easy to understand. IPPs have
8 followed, as closely as possible, the language for settlements recommended by this District’s
9 Procedural Guidance for Class Action Settlements.⁷⁰ With this motion, IPPs provide proposed forms
10 for publication notice, email notice, postcard notice, and online banner notices.⁷¹

11 The proposed plan of notice includes several components. The direct notice component will
12 include email notice to approximately 25 million potential class members for whom IPPs have
13 collected direct contact information.⁷² IPPs anticipate receiving further class contact information
14 from additional third parties prior to the dissemination of notice. To supplement this direct notice
15 campaign, Gilardi will also undertake a publication notice program consisting of print publication,
16 online publication (through search advertising, banner advertising, Facebook advertising, Twitter-
17 promoted tweets) and a press release.⁷³ In addition, IPPs have established a website,
18 www.OpticalDiskDriveAntitrust.com, where class members will be able to find additional, detailed
19 information, including “Frequently Asked Questions,” important case documents and contact
20 information for both class counsel and the notice and claims administrator. IPPs have worked with
21 Gilardi to draft a simple claims form for class members, which will be available in electronic and
22

23
24 ⁶⁸ *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004); *see also* Fed. R. Civ. P.
23(c)(2)(B) (describing specific information to be included in the notice).

25 ⁶⁹ *See* Vasquez Decl., ¶¶ 14, 29.

26 ⁷⁰ *See* <http://www.cand.uscourts.gov/ClassActionSettlementGuidance> (last visited Dec. 9, 2015).

27 ⁷¹ Vasquez Decl., Exs. 2, 4-6.

28 ⁷² Friedman Decl., ¶ 10.

⁷³ Vasquez Decl., ¶¶ 13, 17-28.

1 hard copy form.⁷⁴ A toll-free telephone number will also be established to answer questions from
 2 class members.⁷⁵ Gilardi estimates that this notice campaign will reach in excess of 70 percent of
 3 class members.⁷⁶ These notice provisions meet the requirements of Rule 23 and will allow the class a
 4 full and fair opportunity to review and respond to the proposed settlement.

5 **E. Proposed Schedule for Dissemination of Notice and Final Approval**

6 IPPs propose the following schedule for the dissemination of class notice and final approval

Event	Proposed Deadline
Notice campaign to begin, including website, email, publication and Internet notice	August 20, 2016 [30 days from preliminary approval order]
Last day for motion for attorneys' fees, costs, expenses, and service awards	October 5, 2016 [14 days before objection deadline]
Last day for objections and requests for exclusion from the class	October 19, 2016 [60 days from notice]
Last day for motion in support of final approval of settlements	November 2, 2016 [14 days after objection deadline]
Fairness Hearing	December 8, 2016 [35 days from motion for final approval], unless otherwise ordered by the Court.
Close of Claims Period	July 1, 2017

15 **V. CONCLUSION**

16 With these settlements, IPPs have guaranteed recovery of \$124.5 million for the indirect
 17 purchaser class. These settlements were reached only after extensive negotiations and with the
 18 assistance of Magistrate Judge Corley. Respectfully, IPPs request that this Court enter an order:
 19 1) preliminarily approving proposed class action settlements with the NEC, Panasonic, Sony and
 20 HLDS defendant families; 2) certifying the settlement classes; 3) appointing Hagens Berman Sobol
 21 Shapiro LLP as Class Counsel; and 4) approving the manner and form of notice and proposed plan of
 22 allocation to class members.

26 ⁷⁴ *Id.*, Ex. 7.

27 ⁷⁵ *Id.*, ¶ 28.

28 ⁷⁶ *Id.*, ¶ 32.

1 DATED: June 28, 2016

HAGENS BERMAN SOBOL SHAPIRO LLP

2 By s/ Jeff D. Friedman
JEFF D. FRIEDMAN

3
4 Shana E. Scarlett (217895)
715 Hearst Avenue, Suite 202
Berkeley, CA 94710
5 Telephone: (510) 725-3000
6 Facsimile: (510) 725-3001
jefff@hbsslaw.com
shanas@hbsslaw.com

7
8 Steve W. Berman (*Pro Hac Vice*)
HAGENS BERMAN SOBOL SHAPIRO LLP
1918 Eighth Avenue, Suite 3300
9 Seattle, WA 98101
10 Telephone: (206) 623-7292
Facsimile: (206) 623-0594
steve@hbsslaw.com

11 *Lead Counsel for*
12 *Indirect Purchaser Class*