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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

IN RE: CATHODE RAY TUBE (CRT)  
ANTITRUST LITIGATION

Master File No. CV-07-5944-SC

MDL No. 1917

This Document Relates to:

**ALL DIRECT PURCHASER ACTIONS**

**DIRECT PURCHASER PLAINTIFFS’  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF MOTION  
FOR FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT WITH TOSHIBA  
DEFENDANTS**

Date: July 22, 2013

Time: 10:00 a.m.

Judge: Honorable Charles A. Legge (Ret.)

JAMS: Two Embarcadero Center, Suite 1500

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to Federal Rule of Civil Procedure 23(e) and the Court’s Order granting  
4 preliminary approval of the proposed settlement (Docket No. 1603), Direct Purchaser Class  
5 Plaintiffs (“Plaintiffs”) submit this memorandum in support of final approval of the Class  
6 settlement (“Settlement”) reached with Defendants Toshiba Corporation, Toshiba America  
7 Information Systems, Inc., Toshiba America Consumer Products, L.L.C., and Toshiba America  
8 Electronic Components, Inc. (collectively “Toshiba” or “Settling Defendants”).

9 The Settlement provides for payment to the class in the amount of \$13,500,000 for a  
10 complete release of all class members’ claims as defined in paragraph 13 of the Settlement  
11 Agreement. Saveri Decl., Ex. 1. Toshiba has also agreed to cooperate with the Plaintiffs in  
12 providing certain information regarding the allegations in the complaint. *Id.* (Settlement  
13 Agreement ¶ 24). In addition, the sales of Toshiba remain in the case for the purpose of computing  
14 damages against the remaining non-settling Defendants. Saveri Decl. ¶ 21.

15 This is the fifth settlement in this action. Settlements with Chunghwa, the Philips  
16 Defendants, the Panasonic Defendants, and the LG Defendants have been finally approved by the  
17 Court.

18 On March 18, 2013, the Court certified the Settlement Class and preliminarily approved the  
19 Settlement. (Docket No. 1603). In addition, the Court: 1) ordered that class members be provided  
20 notice of the Settlement; 2) set May 16, 2013 as the date for class members to opt-out of the  
21 Settlement Class or object to the Settlement; and 3) set July 22, 2013 as the date for the hearing on  
22 final approval of the Settlement. *See id.*

23 There are no objections to the Settlement. Sherwood Decl. ¶ 10.

24 Direct Purchaser Plaintiffs respectfully request the Court grant final approval of the  
25 Settlement on the grounds that it is fair, adequate and reasonable to the class.

26 **II. FACTUAL AND PROCEDURAL HISTORY**

27 This multidistrict litigation arises from an alleged conspiracy to fix prices of Cathode Ray  
28 Tubes (“CRTs”). In November of 2007, the first direct purchaser plaintiff filed a class action

1 complaint on behalf of itself and all others similarly situated alleging a violation of section one of  
2 the Sherman Act, 15 U.S.C. § 1, and section four of the Clayton Act, 15 U.S.C. § 15. Thereafter,  
3 additional actions were filed in other jurisdictions, and the Judicial Panel on Multidistrict Litigation  
4 transferred all related actions to this Court on February 15, 2008. (Judicial Panel on Multidistrict  
5 Litigation Transfer Order, Dkt. No. 122). On May 9, 2008, Saveri & Saveri, Inc. was appointed  
6 Interim Lead Class Counsel for the nationwide class of direct purchasers. (Order Appointing  
7 Interim Lead Counsel, Dkt. No. 282).

8 On March 16, 2009, the Direct Purchaser Plaintiffs filed their Consolidated Amended  
9 Complaint (“CAC”) alleging an over-arching horizontal conspiracy among the Defendants and  
10 their co-conspirators to fix prices for CRTs and to allocate markets and customers for the sale of  
11 CRTs in the United States from March 1, 1995 through November 25, 2007 (the “Class Period”).  
12 The Complaint alleges that Plaintiffs and members of the Class are direct purchasers of CRTs  
13 and/or CRT Finished Products from Defendants and/or their subsidiaries and were injured because  
14 they paid more for CRTs and/or CRT Finished Products than they would have absent Defendants’  
15 illegal conspiracy. (Compl. ¶¶ 213–221). Plaintiffs seek, among other things, treble damages  
16 pursuant to Sections 4 of the Clayton Act, 15 U.S.C. §§ 15 and 22. (Compl., Prayer for Relief ).

17 Defendants filed several motions to dismiss the CAC on May 18, 2009. (See Dkt. Nos.  
18 463–493). On February 5, 2010 this court issued its rulings denying in part and granting in part  
19 Defendants’ motions to dismiss (Report, Recommendations and Tentative Rulings regarding  
20 Defendants’ Motions to Dismiss, Dkt. No. 597). After an objection by Defendants, Judge Conti on  
21 March 30, 2010 entered an order approving and adopting Judge Legge’s previous ruling and  
22 recommendations. (Dkt. No. 665). On April 29, 2010, Defendants answered the CAC.

23 Thereafter, in May 2010, certain Defendants propounded interrogatories requesting  
24 Plaintiffs to identify what evidence they had about the existence of a conspiracy to fix the prices of  
25 CRT Products at the time they filed their complaints. Plaintiffs objected to these interrogatories as,  
26 among other things, premature “contention” interrogatories. Defendants moved to compel  
27 answers. On November 18, 2010, after a hearing, the Special Master ordered Plaintiffs to answer  
28 the interrogatories. (Report and Recommendations Regarding Discovery Motions, Dkt. No. 810).

1 On December 8, 2010, the Court adopted the Special Master's Report and Recommendation.  
2 (Order Adopting Special Master's Report, Recommendation, and Tentative Rulings Regarding  
3 Discovery Motions, Dkt. No. 826). On January 31, 2011, Plaintiffs answered Defendants'  
4 interrogatories.

5 On March 21, 2011, certain Defendants moved for sanctions pursuant to Federal Rules of  
6 Civil Procedure, Rule 11 on the grounds that the allegations of a finished product conspiracy were  
7 without foundation and should be stricken from the complaint. (Defendants' Motion for Sanctions  
8 Pursuant to Rule 11, Dkt. No. 880). On June 15, 2011, after hearing, the Special Master  
9 recommended that these Defendants' motion be granted and that Plaintiffs' allegations of a  
10 finished products conspiracy be stricken from the complaint. (Special Master Report and  
11 Recommendations on Motions Regarding Finished Products, Dkt. No. 947). The Special Master  
12 also recommended that "the issue of the possible impact or effect of the alleged fixing of prices of  
13 CRTs on the prices of Finished Products shall remain in the case, and is a proper subject of  
14 discovery." *Id.* at p. 14.

15 On June 29, 2011, Defendants moved the Court to adopt the Special Master's Report and  
16 Recommendation. (Motion to Adopt Special Master's Report and Recommendation Regarding  
17 Finished Products, Dkt. No. 953). Plaintiffs filed an objection to Special Master's Report and  
18 Recommendation. (Direct Purchaser Plaintiffs' Objection to Report and Recommendation on  
19 Motions Regarding Finished Products, Dkt. No. 957). The Court set the matter for hearing on  
20 September 2, 2011. (Dkt. No. 968).

21 On August 26, 2011, before the hearing on the Special Master's Report and  
22 Recommendations Regarding Finished Products, the parties entered into a stipulation which  
23 provided, among other things: 1) that the Special Master's recommended finding that Plaintiffs  
24 violated Rule 11 be vacated; 2) that certain other aspects of the Special Master's recommendations  
25 be adopted; and 3) that Plaintiffs' "allegations of the Direct CAC purporting to allege a conspiracy  
26 encompassing Finished Products are Stricken from the Direct CAC, provided, however, that the  
27 issue of the possible impact or effect of the alleged fixing of prices of CRTs on the prices of  
28 Finished Products shall remain in the case." In addition, Plaintiffs agreed to withdraw "all



1 discovery requests regarding or relating to information in support of the CRT Finished Product  
2 Conspiracy claims,” and that “the issue of the purported impact or effect of the alleged fixing of  
3 prices of the CRTs on the prices of the Finished Products shall remain in the case and is a proper  
4 subject of discovery.” (Stipulation and Order Concerning Pending Motions Re: Finished Products,  
5 Dkt. No. 996).

6 On December 12, 2011, Defendants filed a joint motion for Summary Judgment against  
7 Direct Purchaser Plaintiffs who purchased CRT Finished Products. (Dkt. No. 1013). On February  
8 24, 2012, Plaintiffs filed their Memorandum of Points and Authorities in Opposition to  
9 Defendants’ Motion For Partial Summary Judgment and supporting Declaration of R. Alexander  
10 Saveri under seal. (Dkt. No. 1057). That same day, the Direct Action Plaintiffs also filed an  
11 opposition to Defendants’ motion. On March 9, 2012, Defendants filed their Reply In Support of  
12 Motion for Summary Judgment (Dkt. No. 1083) and on March 20, 2012, the Court heard argument.  
13 On May 31, 2012, the Special Master issued his Report and Recommendation regarding  
14 Defendants’ Joint Motion for Summary Judgment recommending that the Court grant Defendants’  
15 motion and that judgment be entered against certain plaintiffs that directly purchased CRT Finished  
16 Products (“R&R”). (Dkt. No. 1221).

17 On June 12, 2012, the Direct Purchaser Plaintiffs, the Direct Action Plaintiffs, and the  
18 Defendants submitted a Stipulation notifying the Court that Plaintiffs intended to object to the  
19 R&R. (Dkt. No. 1228). On June 26, 2012, the Court ordered all parties to file their briefs by July  
20 26, 2012 and set a hearing for August 10, 2012. (Dkt. No. 1240). On July 28, 2012, the Court  
21 vacated the hearing. (Dkt. No. 1243). The parties filed their briefs as ordered.

22 On November 29, 2012, the Court entered the Order Granting in Part and Denying in Part  
23 Defendants’ Joint Motion for Summary Judgment (“Order”) (Dkt. No. 1470). The Court found  
24 that the Direct Purchaser Plaintiffs that purchased a Finished Product, were “in fact indirect  
25 purchasers for purposes of antitrust standing.” Order at p. 6. The Court ruled that the ownership  
26 and control exception created in *Royal Printing Co. v. Kimberly-Clark Corp.*, 621 F.2d 323 (9th  
27 Cir. 1980), conferred standing on Direct Purchaser Plaintiffs to sue “insofar as they purchased  
28

1 [Finished Products] incorporating the allegedly price-fixed CRTs from an entity owned or  
2 controlled by any allegedly conspiring defendant.” Order at p. 16.

3 In September of 2008, the first of several stays prohibiting plaintiffs from obtaining merits  
4 discovery was entered by this Court. (Stipulation and Order for Limited Discovery (Sept. 12, 2008)  
5 (Dkt. No.379); Stipulation and Order to Extend Limited Discovery Stay (Feb. 5, 2009) (Dkt. No.  
6 425); Stipulation and Order re: Amended Motion to Dismiss Briefing Schedule and Extended  
7 Limited Discovery Stay (further extending the February 5, 2009 Order) (June 8, 2009) (Dkt. No.  
8 509); Stipulation and Order to Extend Limited Discovery Stay (Jan. 5, 2010) (Dkt. No. 590)). On  
9 June 4, 2008, Plaintiffs’ propounded their First Set of Limited Document Requests. Thereafter, on  
10 March 12, 2010, after the partial stay of discovery was lifted, Plaintiffs propounded their Second  
11 Set of Document Requests and First Set of Interrogatories. After extensive meet and confers and  
12 several motions to compel, the Court issued its Report Regarding Case Management Conference  
13 No. 4 on October 27, 2011 setting the middle of December, 2011 as the deadline for the completion  
14 of substantial discovery by all parties. (Dkt. Nos. 1007, 1008). Plaintiffs have now received over 5  
15 million pages of documents from Defendants.

16 On March 19, 2012, the Special Master issued the Scheduling Order and Order Re  
17 Discovery and Case Management Protocol. (Dkt. Nos. 1093, 1094). The Court entered both  
18 Orders on April 3, 2012. (Dkt. Nos. 1127, 1128). The Scheduling Order set August 30, 2013 as  
19 the date for completion of all fact and expert discovery. Beginning in June of 2012, after meeting  
20 and conferring with defendants regarding the scope and topics of 30(b)(6) witnesses, Plaintiffs in  
21 coordination with the indirect purchasers, the Attorneys General, and the opt-out plaintiffs, began  
22 taking 30(b)(6) depositions of the various defendants. To date, plaintiffs collectively have deposed  
23 approximately twenty-five corporate representatives. Beginning in December of 2012, plaintiffs  
24 began taking fact depositions. To date, plaintiffs collectively have deposed more than fifteen fact  
25 witnesses.

26 On October 19, 2012, the Court granted final approval of the first two settlements reached  
27 in this case with: (1) Chunghwa Picture Tubes, Ltd. and Chunghwa Picture Tubes (Malaysia) Sdn.  
28 Bhd. (“CPT”), and (2) Koninklijke Philips Electronics N.V., Philips Electronics North America

1 Corporation, Philips Electronics Industries (Taiwan), Ltd., and Philips Da Amazonia Industria  
2 Electronica Ltda. (collectively, “Philips”). The Court certified a Settlement Class for the CPT and  
3 Philips settlements, appointed Plaintiffs’ Interim Lead Counsel as Settlement Class Counsel, and  
4 found that the manner and form of providing notice of the settlements to class members was the  
5 best notice practicable under the circumstances. (Dkt. No. 1412).

6 On December 27, 2012, the Court granted final approval of the settlement reached in this  
7 case with: Panasonic Corporation (f/k/a Matsushita Electric Industrial Co., Ltd.), Panasonic  
8 Corporation of North America, and MT Picture Display Co., Ltd., (collectively, “Panasonic”). The  
9 Settlement also released Defendant Beijing Matsushita Color CRT Co., Ltd. (“BMCC”). The  
10 Court certified a Settlement Class, appointed Plaintiffs’ Interim Lead Counsel as Settlement Class  
11 Counsel, and found that the manner and form of providing notice of the settlements to class  
12 members was the best notice practicable under the circumstances. (Dkt. No. 1508).

13 On April 1, 2013, the Court granted final approval of the settlement reached in this case  
14 with: LG Electronics, Inc., LG Electronics USA, Inc., and LG Electronics Taiwan Taipei Co., Ltd.  
15 (collectively, “LG”). The Court certified a Settlement Class for the LG settlement, appointed  
16 Plaintiffs’ Interim Lead Counsel as Settlement Class Counsel, and found that the manner and form  
17 of providing notice of the settlements to class members was the best notice practicable under the  
18 circumstances. (Dkt. No. 1621).

19 On, March 18, 2013, the Court preliminarily approved the Settlement before the Court. The  
20 Court certified a Settlement Class for the Settlement, appointed Plaintiffs’ Interim Lead Counsel as  
21 Settlement Class Counsel, approved the manner and form of providing notice of the Settlement to  
22 class members, established a timetable for publishing class notice and set a hearing for final  
23 approval. (Dkt. No. 1603).

24 Plaintiffs have hired Gilardi & Co, LLC (“Gilardi”) to serve as the Settlement  
25 Administrator. On April 1, 2013, Gilardi mailed and e-mailed notice to each class member  
26 identified by Defendants. Sherwood Decl. ¶¶ 4–5. On April 5, 2013, the Summary Notice was  
27 published in The Wall Street Journal. *Id.* ¶ 8. A website was also established at  
28 [www.CRTDirectPurchaserAntitrustSettlement.com](http://www.CRTDirectPurchaserAntitrustSettlement.com), which contains copies of the Settlement

1 Agreement, Class Notice and Preliminary Approval Order. *Id.* ¶ 6. The deadline for objections to  
2 the Settlement or requests for exclusion from the Settlement Class was May 16, 2013. Gilardi  
3 received twenty-three (23) requests for exclusion from the Settlement Class and no objections. *Id.*  
4 ¶¶ 9, 10.

### 5 **III. THE TERMS OF THE SETTLEMENT**

6 In exchange for dismissal with prejudice and a release of all claims as defined in paragraph  
7 13 of the Settlement Agreement, Toshiba has agreed to pay \$13,500,000 in cash. The settlement  
8 funds have been paid and deposited into a separate escrow account for the Direct Purchaser Class.  
9 Saveri Decl. ¶ 20.

10 In addition, Toshiba has agreed to cooperate with Plaintiffs in the prosecution of this action  
11 by: 1) providing copies of all discovery (including among other things, all documents,  
12 interrogatories, requests for admission, etc.) Toshiba produces to any other party in the Action; 2)  
13 providing a declaration and/or custodian establishing the authenticity of Toshiba's transactional  
14 data, and foundation of any Toshiba document or data needed at summary judgment or trial; 3)  
15 allowing Counsel to question percipient witnesses noticed for deposition by any other party in the  
16 Action with whom Toshiba has not settled; and 4) using its best efforts to make available two  
17 persons for trial testimony, each of whom is, at the time of trial, a director, officer, and/or  
18 employee of Toshiba whom Lead Counsel reasonably believes to have knowledge regarding  
19 Plaintiffs' claims. *Id.*, Ex. 1, ¶ 19.

20 In addition, Toshiba's sales remain in the case for purposes of computing damages against  
21 the non-settling defendants. *Id.* ¶ 21.

22 Upon the Settlement becoming final, Plaintiffs and Class members will relinquish any  
23 claims against Toshiba as described in paragraph 13 of the Settlement Agreement. Saveri Decl.,  
24 Ex. 1, ¶ 13. The release, however, excludes claims for product defects or personal injury. *Id.*

25 The Settlement becomes final upon: (i) the Court's approval of the Settlement pursuant to  
26 Rule 23(e) and the entry of a final judgment of dismissal with prejudice as to Toshiba; and (ii) the  
27 expiration of the time for appeal or, if an appeal is taken, the affirmance of the judgment with no  
28 further possibility of appeal. Saveri Decl., Ex. 1, ¶ 11.

1 Subject to the approval and direction of the Court, the Settlement payment will be used to:  
 2 (i) make a distribution to Class members in accordance with a proposed plan of allocation to be  
 3 approved by the Court (Saveri Decl., Ex. 1, ¶ 21); (ii) pay Class Counsel’s attorneys’ fees, costs,  
 4 and expenses as may be awarded by the Court (*Id.*, Ex. 1, ¶¶ 22–23); and (iii) pay all taxes  
 5 associated with any interest earned on the escrow account. *Id.*, Ex. 1, ¶ 17(f). In addition, the  
 6 Settlement provides that \$300,000 may be used to pay for Notice costs and future costs incurred in  
 7 the administration and distribution of the Settlement payments. *Id.*, Ex. 1, ¶ 19(a).

#### 8 **IV. ARGUMENT**

9 A class action may not be dismissed, compromised, or settled without the approval of the  
 10 Court. Judicial proceedings under Federal Rule of Civil Procedure 23 have led to a defined  
 11 procedure and specific criteria for class action settlement approval. The Rule 23(e) settlement  
 12 approval procedure includes three distinct steps:

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

20 This procedure safeguards class members’ due process rights and enables the Court to fulfill its  
 21 role as the guardian of class interests. *See* 4 Albert Conte & Herbert Newberg, *Newberg on Class*  
 22 *Actions* §§ 11.22, *et seq.* (4th ed. 2002) (“*Newberg*”).

#### 23 **A. The Class Action Settlement Class.**

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

26 The Court certified a Settlement Class consisting of:

27 All persons and entities who, between March 1, 1995 and November 25, 2007,  
 28 directly purchased a CRT Product in the United States from any defendant or any  
 subsidiary or affiliate thereof, or any co-conspirator. Excluded from the Class are

1 defendants, their parent companies, subsidiaries and affiliates, any co-conspirators,  
2 all governmental entities, and any judges or justices assigned to hear any aspect of  
3 this action.

4 CRT Products refers to all forms of Cathode Ray Tubes, as well as to devices that contain  
5 CRTs. It includes CPTs, CDTs, monochrome display tubes and the finished products that  
6 contain them—televisions and monitors. (Docket No. 1603).

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

9 The second step in the settlement process has also been completed. The Court-approved  
10 notice plan has been successfully implemented and class members have been notified of the  
11 Settlement.

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

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

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

25 A settlement notice is a summary, not a complete source, of information. *See, e.g., Petrovic*  
26 *v. Amoco Oil Co.*, 200 F.3d 1140, 1153 (8th Cir. 1999); *In re “Agent Orange” Prod. Liability*  
27 *Litig.*, 818 F.2d 145, 170 (2d Cir. 1987), *cert. denied*, 484 U.S. 1004 (1988); *Mangone v. First USA*  
28 *Bank*, 206 F.R.D. 222, 233 (S.D. Ill. 2001). This circuit requires a general description of the  
29 proposed settlement in such a notice. *Churchill Vill. L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th  
30 Cir. 2004); *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993); *Mendoza v.*  
31 *Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1351 (9th Cir. 1980), *cert. denied*, 450 U.S. 912 (1981).

32 The notice plan approved by this Court is commonly used in class actions like this one and  
33 constitutes valid, due and sufficient notice to class members, and constitutes the best notice  
34 practicable under the circumstances. The content of the court-approved notices complies with the

1 requirements of Rule 23(c)(2)(b). Both the summary and long-form notices clearly and concisely  
 2 explained in plain English the nature of the action and the terms of the Settlement. They provided  
 3 a clear description of who is a member of the class and the binding effects of class membership.  
 4 They explained how to exclude oneself from the class, how to object to the Settlement, how to  
 5 obtain copies of papers filed in the case and how to contact Class counsel. *See* Sherwood Decl.,  
 6 Exs. A, B. The notices also explained that they provided only a summary of the Settlement, that  
 7 the settlement agreement was on file with the District Court, and that the settlement agreement was  
 8 available online at: [www.CRTDirectPurchaserAntitrustSettlement.com](http://www.CRTDirectPurchaserAntitrustSettlement.com). *See* Sherwood Decl., Exs.  
 9 A, B. Consequently every provision of the Settlement was available to each class member.

10 The notice plan was implemented by the settlement administrator Gilardi & Co. LLC.  
 11 Sherwood Decl., ¶ 1. Specifically, Gilardi printed and mailed 16,618 notices to class members  
 12 through U.S. Mail and electronically mailed notices to 872 unique electronic mail addresses of  
 13 class members. Sherwood Decl., ¶¶ 4, 5. Gilardi also published notice in the April 5, 2013 Wall  
 14 Street Journal. Sherwood Decl., ¶ 8, Ex. B. Gilardi also maintains the case website, at which class  
 15 members can view and print the Class Notice, the Settlement Agreement, and the Preliminary  
 16 Approval Order. Sherwood Decl., ¶ 6. Gilardi also established a toll-free telephone number to  
 17 answer Class members' questions in both English and Spanish. Sherwood Decl. ¶ 7.

18 The notice plan is substantially identical to the notice plan used for the finally approved  
 19 CPT, Philips, Panasonic, and LG Settlements. Saveri Decl. ¶ 24.

20 **C. The Settlement Is “Fair, Adequate And Reasonable” and Should Be Granted**  
 21 **Final Approval.**

22 The law favors the compromise and settlement of class action suits. *See, e.g., Byrd v. Civil*  
 23 *Serv. Comm’n*, 459 U.S. 1217 (1983); *Churchill Village*, 361 F.3d at 576 (9th Cir. 2004); *Class*  
 24 *Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). “The decision to approve or  
 25 reject a settlement is committed to the sound discretion of the trial judge because he is ‘exposed to  
 26 the litigation and their strategies, positions and proof.’” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,  
 27 1026 (9th Cir. 1988) (quoting *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 626 (9th  
 28 Cir. 1982)). In exercising such discretion, courts should give “proper deference to the private

1 consensual decision of the parties . . . . [T]he court’s intrusion upon what is otherwise a private  
2 consensual agreement negotiated between the parties to a lawsuit must be limited to the extent  
3 necessary to reach judgment that the agreement is not the product of fraud or overreaching by, or  
4 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,  
5 reasonable and adequate to all concerned.” *Hanlon*, 150 F.3d at 1027 (citation omitted).

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

12 [T]he universally applied standard is whether the settlement is fundamentally fair,  
13 adequate and reasonable. The district court's ultimate determination will  
14 necessarily involve a balancing of several factors which may include, among  
15 others, some or all of the following: the strength of plaintiffs' case; the risk,  
16 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.

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

18 The court is entitled to exercise its “sound discretion” when deciding whether to grant final  
19 approval. *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff’d*, 661 F.2d  
20 939 (9th Cir. 1981); *Torrasi*, 8 F.3d at 1375. “Where, as here, a proposed class settlement has been  
21 reached after meaningful discovery, after arm’s length negotiation, conducted by capable counsel,  
22 it is presumptively fair.” *M. Berenson Co. v. Faneuil Hall Marketplace, Inc.*, 671 F. Supp. 819, 822  
23 (D. Mass. 1987).

### 24 **1. The Settlement Provides Considerable Relief For The Class.**

25 The consideration for the Settlement is substantial and provides considerable relief for the  
26 class. The Settlement provides for a payment of \$13,500,000. *See Saveri Decl.* ¶ 20. The  
27 Settlement also compares favorably to settlements finally approved in other price-fixing cases.  
28



1 *See, e.g., Fisher Bros. v. Mueller Brass Co.*, 630 F. Supp. 493, 499 (E.D. Pa. 1985) (recoveries  
2 equal to .1%, .2%, 2%, .3%, .65%, .88%, and 2.4% of defendants' total sales).

3 Further, the settlement calls for Toshiba to cooperate with Plaintiffs. Saveri Decl. ¶ 22.  
4 This is a valuable benefit because it will save time, reduce costs, and provide access to information,  
5 witnesses, and documents regarding the CRT conspiracy that might otherwise not be available to  
6 Plaintiffs. *See In re Mid-Atlantic Toyota Antitrust Litig.*, 564 F. Supp. 1379, 1386 (D. Md. 1983)  
7 (a defendant's agreement to cooperate with plaintiffs "is an appropriate factor for a court to  
8 consider in approving a settlement"). "The provision of such assistance is a substantial benefit to  
9 the classes and strongly militates toward approval of the Settlement Agreement." *In re Linerboard*  
10 *Antitrust Litig.*, 292 F. Supp. 2d 631, 643 (E.D. Pa. 2003). *See also In re Mid-Atlantic Toyota*  
11 *Antitrust Litig.*, 564 F. Supp. at 1386 (concluding that commitment to cooperate is appropriate  
12 factor to consider in approving partial settlement); *In re Corrugated Container Antitrust Litig.*,  
13 Case No. M.D.L. 310, 1981 WL 2093, at \*16 (S.D. Tex. June 4, 1981) ("The cooperation clauses  
14 constituted a substantial benefit to the class."). In addition, "[i]n complex litigation with a plaintiff  
15 class, 'partial settlements often play a vital role in resolving class actions.'" *Agretti v. ANR Freight*  
16 *Sys., Inc.*, 982 F.2d 242, 247 (7th Cir. 1992) (quoting Manual for Complex Litigation Second, §  
17 30.46 (1986)).

18 Finally, the settlement preserves Plaintiffs' right to litigate against the non-settling  
19 defendants for the entire amount of Plaintiffs' damages based on joint and several liability. *See*  
20 *Corrugated Container*, 1981 WL 2093, at \*17; Saveri Decl. ¶ 21 (Released claims do not preclude  
21 Plaintiffs from pursuing any and all claims against other non-settling defendants for the sales  
22 attributable to Toshiba).

## 23 **2. The Class Members' Positive Reaction Favors Final Approval.**

24 There are no objectors to the Settlement and the reaction of the class to the Settlement  
25 supports this Court granting final approval. Sherwood Decl., ¶ 10. In determining the fairness and  
26 adequacy of a proposed settlement, the Court also should consider "the reaction of the class  
27 members to the proposed settlement." *Churchill Village*, 361 F.3d at 575; *Hanlon*, 150 F.3d at  
28 1026. "It is established that the absence of a large number of objections to a proposed class action

1 settlement raises a strong presumption that the terms of a proposed class settlement action are  
 2 favorable to the class members.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D.  
 3 523, 529 (C.D. Cal. 2004); *see also, In re Fleet/Norstar Sec. Litig.*, 935 F. Supp. 99, 107 (D.R.I.  
 4 1996).

5 Pursuant to the Court’s order, approximately 17,490 Class Notices were mailed or  
 6 electronically mailed to class members throughout the United States. *See Sherwood Decl.*, ¶¶ 4, 5.  
 7 When presented with the material financial terms of the proposed settlement, no members of the  
 8 class objected to the settlement. *Sherwood Decl.*, ¶ 10. In addition, only 23 class members opted  
 9 out of the class. *See Sherwood Decl.*, ¶¶ 4, 5, 10. The reaction of the class to the proposed  
 10 settlement therefore supports the conclusion that the proposed settlement is fair, adequate and  
 11 reasonable. *Pallas v. Pac. Bell*, No. C-89-2373 DLJ, 1999 WL 1209495, at \*8 (N.D. Cal. 1999)  
 12 (“The small percentage—less than one percent—of persons raising objections is a factor weighing  
 13 in favor of approval of the settlement.”); *Bynum v. Dist. of Columbia*, 412 F. Supp. 2d 73, 77  
 14 (D.D.C. 2006) (“The low number of opt outs and objectors (or purported objectors) supports the  
 15 conclusion that the terms of the settlement were viewed favorably by the overwhelming majority of  
 16 class members.”). *See also, Arnold v. Arizona Dept. of Pub. Safety*, No. CV-01-1463-PHX-LOA,  
 17 2006 WL 2168637, at \*10 (D. Ariz. July 31, 2006); *In re Patriot Am. Hospitality Inc. Sec. Litig.*,  
 18 No. MDL C-00-1300 VRW, 2005 WL 3801594, at \*2 (N.D. Cal. Nov. 30, 2005). The inference of  
 19 class’s approval of the settlement is even stronger where, as here, much of the class consists of  
 20 sophisticated business entities. *See Linerboard*, 321 F. Supp. 2d at 629.

### 21 **3. The Settlement Eliminates Significant Risk To The Class.**

22 While Plaintiffs believe their case is strong, the settlement eliminates significant risks they  
 23 would face if the action were to proceed. Plaintiffs would bear the burden of establishing liability,  
 24 impact and damages. *See, e.g., Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 118 (2d Cir.  
 25 2005) (“Indeed, the history of antitrust litigation is replete with cases in which antitrust plaintiffs  
 26 succeeded at trial on liability, but recovered no damages, or only negligible damages, at trial, or on  
 27 appeal.”); *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 475 (S.D.N.Y. 1998); *In*  
 28 *re Sumitomo Copper Litig.*, 189 F.R.D. 274, 283 (S.D.N.Y. 1999). This is an important

1 consideration because Defendants have vowed to aggressively defend this action. Thus, the  
 2 Settlement is in the best interest of the Class because it eliminates the risks of continued litigation,  
 3 while at the same time creating a substantial cash recovery and obtaining certain defendants'  
 4 cooperation.

5 Continued litigation against Defendants also would involve significant additional expenses  
 6 and protracted legal battles, which are avoided through the Settlement. *In re Visa*  
 7 *Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503, 510 (E.D.N.Y. 2003), *aff'd* 396 F.3d 96  
 8 (2d Cir. 2005) (“The potential for this complex litigation to result in enormous expense, and to  
 9 continue for a long time, was great.”); *Marisol A. ex rel. Forbes v. Giuliani*, 185 F.R.D. 152, 163  
 10 (S.D.N.Y. 1999) (noting that trial would last at least five months and require testimony from  
 11 numerous witnesses and experts); *In re Austrian and German Bank Holocaust Litig.*, 80 F. Supp.  
 12 2d 164, 174 (S.D.N.Y. 2000) (“Most class actions are inherently complex and settlement avoids the  
 13 costs, delays and multitude of other problems associated with them.”).

14 **4. The Settlement Is the Product of Arm’s-Length Negotiations Between**  
 15 **the Parties and The Recommendation of Experienced Counsel Favors**  
 16 **Approval.**

17 This class action has been vigorously litigated. Class Counsel has analyzed millions of  
 18 documents produced by defendants and others. They have also conducted an independent  
 19 investigation of the facts and analyzed Defendants’ sales and pricing data.

20 The negotiations leading to the Settlement were vigorous, informed and thorough. The  
 21 parties reached agreement after the exchange of mediation briefs and a mediation before an  
 22 experienced mediator, Eric Green. They were contested and conducted in the utmost good faith.  
 23 Saveri Decl. ¶ 19.

24 Counsel’s judgment that the Settlement is fair and reasonable is also entitled to great  
 25 weight. *See Nat’l Rural Telcomms. Coop.*, 221 F.R.D. at 528 (“‘Great weight’ is accorded to the  
 26 recommendation of counsel, who are most closely acquainted with the facts of the underlying  
 27 litigation.”); *accord Bellows v. NCO Fin. Sys.*, 2008 U.S. Dist. LEXIS 103525, at \*22 (S.D. Cal.  
 28 Dec. 2, 2008); *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1188 (10th Cir. 2002);  
*Wilkerson v. Martin Marietta Corp.*, 171 F.R.D. 273, 288–89 (D. Colo. 1997); *Officers for Justice*,

1 688 F.2d at 625.

2 While the Plaintiffs believe they have meritorious claims, Defendants have asserted that  
3 they have strong defenses which would serve to eliminate their liability and/or damage exposure to  
4 the Class. The parties entered into the Settlement to eliminate the burden, and expense and risks of  
5 further litigation.

6 For all of these reasons, the cash settlement obtained represents an excellent recovery and is  
7 certainly "fair, adequate and reasonable" to the Class. Accordingly, final approval should be  
8 granted.

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

11 The Class Notice, which was disseminated in accordance with the Preliminary Approval  
12 Order, outlined the following proposed plan for allocating the settlement proceeds:

13 In the future, each Settlement Class member's *pro rata* share of the Settlement  
14 Fund will be determined by computing each valid claimant's total CRT Product  
15 purchases divided by the total valid CRT Product purchases claimed. This  
16 percentage is multiplied to the Net Settlement Fund (total settlements minus all  
17 costs, attorneys' fees, and expenses) to determine each claimant's *pro rata* share  
18 of the Settlement Fund. To determine your CRT Product purchases, CRT tubes  
(color display and color picture) are calculated at full value (100%) while CRT  
televisions are valued at 50% and CRT computer monitors are valued at 75%. In  
summary, all valid claimants will share in the settlement funds on a *pro rata* basis  
determined by the CRT value of the product you purchased — tubes 100%,  
monitors 75% and televisions 50%.

19 *See* Sherwood Decl., Ex. A, at 9.

20 Although Plaintiffs have proposed deferring the distribution of funds until a later date,  
21 Plaintiffs have informed the class that any distribution will be made on a *pro rata* basis. A plan of  
22 allocation of class settlement funds is subject to the "fair, reasonable and adequate" standard that  
23 applies to approval of class settlements. *In re Citric Acid Antitrust Litig.*, 145 F. Supp. 2d 1152,  
24 1154 (N.D. Cal. 2001). A plan of allocation that compensates class members based on the type and  
25 extent of their injuries is generally considered reasonable. *In re Computron Software, Inc.*, 6 F.  
26 Supp. 2d 313, 321 (D.N.J. 1998). Here the proposed distribution will be on a *pro rata* basis, with  
27 no class member being favored over others. This type of distribution has frequently been  
28 determined to be fair, adequate, and reasonable. *See In re Dynamic Random Access Memory*

1 (*DRAM Antitrust Litig.*, No. M-02-1486 PJH, Dkt. No. 2093, p.2 (Oct. 27, 2010) (Order  
2 Approving Pro Rata Distribution); *In re Vitamins Antitrust Litig.*, No. 99-197 TFH, 2000 WL  
3 1737867, at \*6 (D.D.C. Mar. 31, 2000) (“Settlement distributions, such as this one, that apportion  
4 funds according to the relative amount of damages suffered by class members, have repeatedly  
5 been deemed fair and reasonable.”); *In re Lloyds’ Am. Trust Fund Litig.*, No. 96 Civ.1262 RWS,  
6 2002 WL 31663577, at \*19 (S.D.N.Y. Nov. 26, 2002) (“*pro rata* allocations provided in the  
7 Stipulation are not only reasonable and rational, but appear to be the fairest method of allocating  
8 the settlement benefits.”); *In re PaineWebber Ltd. P’ships Litig.*, 171 F.R.D. 104, 135 (S.D.N.Y.  
9 1997) (“*pro rata* distribution of the Settlement on the basis of Recognized Loss will provide a  
10 straightforward and equitable nexus for allocation and will avoid a costly, speculative and bootless  
11 comparison of the merits of the Class Members’ claims”).

12 In summary, class members will submit their purchase information for both CRT tubes and  
13 finished products—televisions and monitors containing CRTs. All class members will share in the  
14 settlement funds on a *pro rata* basis determined by the CRT value of the product they purchased—  
15 tubes 100%, monitors 75% and televisions 50%.

16 The proposed plan of allocation is identical to the plan of allocation for the finally approved  
17 CPT, Philips, Panasonic, and LG settlements. Saveri Decl. ¶ 24. Accordingly, the plan of  
18 allocation done on a *pro rata* basis in the instant case is “fair, adequate and reasonable” to the  
19 Class and final approval of the plan of allocation should be granted.

## 20 **V. OBJECTIONS BY CLASS MEMBERS**

21 As indicated above, there were no objections to the Settlement.

## 22 **VI. EXCLUSIONS**

23 Class members were advised of the right to be excluded from the Settlement Class, which  
24 could be accomplished through mailing a request for exclusion to the Settlement Administrator not  
25 later than May 16, 2013. Twenty-three (23) requests for exclusion were received from Class  
26 members. Sherwood Decl., ¶ 9, Ex. C.

1 **VII. CONCLUSION**

2 For the foregoing reasons set forth herein, Plaintiffs respectfully submit that the Court  
3 should enter an order granting the relief requested by this motion: (i) granting final approval of the  
4 Settlement; and (ii) granting final judgment and dismissal with prejudice as to Toshiba.

5 Dated: July 1, 2013.

Respectfully submitted,

6 /s/ Guido Saveri  
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