

1 Mario N. Alioto (56433)
 2 Lauren C. Capurro (241151)
 3 TRUMP, ALIOTO, TRUMP & PRESCOTT LLP
 4 2001 Union Street, Suite 483
 5 San Francisco, CA 94123
 6 Telephone: 415-563-7200
 7 Facsimile: 415- 346-0679
 8 Email: malioto@tatp.com
 9 jpatane@tatp.com
 10 lauren russell@tatp.com

11 *Lead Counsel for the Indirect*
 12 *Purchaser Plaintiffs for the 22 States*

13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA**
 15 **OAKLAND DIVISION**

16 IN RE: CATHODE RAY TUBE (CRT)
 17 ANTITRUST LITIGATION

18 MASTER FILE NO. 4:07-cv-5944 JST
 19 Case No. 13-cv-03234-JST

20 This Document Relates to:
 21 INDIRECT PURCHASER ACTIONS FOR
 22 THE 22 STATES

23 MDL NO. 1917

24 **INDIRECT PURCHASER PLAINTIFFS’**
 25 **NOTICE OF MOTION AND MOTION**
 26 **FOR ORDER APPOINTING FUND**
 27 **ADMINISTRATOR AND AUTHORIZING**
 28 **DISTRIBUTION OF SETTLEMENT**
FUNDS; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF

Hearing Date: July 28, 2022
 Time: 2:00 p.m.
 Courtroom: 6, 2nd Fl. (Oakland)
 Judge: Hon. Jon S. Tigar

TABLE OF CONTENTS

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

PAGE(S)

I. INTRODUCTION.....1

II. STATEMENT OF RELEVANT FACTS.....3

 A. The Settlements And Settlement Approval.....3

 B. Notice To Class Members Regarding The Settlements And
 Filing Claims.....4

 C. The Two Plans Of Distribution.....5

 1. The Plan Of Distribution For All Settlements Except The
 Chunghwa Settlement.....5

 2. The Plan of Distribution For The Chunghwa Settlement.....6

 D. Claims Administration.....7

 1. Summary Of Settlement Administrators’ Receipt And
 Review Of Claims.....7

 2. The Settlement Administrator’s Audit Criteria And
 Results.....9

 3. Proposal For Payment Of Late Claims.....11

 E. The Net Settlement Funds Available For Distribution.....12

 1. The Amounts Recovered.....12

 2. Interest Accrued On The Fund.....13

 3. Court-Authorized Payments From The Settlement
 Funds.....13

 4. Additional Costs And Expenses Incurred In Connection With The Prosecution
 And Settlement Of This
 Litigation.....14

 5. Additional Payments Owed to the Settlement
 Administrator.....14

 6. Reserves And the Amount Available For Distribution.....14

F. Distribution Of The Net Settlement Fund.....16

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

III. ARGUMENT.....17

 A. The Court Should Approve The Settlement Administrator’s
 Recommendations Regarding Acceptance Or Rejection
 Of Claims.....18

 B. The Court Should Adopt Lead Counsel’s Recommendation
 Regarding Late, Amended And Placeholder Claims.....19

 C. The Court Should Approve The Reimbursement Of
 Expenses.....21

 1. The Court Should Authorize Payment Of The Settlement Administrator’s Unpaid
 Fees And Expenses.....21

 2. The Court Should Approve The Expenditures From The Future Expense Fund
 And Authorize The Reimbursement Of Litigation Expenses To IPP
 Counsel.....23

IV. CONCLUSION24

TABLE OF AUTHORITIES

PAGE(S)

Cases

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

In re Dynamic Random Access Memory (DRAM) Antitrust Litig.,
No. 02-1486, ECF Nos. 2273, 2283 (N.D. Cal. 2016) 20, 21

In re Anthem, Inc. Data Breach Litig.,
327 F.R.D. 299 (N.D. Cal. 2018) 18

In re Cathode Ray Tube Antitrust Litig.,
No. 20-15697, 2021 WL 4306895 (9th Cir. Mem. Sept. 22, 2021) 4

In re Gypsum Antitrust Cases,
565 F.2d 1123 (9th Cir. 1977)..... 19

In re Int’l Air Transp. Surcharge Antitrust Litig.,
No. M 06-01793 CRB, 2011 WL 6337625 (N.D. Cal. Dec. 19, 2011),
aff’d, 577 F. App’x 711 (9th Cir. 2014) 19

In re Orthopedic Bone Screw Prods. Liab. Litig.,
246 F.3d 315 (3d Cir. 2001) 19

In re TFT-LCD (Flat Panel) Antitrust Litig.,
No. 03-1827, ECF Nos. 9217, 9273 (N.D. Cal. 2014) 20

In re Valdez,
289 F. App’x 204 (9th Cir. 2008)..... 20

Welch & Forbes, Inc. v. Cendant Corp. (In re Cendant Corp. Prides Litig.),
233 F.3d 188 (3d Cir. 2000) 20

Willner v. Manpower Inc.,
No. 11-cv-02846-JST, 2015 WL 3863625 (N.D. Cal. June 22, 2015) 24

Statutes

20
21

26 U.S.C. § 468B 16

Fed. R. Civ. P. 23 subd. (h) 21

Treatises

22
23
24
25
26
27
28

4 William B. Rubenstein, *Newberg on Class Actions*, § 12:19 (5th ed.) (Westlaw 2018) 18, 19

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on July 28, 2022, at 2:00 p.m., or as soon thereafter as the matter may be heard, before the Honorable Jon S. Tigar, United States District Judge, Oakland Courthouse, located at 1301 Clay Street, Courtroom 6, 2nd Floor, Oakland, California, the Indirect Purchaser Plaintiffs (“IPPs”) will and hereby do move the Court for an Order appointing The Notice Company as the Fund Administrator, and authorizing the distribution of settlement proceeds obtained in the Indirect Purchaser Actions to class members who submitted valid claims.

IPPs request that the Court enter an Order appointing The Notice Company as the Fund Administrator and approving the distribution of settlement funds in accordance with the Plans of Distribution previously approved by the Court (ECF No. 5040; 5786) to members of the 22 Indirect Purchaser State Classes whose claims have been approved by the Court-appointed Settlement Administrator, The Notice Company. In addition, IPPs seek an Order (1) authorizing payment to the Settlement Administrator for unreimbursed costs and expenses; (2) approving IPP Counsel’s expenditures from the Future Expense Fund; (3) authorizing reimbursement to IPP Counsel of out-of-pocket expenses; and (4) authorizing IPPs to reserve funds in escrow for the payment of future claims administration costs, potential tax liability, and/or other issues.

This Motion is based on this Notice of Motion, the following Memorandum of Points and Authorities in support thereof, the accompanying Declarations of Joseph Fisher and Mario N. Alioto, the pleadings and papers on file in this action and such other matters as may be presented to the Court at or prior to the hearing on the Motion.

Dated: June 23, 2022

/s/ Mario N. Alioto

Mario N. Alioto (56433)
Lauren C. Capurro (241151)
TRUMP, ALIOTO, TRUMP & PRESCOTT, LLP
2001 Union Street, Suite 483
San Francisco, CA 94123
Telephone: (415) 563-7200
Facsimile: (415) 346-0679

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

malioto@tatp.com
lauren russell@tatp.com

Lead Counsel for the Indirect Purchaser Plaintiffs

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

STATEMENT OF ISSUES TO BE DECIDED

1. Whether to authorize payment of all claims as approved by the Settlement Administrator from the Net Settlement Funds according to the weighted pro rata Plans of Distribution approved by the Court and set forth in Exhibits D and E to the Fisher Declaration.

2. Whether to appoint The Notice Company as the Fund Administrator.

3. Whether to adopt and approve IPP Lead Counsel’s recommendation that the Court pay “Late Claims” to the extent, and in the manner, set forth herein.

4. Whether to authorize the payment to the Settlement Administrator of fees, costs and expenses incurred, but as yet unpaid, in the amount of \$99,240.13.

5. Whether to approve IPP Counsel’s expenditure of \$2,330,710.87 from the Future Expense Fund during the period from September 2015 through the present for the prosecution and settlement of this litigation on behalf of indirect purchaser class members, as detailed herein.

6. Whether to approve the reimbursement from the settlement funds of \$345,171.76 in additional expenses incurred by IPP Counsel in the prosecution and settlement of this litigation on behalf of indirect purchaser class members, as detailed herein.

7. Whether to reserve \$10,000,000 on a pro rata basis, from funds distributed to claimants being awarded \$1 million or more, for the payment of future claims administration fees, costs and expenses, potential tax liability, and other unforeseen issues.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Indirect Purchaser Plaintiffs (“IPPs”) have settled this action with certain Defendants (the “Settling Defendants”),¹ resulting in settlements totaling \$547,750,000, plus accrued interest. The Court’s Orders granting final approval to IPPs’ settlements with the Settling Defendants and

¹ The “Settling Defendants” are the Chunghwa (ECF No. 1105), LG Electronics (ECF No. 2542), Panasonic, Philips, Hitachi, Toshiba, Samsung SDI, Thomson and TDA Defendants (ECF No. 5786 (Order Granting Final Approval, dated July 13, 2020) (“Final Approval Order”) at 1-2).

1 the Final Judgments it entered thereafter have been affirmed by the Ninth Circuit in a decision that
2 is no longer subject to further appellate review.

3 Notice of the settlements was sent to class members, certain class members opted out, and
4 potential class members submitted claims to share in the settlement proceeds. The Settlement
5 Administrator has completed an extensive, fair, and reasonable review of all claims filed. Because
6 the Chunghwa Settlement includes resellers and required distributions to State Attorneys General,
7 the Court approved a slightly different Plan of Distribution that must be administered separately.
8 As of May 31, 2022, the Net Settlement Fund for the Chunghwa settlement is \$6,341,556.68, and
9 the Net Settlement Fund for all other settlements is \$414,143,781.42. These amounts include the
10 settlement proceeds plus interest, less Court-approved attorneys' fees, expenses, class representative
11 incentive awards, taxes, accounting fees, escrow fees, and amounts distributed from the Chunghwa
12 settlement to the Attorneys General of Illinois and Oregon. If the Court approves the Settlement
13 Administrator's unreimbursed fees and costs, the reimbursement of expenses to IPP Counsel, and
14 an appropriate reserve of \$10,000,000 for future claims administration fees, costs, expenses, taxes
15 and other issues, there will be \$6,137,693.41 remaining in the Chunghwa Net Settlement Fund and
16 \$403,903,232.80 from all other settlements, for a total of \$410,040,926.21.

17 As explained below and in the Declarations of Joseph Fisher (the "Fisher Decl.") and Mario
18 N. Alioto (the "Alioto Decl."), filed herewith, all the prerequisites to a prompt distribution of funds
19 to claimants have been satisfied. The funds to be distributed are already in hand, having been
20 deposited in escrow by the Settling Defendants in 2015 or earlier. The Court has adopted two Plans
21 of Distribution that, taken together, govern the distribution of funds. Alioto Decl. ¶ 2; Fisher Decl.
22 ¶ 9. Class member participation in the claims process has been robust. The Notice Company, the
23 Court-appointed Settlement Administrator for the indirect purchaser settlements (and proposed
24 Fund Administrator), has processed and approved a total of 143,374 valid claims for purchases of
25 144,203,637 CRT televisions, computer monitors and other products containing CRTs ("CRT
26 Products"). Fisher Decl. ¶¶ 10-11.

1 IPPs request that the Court enter the Proposed Order submitted herewith, which appoints
 2 The Notice Company as the Fund Administrator and authorizes it to pay all approved claims from
 3 the Net Settlement Funds, less funds reserved for future claims administration costs, taxes, and other
 4 issues, according to the weighted pro rata Plans of Distribution previously approved by the Court.
 5 The Proposed Order also incorporates IPPs’ proposal that the Court approve payments to certain
 6 late claimants (who filed their claims after the Court-ordered deadlines but on or before May 5,
 7 2020) at 50% of what they would otherwise have received had they timely filed their claims.

8 In conjunction with the distribution of funds, IPPs further request that the Court (1) authorize
 9 payment to the Settlement Administrator for unreimbursed fees and expenses; (2) approve IPP
 10 Counsel’s expenditures from the Future Expense Fund; (3) authorize reimbursement to IPP Counsel
 11 of out-of-pocket expenses; and (4) authorize IPPs to reserve funds in escrow, on a pro rata basis,
 12 from funds distributed to claimants being awarded \$1 million or more, for the payment of future
 13 claims administration costs, potential tax liability, and/or other issues. The accompanying Proposed
 14 Order reflects these payments as well.

15 **II. STATEMENT OF RELEVANT FACTS**

16 **A. The Settlements And Settlement Approval**

17 The Settlement Fund was created as a result of the following settlements (collectively, the
 18 “Settlements”):

- 19 (1) IPPs’ settlement with the Chunghwa Defendants, which the Court finally approved (ECF
 20 No. 1105) and entered Final Judgment on March 22, 2012 (ECF No. 1106);
- 21 (2) IPPs’ subsequent settlement with the LG Defendants, which the Court finally approved
 22 (ECF No. 2542) and entered a Final Judgment on April 18, 2014 (ECF No. 2543); and,
- 23 (3) IPPs’ settlements with six additional groups of Defendants – the Phillips, Panasonic,
 24 Hitachi, Toshiba, Samsung and Thomson/TDA Defendants (the “2015 Settlements”),²
 25 which the Court initially approved on July 7, 2016 (ECF No. 4712), and later approved,

26
 27
 28 ² The Court identified the defendant groups in its July 7, 2016 Order (ECF No. 4712) at 3, fn. 4-9.

1 as amended, in a “Final Approval Order” entered July 13, 2020 (ECF No. 5786), leading
2 to the entry of Final Judgment on July 29, 2020 (ECF No. 5804).

3 Several groups of objectors (“Objectors”) appealed the Court’s approval of the amended
4 Settlements.³ The Ninth Circuit affirmed final approval of the amended settlements in a
5 Memorandum Decision dated September 22, 2021,⁴ and denied Objectors’ petition for rehearing
6 and rehearing *en banc* on December 23, 2021. ECF No. 5973. On June 13, 2022, the United States
7 Supreme Court denied Objectors’ Petition for Certiorari. ECF No. 6023. This Court’s Final
8 Approval Order and Final Judgment are therefore no longer subject to further appellate challenge.
9 The case is ripe for a distribution of the settlement funds to class members, incentive awards to the
10 class representatives, and attorneys’ fees and expenses to the attorneys who prosecuted this case.⁵

11 **B. Notice To Class Members Regarding The Settlements And Filing Claims**

12 IPPs have published five notices to class members regarding the Settlements, the plans of
13 distribution, and the right to file claims to share in the settlement proceeds.⁶ The notice published
14 in August 2015 regarding the 2015 Settlements informed class members that they could submit
15 claims against all settlements. *See generally* ECF No. 4371-1. The notice also provided
16 instructions to class members filing electronic and paper claims, as well as the claim form, and set
17 a deadline of December 7, 2015 for their submission. *Id.* ¶¶ 4-18. This Court has approved each
18 of these notices as constitutionally adequate notice consistent with due process.⁷

19
20 ³ *Ayres et al. v. Indirect Purchaser Plaintiffs, et al.*, Nos. 20-16685, 20-16686, 20-16691 and 20-
21 16699.

22 ⁴ *In re Cathode Ray Tube Antitrust Litig.*, No. 20-15697, 2021 WL 4306895 (9th Cir. Sept. 22,
2021).

23 ⁵ IPPs’ Motion for Distribution of Attorneys’ Fees, Expenses, and Incentive Awards (ECF No.
24 6001) is under submission.

25 ⁶ ECF Nos. 1063-1 (Fisher Decl., Ex. A, Chunghwa Detailed Notice); 2511 (Fisher Decl., Ex. A,
26 LG Detailed Notice); 4371-1 (Fisher Decl., Ex. A, 2015 Settlements Detailed Notice); 4953-2
(Fisher Decl., Ex. A, Chunghwa Reseller Detailed Notice); 5758-1 (Fisher Decl., Ex. A, Amended
Settlements Detailed Notice).

27 ⁷ ECF Nos. 1105 ¶ 6 (Chunghwa); 2542 ¶ 6 (LG); 4712 at 7-9 (2015 Settlements); 5040 at 2
28 (Chunghwa Reseller); 5786 at 14-16 (Amended Settlements).

1 The December 7, 2015, deadline was later modified in two limited respects. First, at the
 2 request of the California Attorney General, the Court extended the claims deadline to June 30,
 3 2016, for California natural persons only, in light of a parallel California state-court *parens*
 4 *patriae* settlement. ECF No. 4339. Second, the Court extended the claims deadline to November
 5 29, 2016 for resellers to file claims against the Chunghwa settlement. ECF No. 4712 at 31-33.

6 The amended settlements reached in 2019 did not require additional notice to the entire class
 7 because the Court concluded that members of 22 Indirect Purchaser State Classes affected by the
 8 amended settlements had already received “the best notice practicable under the circumstances,”
 9 and that the amendments did not adversely affect class members. Final Approval Order at 14-15.
 10 While the Court did allow IPPs to send notice to certain class members, it merely advised the
 11 recipients of their right to object to the amendments and the fee award, and appear at the fairness
 12 hearing. *Id.* at 15-16. The notice did not reopen, or address any issues regarding, the filing of claims.

13 C. The Two Plans Of Distribution

14 The Court has approved two different Plans of Distribution for the Net Settlement Funds –
 15 one plan for the Net Settlement Funds for all settlements except the Chunghwa Settlement (ECF
 16 No. 5786 at 20), and another for the Chunghwa Net Settlement Fund. ECF No. 5040.

17 1. The Plan Of Distribution For All Settlements Except The Chunghwa Settlement

18 The Court-approved Plan of Distribution applicable to all settlements except the
 19 Chunghwa settlement:

20 [P]rovides for (1) a “weighted *pro-rata* distribution to all members of the 22
 21 Indirect Purchaser State Classes that filed valid claims,” (2) a minimum
 22 payment of at least \$25 per claimant, and (3) a maximum payment of “three
 times the estimated money damages per claimant.”⁸

23 Based on data obtained during the course of the litigation, the Plan for Distribution assigned
 24 weights to different types and sizes of CRT Products based on the overcharge evidence for each.
 25 CRT Products were categorized as Standard CRT Televisions (screen size of less than 30 inches),
 26

27
 28 ⁸ Final Approval Order (ECF No. 5786) at 20.

1 Large CRT Televisions (screen size of 30 inches or larger), or CRT Computer Monitors. Weights
 2 were assigned as follows: claims for purchases of Standard CRT Televisions were weighted as 1;
 3 claims for purchases of Large CRT Televisions were weighted as 4.3; and claims for purchases of
 4 CRT Computer Monitors were weighted as 3. The Court approved these weightings, and the Plan
 5 of Distribution in which they were included, in its Final Approval Order on July 7, 2016 (ECF No.
 6 4712), at 26-29, 37 ¶ 8, and reaffirmed that approval in its Final Approval Order as to the amended
 7 settlements on July 13, 2020 (ECF No. 5786) at 20.⁹

8 **2. The Plan Of Distribution For The Chunghwa Settlement**

9 The Court approved a separate Plan of Distribution for the proceeds of the Chunghwa
 10 settlement. ECF No. 5040. That plan specifies the following allocation procedure for claimants
 11 who are members of the Chunghwa settlement class members, which includes indirect purchasers
 12 of CRT Products who resold those products (“Resellers”) and those who purchased CRT Products
 13 for their own use and not for resale (“End Users”):

- 14 • The Chunghwa funds will first be allocated among 24 states (the 22 Indirect
 15 Purchaser States plus Illinois and Oregon) *pro rata* in accordance with those states’
 16 respective populations in 2000. ECF No. 4712 at 29; ECF No. 5040 at 4.
- 17 • The Attorneys General of Illinois and Oregon have been allocated 8.59% and
 18 2.37% of the Net Settlement Fund, respectively, which the Attorneys General have
 19 distributed to residents of Illinois and Oregon (ECF No. 5040 at 4; *see also* ECF
 20 No. 5376 (Order Granting State of Illinois’, State of Oregon’s and Chunghwa
 21 Picture Tube Ltd.’s Motion to Disburse the Illinois and Oregon Shares of the
 22 Chunghwa Settlement Funds));
- 23 • For the remaining 22 States, each state’s pro rata share will be divided 50/50
 24 between Resellers and End Users, and then distributed to Reseller and End user

25
 26 ⁹ The term “CRT Weighted Units” refers to the number of CRT Products calculated using the
 27 weights as described in this paragraph. Fisher Decl. ¶ 9. For example, a claimant who purchased
 28 one large CRT television would be assigned 4.3 CRT Weighted Units for the purpose of
 calculating their pro rata share of the Net Settlement Funds.

1 claimants on the same weighted pro rata basis described above and approved by the
2 Court (ECF No. 5040 at 4-5);

- 3 • Payment amounts will be based on the number of valid claims filed, as well as on
4 the number and type of CRT Product(s) purchased;
- 5 • If Reseller claimants do not exhaust a particular state’s Reseller fund, the residue
6 will be distributed pro rata to existing End User claimants from that state. *Id.*

7 IPP Counsel proposes that, like the other settlements, the Court authorize a \$25 minimum
8 payment for Reseller claimants (qualifying End User claimants will receive the \$25 minimum
9 payment pursuant to the Plan of Distribution for the other settlements). The minimum payment
10 will help to reduce administration costs and will avoid issuing checks for very small amounts.

11 Alioto Decl. ¶ 15.

12 **D. Claims Administration**

13 **1. Summary Of Settlement Administrators’ Receipt And Review Of Claims**

14 The Settlement Administrator received a total of 156,467 claims through May 5, 2020 (the
15 “Cutoff Date,” discussed below). The Settlement Administrator conducted an extensive review
16 and audit of those claims. Fisher Decl. ¶¶ 10-12. As a result of that process, the Settlement
17 Administrator has approved a total of 143,374 claims for purchases of 285,602,057 CRT Products,
18 or 422,268,446 CRT Weighted Units. *Id.* The approved claimants include individual consumers,
19 small and large businesses, and some multinational corporations, most of which purchased CRT
20 Products for their own use and not for resale.¹⁰ Individual claimants typically purchased
21 anywhere from one to ten CRT Products for their own use, while small and large businesses
22 purchased anywhere from a few CRT Products to thousands of CRT Products.

23 Of the claims received, 145,191 were Timely Claims (i.e., claims submitted by the Court-
24 ordered deadlines described above) by End Users of CRT Products, submitted as paper or
25 electronic Claim Forms; the number of CRT Weighted Units claimed was 399,331,586,327.

26 _____
27
28 ¹⁰ As indicated above, Reseller claimants may only participate in the Chunghwa settlement.

1 Another 5,263 claims were Timely Claims from Resellers; the number of CRT Weighted Units
2 claimed was 1,266,905,808. *Id.* ¶ 10.

3 Subsequent to the Court-approved deadlines for the submission of Timely Claims, the
4 Settlement Administrator continued to receive claim submissions both electronically and by mail
5 (“Late Claims”). The Settlement Administrator continued to process and review claims that were
6 submitted through the May 5, 2020 Cutoff Date. For End Users, the Settlement Administrator
7 received 4,901 Late Claims submitted by the Cutoff Date amounting to 43,373,930 Weighted
8 Units. For Resellers, the Settlement Administrator received 1,112 Late Claims submitted by the
9 Cutoff Date amounting to 10,675,846 Weighted Units. *Id.* ¶ 11.

10 The Settlement Administrator reviewed each Timely and Late Claim form received by the
11 Cutoff Date for compliance with the Settlements’ requirements. Some claims were found to be
12 deficient or incomplete. Among the various types of deficiencies found were the following:

- 13 • claims that were clearly outliers representing numbers that appeared to be
14 anomalies or that materially deviated from an expected range, for example, an
15 individual claiming to have purchased billions of CRT Products (“Outlier Claims”);
- 16 • claims submitted by a third-party representative or agent on behalf of a claimant
17 (“Claims Aggregator”) who failed to provide purchase quantities for CRT Products
18 on the Claim Form or only partially completed this information so that the Claim
19 Form showed “N/A” or “TBD” or “0” or was blank or some combination thereof
20 (referred to as “Placeholder Claims”);
- 21 • claimants who directly submitted (not through a Claims Aggregator) incomplete
22 claim forms, including missing name and/or contact information, missing claim
23 eligibility information, missing purchase quantities, or failure to sign the Proof of
24 Claim form;
- 25 • claims for ineligible purchases, such as purchases of CRT Products directly from
26 any of the Defendants, purchases of non-CRT Products, purchases of Sony-branded
27 products, purchases made outside of the Class Period, purchases made outside of
28

1 the United States, purchases made in a state that is not one of the eligible states
2 under the Settlements, or multi-state purchases where central purchasing of all CRT
3 Products was asserted to have occurred in one of the eligible states;

- 4 • claims submitted by a Claims Aggregator on behalf of a claimant without an
5 agreement demonstrating the authority of the Claims Aggregator to act as the
6 claimant’s agent or representative;
- 7 • duplicate claims submitted by the same corporate claimant, for example, a parent
8 corporation submitting a claim that was inclusive of the CRT purchases of a
9 subsidiary, where the subsidiary had already submitted its own claim for those
10 purchases;
- 11 • duplicate claims submitted by the same individuals, for example, the same
12 individuals submitting multiple claims with slight variations in their contact
13 information, or multiple claims from persons residing at the same address that
14 appeared to represent duplicate purchases of CRT Products);
- 15 • “Competing Claims” submitted by Claims Aggregators, where two Claims
16 Aggregators each submitted a claim on behalf of the same claimant;
- 17 • inflated claims where claimants asserted that all CRT televisions purchased were
18 Large rather than Standard sized (for which the overcharge and assigned CRT
19 Weighted Units were significantly higher) or that CRT Products were replaced at
20 twice the industry average.

21 *Id.* ¶ 12. A detailed description of the Settlement Administrator’s procedures for addressing these
22 different categories of deficient claims is set forth in the Fisher Declaration. *Id.* ¶¶ 13-21.

23 **2. The Settlement Administrator’s Audit Criteria And Results**

24 All claims were subject to review and/or audit by the Settlement Administrator. For claims
25 submitted directly by Class members, an audit threshold was set at purchases of 30 CRT Products
26 for individual claims, 100 CRT Products for small businesses, 250 CRT Products for medium
27 businesses, and 1,000 CRT Products for large businesses, where business size was based on the
28

1 number of employees as reported by the claimant. Where business size could not be determined,
2 the audit threshold was set at the purchase of 50 CRT Products. Claimants were selected and
3 placed into an audit pool consisting of 2,190 entities. For claims submitted by Claims
4 Aggregators, the Settlement Administrator began by auditing large claims, meaning the top 5% of
5 claims submitted by each Claims Aggregator. If audits resulted in substantial reductions of
6 claimed purchases of CRT Products for a Claims Aggregator, then other claims submitted by that
7 Claims Aggregator were added to the audit list. The Settlement Administrator also selected
8 additional claims for audit based on comparisons of claim submissions by comparable companies.
9 Fisher Decl. ¶ 22.

10 Considering all submitted claims, including Outlier Claims, reviews and audits were
11 performed on claims that represent over 99% of all CRT Weighted Units initially claimed.
12 Excluding Outlier Claims, reviews and audits were performed on 53,589 claims that accounted for
13 over 98% of claimed CRT Weighted Units. The audit process involved reviewing voluminous
14 purchase data and multiple sources of documentation for numerous claims. Other claims had little
15 or no contemporaneous purchase records available which required vetting by other means, such as
16 investigations of publicly available records, CRT television and computer monitor industry data,
17 and other third-party data sources. The Settlement Administrator reviewed and evaluated the
18 claimed CRT Weighted Units as follows: 83% were directly reviewed or audited; 9% were
19 submitted by a Claims Aggregator whose previous audits resulted in no (zero) reduction in units
20 claimed, leading the Settlement Administrator to treat further audits of their claims as not justified;
21 and over 6% were submitted by Claims Aggregators that previously resolved audits for other
22 claims in a manner that demonstrated a reasonable process for validating the claims submission
23 process and accepting the calculations utilized. *Id.* ¶ 23.

24 Audit notices were sent to all audited claims, providing instructions on how to respond to
25 the audit and the deadline for responses. If no response was received, a second-chance audit
26 notice was sent, providing a new deadline for response and informing the claimant that if no
27 response was received, then claimed purchases of numerous CRT Products would be reduced to a
28

1 claim for a \$25 minimum payment. When the Settlement Administrator received responses with
 2 sufficient support for the originally claimed units, or sufficient support for revised purchase
 3 quantities submitted by the claimant or its authorized representative, the claims were accepted or
 4 revised and the audit was closed. For those audits where questions remained after audit responses
 5 were received and more information was required, the Settlement Administrator pursued follow-
 6 up communications until the audit was resolved with the claimant. In some cases, Class Counsel
 7 was involved in assisting and resolving disputed audits. *Id.* ¶ 24.

8 The detailed results of the Settlement Administrator’s audit, by category of claim, is set
 9 forth in the Fisher Declaration filed herewith. *Id.* ¶¶ 25-28. The Settlement Administrator’s
 10 thorough review process identified and eliminated invalid Outlier Claims for both End Users and
 11 Resellers. Excluding Outlier Claims, the Settlement Administrator’s review process identified and
 12 eliminated 88% of the CRT Weighted Units claimed from end-user Timely Claims, 65% from End
 13 User Late Claims, 20% of the CRT Weighted Units from Reseller Timely Claims and 27% of the
 14 CRT Weighted Units from Reseller Late Claims. *Id.* ¶ 30.

15 3. Proposal For Payment Of Late Claims

16 Lead Counsel and the Settlement Administrator, with substantial assistance from U.S.
 17 District Judge Jacqueline Scott Corley, have devised a fair and balanced proposal for the partial
 18 payment of Late Claims. Alioto Decl., ¶ 16; Fisher Decl. ¶ 38. Lead Counsel and the Settlement
 19 Administrator recommend that the Court adopt the following approach:

- 20 • Late Claims “on file” with the Settlement Administrator as of May 5, 2020, and
 21 approved by the Settlement Administrator, shall be paid at 50%-unit value, as
 22 compared with Timely Claims, which shall be paid at 100%-unit value;
- 23 • Placeholder Claims which, as of May 5, 2020, did not provide a good-faith number of
 24 CRT units purchased are not considered “on file” and shall not be paid;
- 25 • Claims filed after May 5, 2020 are rejected.

- 1 • Application of the 50% reduction to Late Claims shall not reduce the value of any such
- 2 claim to less than the minimum payment of \$25 (unless the minimum payment is
- 3 reduced to less than \$25 for all claimants).
- 4 • If any residual remains in the Net Settlement Fund after distribution checks become
- 5 stale, such residual will be shared as follows (i) if the residual is less than or equal to
- 6 \$12 million, it shall be share pro rata by the Late Claimants, subject to a minimum
- 7 threshold set at the Settlement Administrator’s discretion, and (ii) if the residual is
- 8 more than \$12 million, it shall be shared pro rata by all claimants, subject to a
- 9 minimum threshold set at the Settlement Administrator’s discretion.

10 Alioto Decl. ¶ 17; Fisher Decl. ¶ 38.

11 As further explained below, Lead Counsel and the Settlement Administrator believe this
 12 proposal properly balances the interests of all claimants. Alioto Decl. ¶ 18; Fisher Decl. ¶¶ 29, 38.
 13 The Settlement website continues to inform claimants that the Court has not yet decided whether
 14 Late Claims will be paid. The proposal to pay Late Claims at 50% value has been shared with the
 15 Claims Aggregators and this motion will be posted on the Settlement website. Fisher Decl. ¶ 38.
 16 Attached as Exhibit D to the Fisher Declaration is a schedule of the approved End User claimants
 17 showing the number of CRT Weighted Units approved for each claim, with the number of
 18 Weighted Units reduced by 50% for Late Claims submitted on or before the Cutoff Date. *Id.* ¶ 39.
 19 Attached as Exhibit E to the Fisher Declaration is a schedule of all Reseller claimants showing the
 20 number of CRT Weighted Units approved for each claim, where the number of CRT Weighted
 21 Units is reduced by 50% for Late Claims submitted on or before the Cutoff Date. *Id.* ¶ 40.

22 **E. The Net Settlement Funds Available For Distribution**

23 **1. The Amounts Recovered**

24 In or prior to the year 2015, pursuant to the original Settlement Agreements with IPPs, the
 25 Settling Defendants deposited \$576,804,127¹¹ into multiple defendant-specific escrow accounts at

26 _____

27 ¹¹ Defendant Chunghwa paid its \$10,000,000 in three installments. Thus, Lead Counsel required
 28 that it pay interest on those installments, which totaled \$54,127. Alioto Decl. ¶ 2.

1 Union Bank and Citi Bank, under the supervision of the Court, with IPP Lead Counsel and an
 2 attorney for each defendant as Co-Escrow Agents on each account (the “Escrow Accounts”). Alioto
 3 Decl. ¶ 2. Subsequently, the Settlement Agreements were amended to reduce the settlement
 4 consideration by \$29,000,000,¹² which amount was refunded to the Settling Defendants by Order
 5 dated July 13, 2020. ECF No. 5787.¹³ The amended Settlements reduced the principal amount of
 6 the Settlement Fund to \$547,804,127 plus accrued interest.¹⁴

7 **2. Interest Accrued On The Fund**

8 The Escrow Accounts have been invested in instruments backed by the full faith and credit
 9 of the United States Treasury (*i.e.*, T-Bills and T-Notes). These investments have yielded interest at
 10 various rates over the years. As of May 31, 2022, the net amount of interest earned on the settlement
 11 funds to be distributed to claimants was \$17,471,780.40. Interest is continuing to accrue, thus the
 12 Net Settlement Funds available for distribution will continue to increase. Alioto Decl. ¶ 5.

13 **3. Court-Authorized Payments From The Settlement Funds**

14 The Court has previously authorized deductions totaling \$149,993,268.44 to be made from
 15 the Escrow Accounts for the establishment of the Future Expense Fund (described below), the cost
 16 of providing notice of the various settlements, claims administration, attorneys’ fees plus interest,¹⁵
 17 litigation expenses, incentive awards to class representatives, and distributions to the Attorneys
 18 General of Illinois and Oregon.¹⁶ Alioto Decl. ¶ 6.

19 //

20 _____
 21 ¹² Final Approval Order at 3, n.7.

22 ¹³ Defendant Hitachi has not yet withdrawn the \$1,498,846.33 that the Court ordered be refunded
 23 to it. These funds are not available for distribution to claimants. Alioto Decl. ¶ 3.

24 ¹⁴ Final Approval Order at 5. IPP Counsel reduced their attorney fee request by \$29,000,000 to
 25 ensure the reduction in the settlements would not adversely affect class members. *Id.* at 5-6.

26 ¹⁵ Pursuant to the Settlement Agreements and the Final Approval Order, IPP Counsel is entitled to
 27 interest on their attorney fee award. *See* ECF Nos. 3862-1 ¶ 23a, 5786 at 26. The attorney fee
 28 award is approximately 23.66% of the total \$547,750,000 settlement fund. Thus, IPP Counsel is
 29 entitled to 23.66% of the total interest accrued on the fund, net of taxes.

¹⁶ *See* ECF Nos. 993; 2248; 3906; 4712 at 34, 37; 5376; 5786 at 25-27; 6003.

1 **4. Additional Costs And Expenses Incurred In Connection With The Prosecution**
 2 **And Settlement Of This Litigation**

3 This Court previously approved the establishment of the Future Expense Fund with
 4 withdrawals totaling \$6,250,000 from the Escrow Accounts,¹⁷ and approved the expenditure of
 5 \$4,495,878.02 from that fund for common litigation expenses. Final Approval Order at 25-27. A
 6 total of \$2,354,121.98 (\$1,754,121.98 remaining from the \$6,250,000, plus \$600,000 received from
 7 the Direct Action Plaintiffs¹⁸) was retained in the Future Expense Fund to fund the ongoing
 8 litigation. Final Approval Order at 25; Alioto Decl. ¶ 7.

9 Since September 2015, when IPPs filed their motion for attorneys' fees and reimbursement
 10 of expenses (ECF No. 4071), IPP Counsel have paid an additional \$2,330,710.87 from the Future
 11 Expense Fund and \$345,171.76 in out-of-pocket expenditures for expenses incurred in the continued
 12 prosecution and settlement of this case. Alioto Decl. ¶¶ 20-23. By this motion, and as further detailed
 13 herein, IPPs request that the Court approve the \$2,330,710.87 expenditure from the Future Expense
 14 Fund, and authorize reimbursement to IPP Counsel of the \$345,171.76 in out-of-pocket expenses.

15 **5. Additional Payments Owed To The Settlement Administrator**

16 The Settlement Administrator has incurred additional claims administration fees and
 17 expenses in the amount of \$99,240.13 that have not yet been paid. Fisher Decl. ¶ 34. Lead Counsel
 18 has reviewed these claims administration expenses and has determined them to be reasonable and
 19 necessary for the claims administration in this case. Alioto Decl. ¶ 19. By this motion, IPP Counsel
 20 seeks authorization to pay this amount from the Settlement Fund, as further detailed below.

21 **6. Reserves And The Amount Available For Distribution**

22 IPP Lead Counsel commissioned and oversaw a thorough audit of the individual Escrow
 23 Accounts by a Certified Public Accountant. Alioto Decl. ¶ 4. Pursuant to this Court's Order
 24 requiring that the Chunghwa settlement only be charged its pro rata share of litigation expenses
 25 (ECF No. 4443 at 6-7), the \$2.5 million withdrawal from the Chunghwa settlement fund for the

26 _____
 27 ¹⁷ ECF Nos. 1334, 2618, 2944, and 3524.

28 ¹⁸ The Direct Action Plaintiffs ("DAPs") paid these monies to IPPs when they joined the litigation
 in 2012 in exchange for access to IPP Counsel's extensive work product. Alioto Decl. ¶ 7.

1 Future Expense Fund was reallocated pro rata amongst all settlements. Alioto Decl. ¶ 7. Other
2 common expenses were also reallocated to ensure that each Escrow Account only pays its pro rata
3 share of common expenses. *Id.*

4 As of May 31, 2022, \$6,341,556.68 is available for distribution from the Chunghwa Escrow
5 Account and \$414,143,781.42 from the other settlements' Escrow Accounts. *Id.* ¶ 9. These amounts
6 include the settlement proceeds plus accrued interest, less taxes, escrow fees, accounting fees, and
7 Court-approved attorneys' fees plus interest, costs, expenses, and incentive awards to Class
8 Representatives. Interest is continuing to accrue. *Id.* If the Court approves the payment of an
9 additional \$99,240.13 to the Settlement Administrator, and \$345,171.76 in out-of-pocket expenses
10 to IPP Counsel, these amounts will also be deducted pro rata from the Escrow Accounts, leaving
11 \$6,321,228.55 in the Chunghwa Fund and \$413,719,697.66 in the other funds.¹⁹

12 In addition, the Settlement Administrator has submitted an estimated budget of \$500,000-
13 \$600,000 for future administration costs and fees. Fisher Decl. ¶ 34. This figure includes the cost
14 of providing reports and materials in support of this motion, costs and fees associated with
15 distribution of payments to Class Members, reaching claimants who submitted claims nearly seven
16 years ago, ongoing communications with claimants and their representatives, and the closing of
17 the case in The Notice Company's files. *Id.*, Ex. B. Lead Counsel and the Settlement
18 Administrator propose that a reserve of \$10,000,000 be withheld, on a pro rata basis, from funds
19 distributed to claimants being awarded \$1 million or more for any contingencies that may arise
20 with respect to claims, to pay for any other future fees or expenses authorized by the Court and
21 incurred in connection with administering the Settlements, as well as any further escrow fees,
22 taxes, and the costs of preparing appropriate tax returns. Alioto Decl. ¶ 11; Fisher Decl. ¶ 35.

23 Accordingly, \$6,137,693.41 will be available for distribution now to End User and
24 Reseller claimants from the Chunghwa settlement, and \$403,903,232.80 will be available for
25

26 _____
27 ¹⁹ Alioto Decl. ¶ 10; Fisher Decl. ¶ 32. The \$6,250,000 for the Future Expense Fund has already
28 been withdrawn from the Escrow Accounts, and has already been accounted for in the calculation
of the Net Settlement Funds. Alioto Decl. ¶ .

1 distribution to End User claimants from the other settlements. Alioto Decl. ¶ 12. These amounts
2 are equal to the current Net Settlement Funds less \$99,240.13 to be paid to the Settlement
3 Administrator, the \$345,171.16 in out-of-pocket expenses to IPP Counsel, and \$10,000,000 to be
4 held in reserve. *Id.* ¶¶ ___. Any unused portion of the \$10,000,000 reserve will be distributed to the
5 claimants from which it is withheld as part of a subsequent distribution. *Id.* ¶ ___.

6 **F. Distribution Of The Net Settlement Fund**

7 In order for The Notice Company to process the payments to claimants, the current Escrow
8 Agents (Citibank and Union Bank) must be ordered to transfer all funds from the Escrow
9 Accounts, including all accrued interest, to the account established for the Qualified Settlement
10 Fund (“QSF”) at Western Alliance Bank and administered by The Notice Company. The Escrow
11 Agents also must transfer to The Notice Company the “administrator” role in accordance with
12 Section 468B of the Internal Revenue Code (26 U.S.C. § 468B) for the QSF, as outlined in the
13 Escrow Agreements. The Escrow Agents have agreed to cooperate with The Notice Company and
14 Lead Counsel in this transition. Alioto Decl. ¶ 13. The Notice Company will not distribute,
15 withdraw, or transfer any funds from the QSF account without written authorization (“Distribution
16 Notice”) from Lead Counsel. *Id.* ¶ 14.

17 Upon the entry of an order appointing The Notice Company as the Fund Administrator and
18 approving the distribution of the Net Settlement Funds, the Fund Administrator will (a) transfer
19 the amount ordered by the Court into a Distribution Fund and (b) calculate each authorized
20 claimant’s pro rata share of that Fund pursuant to the Court-approved Plans of Distribution for the
21 Chunghwa Net Settlement Fund and the Net Settlement Fund for the other settlements. Fisher
22 Decl. ¶¶ 36-37. The \$25 minimum payment will be achieved by first calculating payments by
23 allocating funds based on each claimant’s approved CRT Weighted Units, identifying those claims
24 that would receive less than \$25, and then recalculating payments so that all claims are grossed up
25 to a \$25 minimum payment. Subject to the minimum payment of \$25, payments per claimant will
26 not exceed the allowable maximum amount so long as the Settlement Administrator calculates
27 payments utilizing the assigned weights associated with the purchased CRT Products. *Id.*

28

1 The Settlement Administrator has already determined the approved CRT Weighted Units
 2 for each End User and Reseller claimant. *Id.* ¶¶ 39-40, Exs. D & E. The Settlement Administrator
 3 has also calculated the approximate dollar value of a CRT Weighted Unit for End Users
 4 (approximately \$5.90) and Resellers (approximately \$0.01)²⁰ by dividing the total approved CRT
 5 Weighted Units by the Net Settlement Funds set forth above. *Id.*

6 Once the Court has approved the Settlement Administrator's recommendations regarding
 7 the CRT Weighted Units claimed, the Settlement Administrator will calculate each claimant's pro
 8 rata share of the Net Settlement Funds by dividing each claimant's approved CRT Weighted Units
 9 by the total number of claimed CRT Weighted Units to calculate each eligible claimant's pro rata
 10 share (%) of each fund. *Id.* ¶¶ 36 -37. These percentages will then be applied against the Net
 11 Settlement Funds to determine each claimant's pro rata share of each fund. *Id.* Thus, for example,
 12 an individual End User claimant with an approved claim for one Large Television (4.3 CRT
 13 Weighted Units), one Standard Television (1 CRT Weighted Unit), and three computer monitors
 14 (9 CRT Weighted Units) would receive approximately \$82.23 based on a total of 14.3 CRT
 15 Weighted Units. *Id.* ¶ 39. Finally, the Settlement Administrator will pay the claimants by check or
 16 electronically. *Id.* ¶ 35.

17 **III. ARGUMENT**

18 IPPs request an Order authorizing the distribution of the Net Settlement Funds to the
 19 approved claimants based on the approved CRT Weighted Units set forth in Exhibits D and E to
 20 the Fisher Declaration. Entry of an Order permitting a distribution of the Net Settlement Funds to
 21 all approved claimants is proper and appropriate at this time because final judgments have been
 22 _____

23 ²⁰ The difference between the CRT Weighted Unit value for End Users versus Resellers is due to
 24 the fact that Resellers are only members of the Chunghwa settlement class, and are only entitled to
 25 share in 50% of the Chunghwa Net Settlement Fund (approximately \$3,068,000). In contrast, End
 26 User claimants may share in the Net Settlement Funds for all settlements. Additionally, the
 27 Chunghwa Plan of Distribution requires that the \$3,068,000 be divided amongst the 24 states pro
 28 rata according to each state's respective population in 2000, before being distributed pro rata to
 claimants in each state. Thus, the value of a CRT Weighted Unit for Reseller claimants is not only
 much less than End Users, it will also differ for Resellers in different states depending on the
 population and the number of Reseller claimants. Fisher Decl. ¶¶ 37, 40.

1 entered and objectors have exhausted their appeals. *See* 4 William B. Rubenstein, *Newberg on*
 2 *Class Actions*, § 12:19 (5th ed.) (Westlaw 2018). As set forth above, the Court has approved two
 3 Plans of Distribution that allocate the Net Settlement Funds on a weighted pro rata basis based on
 4 each claimant’s approved CRT Weighted Units as a percentage of the total CRT Weighted Units
 5 claimed. Distribution of the Net Settlement Funds, as set forth in Exhibits D and E to the Fisher
 6 Declaration, will give effect to the Court-approved pro rata Plans of Distribution, which
 7 compensate class members based on the extent of their injuries. *See In re Anthem, Inc. Data*
 8 *Breach Litig.*, 327 F.R.D. 299, 332 (N.D. Cal. 2018) (“A plan of allocation that reimburses class
 9 members based on the type and extent of their injuries is generally reasonable.”).

10 **A. The Court Should Approve The Settlement Administrator’s Recommendations**
 11 **Regarding Acceptance Or Rejection Of Claims**

12 The Court should adopt the Settlement Administrator’s recommendations regarding the
 13 acceptance or rejection of claims submitted on or before the applicable Claims Deadline. As set
 14 forth above, the Settlement Administrator has conducted an extremely thorough and diligent
 15 review of claims in this complex case. Fisher Decl. ¶¶ 8-31. Where it found claims that were
 16 incomplete or deficient, it gave the claimants a fair opportunity to correct or supplement them. *Id.*
 17 ¶¶ 20-21, 24. Furthermore, its review of claims included an audit to confirm the eligibility of
 18 purchases. *Id.* ¶¶ 22-31. The Settlement Administrator processed late claims, and also considered
 19 late responses to requests for information if relevant documentation and/or information was
 20 provided. *Id.* ¶¶ 11, 26, 28. Additionally, where possible, the Settlement Administrator used
 21 publicly available data and worked with an expert economist to help audit certain claims. *Id.* ¶ 23.
 22 The Settlement Administrator and Lead Counsel also spent a significant amount of time working
 23 with claimants and/or their representatives or counsel to resolve claim disputes. *Id.* ¶¶ 23-24.
 24 Based on this process, the Settlement Administrator has determined that there are 143,723 claims
 25 that merit acceptance and payment. *Id.* ¶¶ 39-40, Exs. D & E. A class action settlement
 26 administrator’s decision regarding class members’ eligibility to participate in a distribution of
 27 settlement funds merits deference from the Court. *In re Int’l Air Transp. Surcharge Antitrust*
 28

1 *Litig.*, No. M 06-01793 CRB, 2011 WL 6337625, at *2 (N.D. Cal. Dec. 19, 2011), *aff'd*, 577 F.
 2 App’x 711 (9th Cir. 2014) (“The Settlement Administrator, who was involved in the mediation
 3 and negotiation of the settlement agreements, and has been administering the funds for three years,
 4 has direct and extensive knowledge of this case. . . . Thus, the Court must give some deference to
 5 his recommendation as to factual matters.”).

6 **B. The Court Should Adopt Lead Counsel’s Recommendation Regarding Late,
 7 Amended And Placeholder Claims**

8 There have been a substantial number of Late Claims in this case. Lead Counsel’s
 9 recommended approach—under which Late Claims submitted before May 5, 2020 would be paid
 10 at 50% of the value of Timely Claims, with the potential for an additional payment from any
 11 residue—strikes a balance between disallowing Late Claims entirely and allowing all Late Claims
 12 at full value despite the Court-ordered deadlines. Lead Counsel’s approach is designed to avoid
 13 the delay and expense of continuing litigation over Late Claims. Alioto Decl. ¶ 18.

14 “Settlement administration in a complex class action often requires courts to use their
 15 equitable powers under Rule 23 to manage the disparate interests competing over a finite pool of
 16 assets with which to satisfy the class A primary use of these equitable powers is balancing the
 17 goals of expedient settlement distribution and the consideration due to late-arriving class
 18 members. . . . Integral to this balancing, however, is the court’s responsibility and inherent power
 19 and duty to protect unnamed, but interested persons.” *In re Orthopedic Bone Screw Prods. Liab.*
 20 *Litig.*, 246 F.3d 315, 321 (3d Cir. 2001) (internal quotation marks and citations omitted).
 21 Ultimately, “[t]he goal of any distribution method is to get as much of the available damages
 22 remedy to class members as possible and in as simple and expedient a manner as possible.” 4
 23 William B. Rubenstein, *Newberg on Class Actions* § 12:15 (5th ed.) (Westlaw 2018).

24 The Court has discretion to allow claims submitted after its Claims Deadline. *In re*
 25 *Gypsum Antitrust Cases*, 565 F.2d 1123, 1128 (9th Cir. 1977). Judicial discretion in that regard
 26 flows from the court’s traditional equity powers to protect interested parties and class members.
 27 *Welch & Forbes, Inc. v. Cendant Corp. (In re Cendant Corp. Prides Litig.)*, 233 F.3d 188, 194-97
 28

1 (3d Cir. 2000) (quoting *Zients v. LaMorte*, 459 F.2d 628, 630 (2d Cir.1972)) (“‘Until the fund
 2 created by the settlement is actually distributed, the court retains its traditional equity powers ... to
 3 protect unnamed, but interested persons.’ A Court may assert this power to allow late-filed proofs
 4 of claim and late-cured proofs of claim.”). In the exercise of that discretion, courts have allowed
 5 late claims in some circumstances and denied them in others. *See, e.g., In re Valdez*, 289 F. App'x
 6 204, 206 (9th Cir. 2008). In many cases, courts approve the full payment of late claims.²¹

7 Here, there are considerations that militate both in favor of and in opposition to allowing
 8 the payment of Late Claims, and which compel the conclusion that Lead Counsel’s balanced
 9 proposal is the best option for all claimants, both timely and late. The Late Claims at issue in this
 10 case are very large, both in terms of the number of claims, and the approximate value of those
 11 claims. If all Late Claims were paid in full here, they would substantially dilute the value of
 12 Timely Claims, leading to objections from timely claimants and likely appeals, and further
 13 delaying the distribution to all claimants. Fisher Decl. ¶ 29.

14 On the other hand, the large number and value of the Late Claims in this case also cuts in
 15 favor of granting late claimants some relief. Not allowing *any* Late Claims in any amount would
 16 deny thousands of class members with otherwise valid claims any share of the recovery; late
 17 claimants are, like timely claimants, class members who were injured by defendants’ conspiracy
 18 and whose interests Lead Counsel has an obligation to represent and the Court has an obligation to
 19 consider. Moreover, denying Late Claims outright would spur further litigation, which would
 20 diminish the common fund and further delay the distribution to timely claimants. Conversely,
 21 given the status of the case, allowing Late Claims under Lead Counsel’s proposal has not and will
 22 not delay the distribution of funds to timely claimants.

23

24

25 ²¹ *See, e.g., In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. 03-1827, ECF Nos. 9217, 9273 (N.D.
 26 Cal. 2014) (approving class counsel’s recommendation to pay late claims submitted over 18
 27 months after the deadline the same as timely claims); *In re Dynamic Random Access Memory*
 28 *(DRAM) Antitrust Litig.*, No. 02-1486, ECF Nos. 2273, 2283 (N.D. Cal. 2016) (class counsel
 recommended and the court approved the payment of late claims filed up to approximately one
 year after the deadline be paid in full).

1 In sum, Lead Counsel submits that paying Late Claims filed through May 5, 2020 at 50%
 2 of the value of Timely Claims with the opportunity for additional compensation from any residue,
 3 while denying claims filed after that date, strikes the proper balance. It gives late claimants
 4 sufficient compensation for their injuries, limits the dilution to Timely Claims, and avoids further
 5 litigation. Finally, other courts have struck a similar balance.²² IPPs submit that this proposal is
 6 reasonable and urge the Court to adopt it.

7 **C. The Court Should Approve The Reimbursement Of Expenses**

8 “An attorney is entitled to ‘recover as part of the award of attorney’s fees those out-of-
 9 pocket expenses that would normally be charged to a fee paying client.’” Final Approval Order at
 10 25 (quoting *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (internal quotation marks and
 11 citation omitted)); *see also* Fed. R. Civ. P. 23 subd. (h) (“In a certified class action, the court may
 12 award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’
 13 agreement.”).

14 **1. The Court Should Authorize Payment Of The Settlement Administrator’s** 15 **Unpaid Fees And Expenses**

16 The Settlement Administrator has provided Lead Counsel with invoices detailing
 17 additional the \$99,240.13 in fees and expenses it has incurred from September 1, 2021 through
 18 May 31, 2022 to administer claims submitted by the Class Members, prepare for the filing of this
 19 motion, and prepare to distribute the settlement funds to Class Members. Fisher Decl., ¶ 34 and
 20 Exhibit B.²³ Lead Counsel has reviewed these invoices and based on Lead Counsel’s first-hand

21 _____
 22 ²² For example, in *DRAM*, although the court ordered the payment in full of late claims filed
 23 before a certain date, for claims filed after that cut-off date, the court ordered they be paid *pro rata*
 24 from any uncashed checks, up to the full value of timely claims. *In re Dynamic Random Access*
Memory (DRAM) Antitrust Litig., No. 02-1486, ECF No. 2283 at 5-6. Claims filed after a certain
 date were disallowed entirely. *Id.* at 6.

25 ²³ A summary of all payments received by the Settlement Administrator for notice costs and
 26 claims administration from 2011 through August 2021 is attached as Exhibit B to the Fisher
 27 Declaration. This Court has already approved the payment of the Settlement Administrator’s
 28 invoices that were paid from the Escrow Accounts. *See* ECF No. 6003 at 5. The Settlement
 Administrator’s other invoices for work performed from 2015-2017 were paid from the Future
 Expense Fund, as further detailed below. Alioto Decl. ¶ 23, Ex. A.

1 knowledge of the work performed by the Settlement Administrator, recommends that the Court
2 approve the payment of this unpaid amount as fair, reasonable and necessary for the
3 administration of claims in this complex case. Alioto Decl. ¶ 19.

4 The Settlement Administrator's work in this case has required a high level of skill,
5 dedication, and effort. The Settlement Administrator had to process and track over 150,000 claims,
6 over 40,000 of which were filed in paper form and had to be manually entered in a database.
7 Fisher Decl. ¶ 10. In addition, the Settlement Administrator audited over 50,000 claims, some
8 requiring the review of voluminous purchase data and other documentation, and others which had
9 little or no contemporaneous purchase records and had to be vetted by other means, such as
10 investigations of publicly available records, CRT television and monitor industry data, and other
11 third-party data. *Id.* ¶¶ 22-31.

12 Furthermore, complex factual and legal issues arose with regard to certain claims. For
13 example, some large claimants inflated their purchases of CRT Products and claimed, for example,
14 that they purchased large CRT televisions (for which the overcharge was significantly higher),
15 and/or that they replaced televisions at twice the industry average. *Id.* ¶ 12. The Settlement
16 Administrator substantially reduced these claims by investigating and procuring data regarding the
17 types and frequency of television purchases by certain types of business during the Class Period.
18 *Id.* ¶ 19. Other claimants sought to recover for purchases of CRT Products in states that were not
19 included in the settlement class, or for foreign purchases of CRT Products, by asserting that their
20 company purchased from a central office in one of the 22 States. Such claims required
21 investigation into whether the claimant did, in fact, purchase their CRT Products from a central
22 office located in one of the 22 States, requiring numerous communications with the claimant to
23 substantiate the claim, and legal research into whether the relevant state statutes permitted
24 recovery for such purchases. *Id.*

25 In sum, the Settlement Administrator substantially increased eligible claimants' pro rata
26 recoveries by investigating and reducing inflated claims. The Settlement Administrator should be
27
28

1 appropriately compensated for this work. IPPs request that the Court authorize the payment of
2 \$99,240.13 for fees and expenses incurred from September 2021 to May 2022.

3 **2. The Court Should Approve The Expenditures From The Future Expense Fund**
4 **And Authorize The Reimbursement Of Litigation Expenses To IPP Counsel**

5 The Court should approve the expenses IPP Counsel have incurred since September 2015 in
6 connection with the continued prosecution and settlement of this case on behalf of the 22 States.

7 As stated above, since September 2015 (when IPPs filed their motion for attorneys' fees and
8 reimbursement of expenses), IPP Counsel has expended an additional \$2,330,710.87 of the
9 \$2,354,121.98 remaining in the Future Expense Fund for expenses incurred in the continued
10 prosecution and settlement of this litigation. Alioto Decl. ¶ 20. A detailed list of these expenses is
11 attached to the Alioto Declaration as Exhibit A. The separate categories of expenses are as follows:

CATEGORY	AMOUNT
Notice/Claims Administration	\$1,846,125.41
Experts/Consultants/Investigators	\$194,686.32
Special Masters/Mediators	\$176,390.15
Document Depository/Management	\$33,970.86
Translations	\$20,416.82
Court Reporters/Deposition Transcripts & Videos	\$44,244.43
Travel/Meals	\$5,834.48
Filing/Messengers	\$1,089.19
Computer Legal Research	\$2,050.36
Accounting/Taxes	\$5,902.85
TOTAL:	\$2,330,710.87

21 As of May 31, 2022, the balance of the Future Expense Fund was \$40,375.83, including accrued
22 interest on the fund. These funds are being retained in the Future Expense Fund for case expenses,
23 including the ongoing litigation against the Irico Defendants. Alioto Decl. ¶ 21.

24 In addition, IPP Counsel has expended an additional \$345,171.76 from the Litigation Fund
25 (which is funded by assessments by IPP Counsel) for the continued prosecution and settlement of
26 this litigation. *Id.* ¶ 22. These expenses are categorized as follows:

CATEGORY	AMOUNT
Notice	\$40,030.00
Experts/Consultants/Investigators	\$186,650.55
Special Masters/Mediators	\$90,310.81
Outside Copies/Printing	\$1,885.03
Court Reporters/Deposition Transcripts	\$5,287.52
Witness/Service Fees	\$4,770.48
Travel	\$1,252.15
Filing Costs - Court Fees/Postage/Couriers	\$2,193.22
Computer Legal Research	\$8,442.00
Accounting Fees	\$4,350.00
TOTAL:	\$345,171.76

The foregoing expenditures from the Future Expense Fund and the Litigation Fund are reflected in the books and records maintained by Lead Counsel. Alioto Decl. ¶ 23. The expenses are set forth in detail in Exhibit A to the Alioto Declaration, and include claims administration, expert economists, appellate counsel, deposition transcripts and videos,²⁴ special masters, mediators, certified translations, online document depository, online legal research, filing and witness fees. *Id.* These expenses were reasonable and necessary for the prosecution and settlement of this action and are routinely approved by courts as proper litigation expenses. *See, e.g., Willner v. Manpower Inc.*, No. 11-cv-02846-JST, 2015 WL 3863625, at *7 (N.D. Cal. June 22, 2015) (attorney may recover from common fund the out-of-pocket expenses normally charged to a paying client, such as research, filing fees, travel, mediation, telephone charges, obtaining transcripts, copying, and mailing). IPPs request the Court approve the \$2,330,710.87 expenditure from the Future Expenses Fund, and authorize reimbursement to IPP Counsel of the \$345,171.76 in out-of-pocket expenses.

IV. CONCLUSION

For the foregoing reasons, IPPs respectfully request that the Court grant this motion and enter an Order: (1) appointing The Notice Company as the Fund Administrator; (2) authorizing

²⁴ The deposition video expenses were incurred before September 2015. These expenses were being reviewed with the vendor and thus were not submitted to the Court as part of IPPs' September 2015 motion. Alioto Decl. ¶ 23.

1 payment of all claims based on the CRT Weighted Units approved by the Settlement
2 Administrator and according to the Court-approved pro rata Plans of Distribution, as set forth in
3 Exhibits D and E to the Fisher Declaration; (3) authorizing payment to the Settlement
4 Administrator for unreimbursed costs and expenses incurred in the amount of \$99,240.13; (4)
5 approving the \$2,330,710.87 expenditure from the Future Expense Fund; (5) authorizing
6 reimbursement to IPP Counsel of the \$345,171.76 in out-of-pocket expenses; and (6) authorizing
7 IPPs to reserve \$10,000,000 on a pro rata basis, from funds distributed to claimants being awarded
8 \$1 million or more, for the payment of future claims administration costs, potential tax liability,
9 and/or other issues.

10 Respectfully submitted,

11 Dated: June 23, 2022

/s/ Mario N. Alioto

12 Mario N. Alioto (56433)
13 Lauren C. Capurro (241151)
14 TRUMP, ALIOTO, TRUMP & PRESCOTT, LLP
15 2001 Union Street, Suite 483
16 San Francisco, CA 94123
17 Telephone: (415) 563-7200
18 Facsimile: (415) 346-0679
19 malieto@tatp.com
20 lauren russell@tatp.com

21 **Lead Class Counsel for the Indirect Purchaser**
22 **Plaintiffs**