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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

Case No. 07-cv-05944-JST

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

**ORDER GRANTING FINAL
APPROVAL**

Re: ECF Nos. 5695, 5758

United States District Court
Northern District of California

Before the Court is Indirect Purchaser Plaintiffs’ motion for final approval of amended settlements pursuant to the Ninth Circuit mandate to reconsider and amend final approval order, final judgment, and fee order. ECF Nos. 5695, 5758. The Court granted preliminary approval of the amended settlements on March 11, 2020, ECF No. 5695, and held a final fairness hearing on July 8, 2020, ECF No. 5782. The Court will grant final approval, and will grant Plaintiffs’ request for attorney’s fees, costs, and incentive awards.

I. BACKGROUND

A. Original Settlement Agreements

The factual history of this case is well known to the parties and is contained in the Court’s prior orders. The case is predicated upon an alleged conspiracy to price-fix cathode ray tubes (“CRTs”), a core component of tube-style screens for common devices including televisions and computer monitors. The conspiracy ran from March 1, 1995 to November 25, 2007, involved many of the major companies that produced CRTs, and allegedly resulted in overcharges of billions of U.S. dollars to domestic companies that purchased and sold CRTs or products containing CRTs. A civil suit was originally filed in 2007, ECF No. 1, consolidated by the Joint Panel on Multidistrict Litigation (“JPML”) shortly thereafter, *see* ECF No. 122, assigned as a

1 Multidistrict Litigation case (“MDL”) to Judge Samuel Conti, *see id.*, and ultimately transferred to
2 the undersigned in November 2015, *see* ECF No. 4162.

3 In 2015, one group of plaintiffs – the Indirect Purchaser Plaintiffs (“IPP Plaintiffs”) –
4 reached class action settlements with six groups of corporate defendants: Phillips,¹ Panasonic,²
5 Hitachi,³ Toshiba,⁴ Samsung,⁵ and Thomson/TDA.⁶ The settlements included a “Nationwide
6 Class” of “[a]ll persons and or entities who or which indirectly purchased in the United States for
7 their own use and not for resale, CRT Products manufactured and/or sold by the Defendants.” *See*
8 ECF No. 1526 at 59-60; ECF Nos. 3862-1, 3862-2, 3862-3, 3862-4, 3862-5; ECF No. 3876-1
9 (adopting the class definitions set forth in the operative complaint). The agreements also included
10 Statewide Damages Classes of indirect purchasers of CRT products seeking money damages
11 under the laws of 21 states and the District of Columbia (“22 Indirect Purchaser State Classes”).
12 *See id.* The Court certified these classes for settlement purposes in its 2016 Final Approval Order.
13 *See* ECF No. 4712 at 7, 36 (adopting Special Master’s report and recommendation, ECF No. 4351
14 at 22-29, and conditionally certifying the 22 Indirect Purchaser State Classes).

15 The proposed settlements resolved all federal and state-law claims brought by the IPP
16 Plaintiffs against the settling Defendants and obligated the Defendants to pay a total of

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19 ¹ The Philips entities include Koninklijke Philips N.V., Philips Electronics North America
Corporation, Philips Taiwan Limited, and Philips do Brasil, Ltda. ECF No. 3862-1 at 2.

20 ² The Panasonic entities include Panasonic Corporation, Panasonic Corporation of North America,
21 and MT Picture Display Co. Ltd. ECF No. 3862-2 at 2.

22 ³ The Hitachi entities include Hitachi, Ltd., Hitachi Asia, Ltd., Hitachi America, Ltd., Hitachi
Electronics Devices (USA), Inc., and Hitachi Displays, Ltd. ECF No. 3862-3 at 2.

23 ⁴ The Toshiba entities include Toshiba Corporation, Toshiba America, Inc., Toshiba America
24 Information Systems, Inc., Toshiba America Consumer Products, L.L.C., and Toshiba America
Electronic Components, Inc. ECF No. 3862-4 at 2.

25 ⁵ The Samsung entities include Samsung SDI Co. Ltd., Samsung SKI America, Inc., Samsung SDI
26 Brazil Ltd., Tianjin Samsung SDI Co. Ltd, Shenzhen Samsung SDI Co., Ltd., SKI Malaysia Sdn.
Bhd., and SDI Mexico S.A. de C.V. ECF No. 3862-5 at 2.

27 ⁶ The Thomson and TDA entities include Technicolor SA, Technicolor USA, Inc., and
28 Technologies Displays Americas LLC. ECF No. 3876-1 at 2.

1 \$541,750,000.⁷ See ECF No. 3862-1 at 8; ECF No. 3862-2 at 8; ECF No. 3862-3 at 8; ECF No.
 2 3862-4 at 8; ECF No. 3862-5 at 8; ECF No. 3876-1 at 9-10. The settlements provided monetary
 3 compensation for class members in the 22 Indirect Purchaser State Classes but did not provide
 4 compensation for persons or entities in certain other states, which collectively are now
 5 denominated the Omitted Repealer State⁸ subclass (“ORS Subclass”).⁹ The settlement also
 6 provided no compensation to persons or entities in states whose laws do not provide for recovery
 7 to indirect purchasers (“non-repealer states”), now denominated the Non-Repealer State subclass
 8 (“NRS Subclass”).¹⁰ See ECF Nos. 3862-1, 3862-2, 3862-3, 3862-4, 3862-5, 3876-1. Even
 9 though they received no compensation, the settlements required members of the ORS and NRS
 10 Subclasses to release their claims for injunctive relief, equitable monetary relief, and damages.

11 The agreements proposed a distribution plan which included: (1) a “weighted pro-rata
 12 distribution to all members of the 22 Indirect Purchaser State Classes that filed valid claims,” (2) a
 13 minimum payment of at least \$25 per claimant, and (3) a maximum payment of “three times the
 14 estimated money damages per claimant.” ECF No. 5587 at 30; see ECF No. 3862 ¶¶ 43-50. The
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16 ⁷ Including the prior Chunghwa and LG settlements, the aggregate IPP settlement amount was
 17 \$576,750,000. ECF No. 4712 at 3.

18 ⁸ In *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977), the Supreme Court held that only direct
 19 purchasers could recover damages for price-fixing under Section 4 of the Clayton Act. *Id.* at 735.
 20 As the Ninth Circuit has summarized, the Supreme Court “barred indirect purchasers’ suits, and
 21 left the field of private antitrust enforcement to the direct purchasers.” *Royal Printing Co. v.*
 22 *Kimberly Clark Corp.*, 621 F.2d 323, 325 (9th Cir. 1980). In response to the *Illinois Brick*
 23 decision, many states passed so-called “*Illinois Brick* repealer statutes,” which give indirect
 purchasers the right to sue when firms violate analogous state antitrust laws. See, e.g., Robert H.
 Lande, *New Options for State Indirect Purchaser Legislation: Protecting the Real Victims of*
Antitrust Violations, 61 Ala. L. Rev. 447, 448 (2010). Such states are referred to a “repealer
 states.” A state which has not enacted such a statute is referred to as a “non-repealer state.”

24 ⁹ The ORS Subclass in its current iteration consists of Indirect Purchaser Plaintiffs in the following
 25 states: Arkansas, Massachusetts, Missouri, Montana, New Hampshire, Oregon, Rhode Island,
 26 South Carolina, and Utah. ECF No. 5518 at 1; ECF No. 5645 at 2. The parties now use the
 “ORS” abbreviation to signify “other repealer states” rather than “omitted repealer states.” ECF
 No. 5645 at 1 n.1.

27 ¹⁰ The NRS Subclass consists of Indirect Purchaser Plaintiffs in the following Non-Repealer
 28 States: Alabama, Alaska, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana,
 Kentucky, Louisiana, Maryland, New Jersey, Ohio, Oklahoma, Pennsylvania, Texas, Virginia,
 Washington, and Wyoming. ECF No. 5518 at 2.

1 plan “assign[ed] different weights to different CRT products based on the overcharge evidence for
2 each.” ECF No. 5587 at 30; *see* ECF No. 3862 ¶¶ 44-49.

3 After this Court preliminarily approved the original settlements, the claims administrator
4 carried out a notice plan which involved: (1) mail and email notices sent to 10,082,690 unique
5 addresses, (2) publication of notice on the settlement website, (3) advertisements on Google,
6 Facebook, and other popular websites, and (4) print and online publications throughout the United
7 States, in both English and Spanish. *See* ECF No. 4071-1 ¶ 114; ECF No. 4371 ¶¶ 4-13. These
8 notices directed class members to the settlement website. *See* ECF No. 4371 ¶¶ 9-13. They also
9 advised class members of material settlement terms, the plan of distribution, and Class Counsel’s
10 intent to apply for an attorney fee award of up to one-third of the settlement fund. ECF No.
11 4071-1 ¶ 115.

12 On July 7, 2016, this Court granted final approval of the six settlement agreements (“Final
13 Approval Order”). ECF No. 4712 at 1. On August 3, 2016, the Court issued a Fee Order
14 approving an attorney’s fees award of \$158,606,250 to Class Counsel, an amount comprising
15 27.5% of the aggregate settlement fund. ECF No. 4740 at 2, 5-9. Two objectors appealed the
16 settlement approval and fee award to the Ninth Circuit. ECF No. 4741.

17 On October 1, 2018, while the appeals were pending, the IPP Plaintiffs filed a Motion
18 pursuant to Federal Rule of Civil Procedure 62.1 for an Indicative Ruling on Their Motion to
19 Amend The IPP Fee Order and Amend the Plan of Distribution. ECF No. 5335. Counsel for the
20 IPP Plaintiffs proposed to modify the earlier settlement by reducing the attorney’s fees award by
21 \$6 million and using those funds to compensate plaintiffs in three states – Massachusetts,
22 Missouri, and New Hampshire – that were omitted from the original settlement. *Id.* at 8.

23 The Court denied the motion on November 8, 2018. ECF No. 5362. The Court concluded
24 that it had erred by approving the settlement in the first place, and that the IPP Plaintiffs’ proposed
25 modifications did not cure all the defects in the settlement. *Id.* The Court’s primary concern was
26 that the settlement required class members in the Omitted Repealer States to release their claims
27 without compensation. *See* ECF No. 5362 at 1. The order also expressed “concerns about the
28 adequacy of the counsel who negotiated that settlement or whether they may have faced a conflict

1 of interest,” given that they had released some clients’ claims without compensation. *Id.* at 1. In
 2 response to the Court’s order, the Ninth Circuit remanded “this case so that the district court
 3 [could] reconsider its approval of the settlement.” *See In re Cathode Ray Tube Antitrust Litig.*,
 4 No. 16-16368 (9th Cir. Feb. 13, 2009), ECF No. 238 at 11. The Ninth Circuit did not vacate this
 5 Court’s Final Approval, Final Judgement, or Fee Order. *Id.*

6 On remand, this Court confirmed the existing lead counsel for the IPP Plaintiffs and
 7 appointed separate counsel for the unnamed ORS and NRS Subclasses. ECF Nos. 5535, 5518.
 8 The Court then referred the matter to Magistrate Judge Corley for settlement. ECF No. 5427.

9 **B. Amended Settlement Agreements**

10 After the Ninth Circuit remanded this case, counsel for IPP Plaintiffs¹¹ and the settling
 11 Defendants engaged in mediation sessions before Magistrate Judge Corley and agreed to amend
 12 the settlements. ECF No. 5531; ECF No. 5587-1 ¶¶ 2-3.

13 The amendments alter the settlements in three ways. First, they appoint new settlement
 14 class representatives for the states of Hawaii, Nevada, New Mexico, and South Dakota.¹² Second,
 15 they narrow the definition of “the Class” to include only the 22 Indirect Purchaser State Classes
 16 certified for settlement in the Court’s 2016 Final Approval Order. ECF No. 5587-1 at 7, 13, 19,
 17 25, 31, 38. The amended settlements no longer include a Nationwide Class. *See* ECF No. 5587 at
 18 16; ECF No. 5587-1. Only members of the 22 Indirect Purchaser State Classes release their
 19 claims against Defendants. Third, the amendments reduce each Defendant’s settlement
 20 contribution by approximately 5.35%, for a total reduction of \$29,000,000. ECF No. 5587 at 17;
 21 *see* ECF No. 5587-1 at 7-8, 13-14, 19-20, 25-26, 31-32, 38-39. The amendments offset these

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 24 ¹¹ Counsel for “IPP Plaintiffs” now only represents class members in the 22 Indirect Purchaser
 25 State Classes rather than all indirect purchasers in the Nationwide Class. *See* ECF Nos. 5535,
 5518.

26 ¹² On September 13, 2019, IPP Plaintiffs filed a stipulation amending their operative complaints to
 27 substitute Sandra Riebow for Daniel Riebow as the named plaintiff for the state of
 28 Hawaii; Gregory Painter for Gloria Comeaux as the named plaintiff for the state of Nevada;
 MaryAnn Stephenson for Craig Stephenson as the named plaintiff for the state of New Mexico;
 and Donna Ellingson-Mack for Jeffrey Speaect as the named plaintiff for South Dakota. ECF
 Nos. 5584-1, 5584-2. On September 16, 2019, the Court entered the Order. ECF No. 5585.

1 reductions in settlement amount by requesting that the Court reduce the attorney’s fees previously
 2 awarded by \$29,000,000. *See id.* Interest earned on the original settlement funds since their 2015
 3 deposit in an escrow account will remain in the fund, except that Class Counsel will still be
 4 entitled to seek a share of the accrued interest proportionate to their fee and expense award. ECF
 5 No. 5587 at 17; *see* ECF No. 5587-1 at 7-8, 13-14, 19-20, 25-26, 31-32, 38-39. All other terms of
 6 the original settlement agreements and plan for distribution remain the same. ECF No. 5587-1 at
 7 8, 14, 20, 26, 33, 39.

8 C. Procedural History

9 On September 16, 2019, the IPP Plaintiffs filed a motion for preliminary approval of the
 10 amended settlements.¹³ ECF No. 5695. The Court then issued an order which: (1) granted the
 11 motion for preliminary approval, (2) provisionally certified the 22 Indirect Purchaser State Classes
 12 for purposes of settlement, (3) authorized the IPP Plaintiffs to provide additional limited notice to
 13 certain class members, and (4) set a deadline of May 29, 2020 for certain class members to object
 14 (“Preliminary Approval Order”). *Id.* at 19.

15 Between August 2019 and February 2020, NRS Subclass member Eleanor Lewis and
 16 several members of the ORS Subclass filed multiple motions to intervene in this MDL and file an
 17 amended complaint. ECF Nos. 5565, 5567, 5643, 5645, 5688, 5689. The Court denied these
 18 motions and directed movants to “file their claims in the appropriate forum(s) and seek transfer
 19 from the JPML or, if properly filed in the Northern District of California, ‘request assignment of
 20 [their] actions to the Section 1407 transferee judge in accordance with applicable local rules.’”
 21 ECF No. 5684 at 6 (quoting J.P.M.L. R. 7.2(a)); *see also* ECF No. 5626 at 3 (denying original
 22 motions to intervene which “attempt[ed] to amend someone else’s complaint”); ECF No. 5628 at 3
 23 (same).

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 27 ¹³ IPP Plaintiffs’ filed a “motion pursuant to Ninth Circuit mandate to reconsider and amend final
 28 approval order, final judgment, and fee order,” which the Court construed as a motion for
 preliminary approval given its requests that the Court “reconsider and approve the amended
 settlements under Rule 23(e); order notice be given; and amend the Final Approval Order, the
 Final Judgment, and the Fee Order . . . after a final hearing.” ECF No. 5695 at 6.

1 In April 2020, the ORS and NRS Subclasses appealed the Court’s Preliminary Approval
 2 Order and orders denying their motions to intervene to the Ninth Circuit. ECF No. 5695. The
 3 subclasses then moved to stay “all proceedings concerning” the Preliminary Approval Order
 4 pending resolution of their appeals. ECF No. 5718, 5720. On June 9, 2020, the Ninth Circuit
 5 concluded that it lacked jurisdiction over the Preliminary Approval Order and dismissed that
 6 portion of the appeal. ECF No. 5738. Thereafter, this Court denied the ORS and NRS
 7 Subclasses’ motion to stay. ECF No. 5774.

8 On May 29, 2020, Lewis and some of the ORS purchasers (“ORS/NRS Objectors”) filed
 9 objections to the amended settlements. ECF Nos. 5732, 5756. On the same day, the Court also
 10 received 15 separate but identical objections from purported members of the 22 Indirect Purchaser
 11 State Classes. ECF Nos. 5739-5752. On June 12, 2020, the Court received a late-filed objection,
 12 identical to those filed by other members of the 22 Indirect Purchaser State Classes.¹⁴ ECF No.
 13 5755.¹⁵ On June 12, 2020, the IPP Plaintiffs and Samsung Defendants filed responses to these
 14 objections. ECF No. 5757, 5758. The Court held a final fairness hearing on July 8, 2020. ECF
 15 No. 5782.

16 **II. JURISDICTION**

17 This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2).

18 **III. STANDING TO OBJECT**

19 **A. Legal Standard**

20 A party seeking to invoke the Court’s jurisdiction has the burden of establishing standing.
 21 *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 103-04 (1998); *see In re Hydroxycut*

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 24 ¹⁴ All but three of the 16 objections filed by purported members of the 22 Indirect Purchaser State
 25 Classes identify Robert Bonsignore as counsel. ECF Nos. 5739, 5740, 5742-5749, 575, 5752,
 5755. Robert Bonsignore also serves as the Court-appointed counsel for the ORS Subclass. *See*
 ECF No. 5518.

26 ¹⁵ On July 3, 2020, five weeks after the deadline to file objections to the amended settlements,
 27 Counsel for the purported members of the 22 Indirect Purchaser State Classes filed a brief “in
 28 further support of their objections to the proposed amended settlement agreements.” ECF No.
 5779. In light of the facts that this supplemental brief was filed well after the deadline to object
 and these individuals already filed objections to the amended settlements, the Court declines to
 consider the supplemental brief.

1 *Mktg. and Sales Practices Litig.*, No. 09md2087 BTM (KSC), 2013 WL 5275618, at *2 (S.D. Cal.
2 Sept. 17, 2013) (“The party seeking to invoke the Court’s jurisdiction—in this case, the
3 Objectors—has the burden of establishing standing.”). Non-class members generally “have no
4 standing to object to the settlement of a class action.” *San Francisco NAACP v. San Francisco*
5 *Unified School Dist.*, 59 F. Supp. 2d 1021, 1032 (N.D. Cal. 1999) (citing *Gould v. Alleco, Inc.*,
6 883 F.2d 281, 284 (4th Cir. 1989)); *Moore v. Verizon Commc’ns Inc.*, No. C 09-1823 SBA, 2013
7 WL 4610764, at *9 (N.D. Cal. Aug. 28, 2013) (“[A] court need not consider the objections of
8 nonclass members because they lack standing.”); *In re Anthem, Inc. Data Breach Litig.*, 327
9 F.R.D. 299, 321 n.6 (N.D. Cal. 2018) (same); *see also In re Equity Funding Corp. of Am. Sec.*
10 *Litig.*, 603 F.2d 1353, 1360-61 (9th Cir. 1979) (finding that non-class member “lack[ed] standing
11 to object to, or to appeal from the [settlement’s] Plan of Allocation or its approval”).

12 A narrow “exception exists to this rule when [a] non-settling defendant can demonstrate
13 that ‘it will suffer some plain legal prejudice as a result’ of the settlement.” *Carillo v. Schneider*
14 *Logistics Trans-Loading and Distrib., Inc.*, No. 2:11-cv-8557-CAS(DTBx), 2014 WL 688178, at
15 *2 (C.D. Cal. Feb. 21, 2014) (quoting *Waller v. Fin. Corp. of Am.*, 828 F.2d 579, 583 (9th Cir.
16 1987)); *see Smith v. Arthur Andersen LLP*, 421 F.3d 989, 998 (9th Cir. 2005) (noting the
17 “exception to the general principle barring objections by non-settling defendants to permit a non-
18 settling defendant to object where it can demonstrate that it will sustain some formal legal
19 prejudice as a result of the settlement” (citing *Waller*, 828 F.2d at 583)).¹⁶ “Formal legal
20 prejudice” sufficient to warrant the application of this exception exists where a settlement
21 (1) “purports to strip [a non-settling defendant] of a legal claim or cause of action, an action for
22 indemnity or contribution for example” or (2) “invalidates the contract rights of one not
23 participating in the settlement.” *Waller*, 828 F.2d at 583.

24 **B. ORS/NRS Objections**

25 The ORS/NRS Objectors argue that the Court should not grant final approval of the
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27 ¹⁶ ORS and NRS Objectors assert that the *Smith* court found that “objector-appellants had standing
28 to object because they were ‘potentially affected by the settlement.’” ECF No. 5732 at 7 (quoting
Smith, 421 F.3d at 998). However, the Ninth Circuit opinion in *Smith* contains no such language.

1 amended settlements because: (1) “IPP Class Counsel has not provided adequate representation to
2 the ORS and NRS Plaintiffs,” (2) some of the 22 Indirect Purchaser State Classes “lack a
3 representative who was properly added to the MDL,” (3) “the settlements do not properly account
4 for the value of the ORS and NRS claims,” (4) “settlement notice has been constitutionally
5 deficient,” and (5) the “fee award should be reduced” or “delayed until the ORS and NRS can
6 participate in negotiations regarding the value of their claims.” ECF No. 5732 at 5-6. The IPP
7 Plaintiffs and Samsung Defendants argue that the Court should disregard these objections because
8 the ORS/NRS Objectors lack standing to object to the amended settlements. ECF No. 5757 at 6-
9 14; ECF No. 5758 at 17-24. The Court agrees.

10 The amended settlements state that the “‘Nationwide Class,’ . . . and members thereof
11 (except for members of the 22 Indirect Purchaser States Classes), are expressly excluded from ‘the
12 Class’ and are not bound by the Agreement.” See ECF No. 5587-1 at 7, 13, 19, 25, 31, 38. The
13 ORS/NRS Subclasses are members of the “Nationwide Class” but are not members of the 22
14 Indirect Purchaser State Classes. ECF No. 5616 at 8; see ECF No. 1526 at 59-60; ECF Nos.
15 3862-1, 3862-2, 3862-3, 3862-4, 3862-5; ECF No. 3876-1. Therefore, the persons and entities in
16 these subclasses are not members of the amended settlement Class and have no standing to object
17 to the Court’s final approval of these agreements. See *Kent v. Hewlett-Packard Co.*, No. 5:09-cv-
18 05341-JF (HRL), 2011 WL 4403717, at *3 (N.D. Cal. Sept. 20, 2011) (“The [objectors] are
19 excluded from the settlement. . . . Because they are not members of the class, [they] lack standing
20 to object.”).

21 The ORS/NRS Objectors argue that they may object as “non-parties” because their “rights
22 are impacted” by the amended settlements. ECF No. 5732 at 7 (emphasis in original). In
23 particular, they contend that (1) “if the settlements are approved . . . , ORS and NRS class members
24 may lose the ability to intervene into this case as class members to assert their claims” and
25 (2) “[o]nce the underlying litigation is dismissed following settlement approval, there may no
26 longer be any action in which to intervene.”¹⁷ ECF No. 5732 at 8 (internal quotation mark,
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28 ¹⁷ As the Court stated in its Order Denying Motion to Stay, “final approval of IPP Plaintiffs’
amended settlements will not terminate the MDL.” ECF No. 5774 at 6. The amended settlements

1 citation, and alteration omitted). According to ORS/NRS Objectors, this “threat of injury from the
 2 settlement, ‘no matter how small,’ suffices to create [] standing.” *Id.* (quoting *Brandt v. Vill. Of*
 3 *Winnetka, Ill.*, 612 F.3d 647, 650 (7th Cir. 2010)). However, the single case that ORS/NRS
 4 Objectors cite in support of their “threat of injury” theory contains no discussion of *non-party*
 5 standing to object to a settlement. *See generally Brandt*, 612 F.3d 647. Instead, it addresses the
 6 requirements that a *plaintiff* must meet in order to establish Article III standing to bring an action
 7 in federal court. *See id.* at 649-50. In the context of non-party objections to settlements, “[m]ere
 8 allegations of injury in fact or tactical disadvantage as a result of a settlement simply do not rise to
 9 the level of plain legal prejudice.” *Carillo*, 2014 WL 688178, at *2 (quoting *Argretti v. ANR*
 10 *Freight System, Inc.*, 982 F.2d 242, 247 (7th Cir. 1992)). Formal legal prejudice sufficient to
 11 create non-party standing exists only where a settlement purports to strip a non-settling defendant
 12 of a legal claim or cause of action or “invalidates the contract rights of one not participating in the
 13 settlement.” *Waller*, 828 F.2d at 583. ORS/NRS Objectors’ arguments show, “[a]t most, [that]
 14 the settlement puts [them] at something of a tactical disadvantage in the continuing litigation.
 15 Such an injury does not constitute plain legal prejudice.” *Id.* at 584 (finding no standing to object
 16 where, as here, “[t]he settlement does not cut off or in anyway affect any of [the non-party’s]
 17 claims; it only disposes of the claims of the classes against [the settling defendant]”). Thus,
 18 ORS/NRS have failed to establish any entitlement to raise non-party objections to the amended
 19 settlements. *In re Hydroxycut*, 2013 WL 5275618, at *2 (“The party seeking to invoke the Court’s
 20 jurisdiction—in this case, the Objectors—has the burden of establishing standing.”). The Court
 21 therefore strikes their objections. *See Miller v. Ghirardelli Chocolate Co.*, No. 12-cv-04936-LB,
 22 2015 WL 758094, at *10 (N.D. Cal. Feb. 20, 2015) (“The court [] finds that all three objectors
 23 lack standing and strikes their objections.”).

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 27 resolve the actions between the 22 Indirect Purchaser State Classes and several groups corporate
 28 defendants. *Id.*; see ECF No. 5531; ECF No. 5587-1 ¶¶ 2-3. “The settlements do not release any
 of the ORS or NRS Subclasses’ claims and do not resolve IPP Plaintiffs’ claims against several
 remaining defendants within the MDL. As such, the underlying MDL will not be eliminated upon
 final approval of the proposed settlement between a particular subset of the classes and defendants
 contained therein.” ECF No. 5774 at 6.

1 **C. Remaining Objections**

2 The remaining 16 objections purport to be from members of the 22 Indirect Purchaser
3 State Classes and present identical, generalized statements challenging the amended settlements’
4 adequacy of representation, attorney’s fees, fairness, and delay in receipt of settlement funds. ECF
5 Nos. 5739-5752, 5755. For instance, the objections assert that: (1) “[t]he proposed settlement
6 class should not be certified for lack of adequate representation” and “both Class Counsel and
7 Class Representatives are inadequate representatives, and some should be conflicted out,”
8 (2) “[t]he proposed settlement is not fair, reasonable and adequate and was not negotiated at arm’s
9 length,” and (3) “[t]he delay arising from Class Counsel’s improper conduct cost me and all others
10 similarly situated to lose more time and interest.” *Id.* The IPP Plaintiffs argue that the Court
11 should disregard these objections because they fail to “provide proof of class membership” and
12 fail to comply with the requirements of Rule 23(e)(5). ECF No. 5758 at 13-15. The Court
13 agrees.¹⁸

14 In its Preliminary Approval Order, the Court granted IPP Plaintiffs’ request to send
15 “limited notification [] to certain class members” to “advise recipients of their opportunities to
16 object to the amendments, object to the requested fee award, and appear at the fairness hearing.”
17 ECF No. 5695 at 19. In doing so, the Court approved the proposed Notice form, which permits
18 any “member of the 22 Indirect Purchaser State Classes [who] submitted a claim in or objected to
19 the 2016 Settlements” to “ask the Court to deny approval of the Settlements as amended by the
20 Amendments or to the attorneys’ fees request by filing objections with the Court.” ECF No. 5587-
21 2 at 18; *see* ECF No. 5695 at 16 n.13, 19. The Notice form requires that “objections *must* include .
22 . . . [p]roof of membership in one or more of the 22 Indirect Purchaser State Classes.” ECF No.
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24 ¹⁸ The Court’s order should not be read as holding that a receipt is required for proof of class
25 membership in all cases. The law is to the contrary. *Briseno v. ConAgra Foods, Inc.*, 844 F.3d
26 1121, 1124-25 (9th Cir. 2017); *see also Lilly v. Jamba Juice Co.*, 308 F.R.D. 231, 236-40 (N.D.
27 Cal. 2014) (rejecting ascertainability requirement). However, the parties to a class action
28 settlement are free to impose a receipt requirement as a condition of making a valid claim,
separate and apart from the issue from class membership. Here, objectors themselves
acknowledge that “proof” in this case requires submission of a receipt. *See, e.g.*, ECF No. 5741 at
2 (“Requiring that Class Members to submit a receipt for the purchase as a condition to object
does not treat Class Members equitably relative to each other and is evidence of the inadequacy of
the Class Representatives and Class Counsel.”).

1 5587-2 at 18 (emphasis added). However, the 16 objectors neither state that they “submitted a
 2 claim in or objected to the 2016 Settlements” nor provide “[p]roof of membership in one or more
 3 of the 22 Indirect Purchaser State Classes.” See ECF Nos. 5739-5752, 5755. They have not
 4 complied with the required “procedures and so have not established that they are actual class
 5 members.” *Miller*, 2015 WL 758094, at *9-10. As such “all [16] objectors have failed to
 6 establish their standing to challenge the settlement.” *Id.* (finding that objectors failed to establish
 7 standing to challenge a settlement where they had not complied with the requirement for objectors
 8 to provide “documents or testimony sufficient to establish membership in the Settlement Class”);
 9 see *In re Hydroxycut*, 2013 WL 5275618, at *2 (“[B]ecause [the objector] has not established that
 10 he in fact purchased a Hydroxycut Product, he has not carried his burden of proving standing as a
 11 class member, and the Court strikes [his] objection.”); see also *Nwabueze v. AT&T Inc.*, No. C 09-
 12 01529 SI, 2013 WL 6199596, at *6-7 (N.D. Cal. Nov. 27, 2013) (overruling objection which
 13 “failed to comply with the Court’s procedural requirements for objecting to the Settlement”).
 14 “[O]n this basis alone, the Court may refuse to consider the objections at issue.” *Chavez v. PVH*
 15 *Corp.*, No. 13-CV-01797-LHK, 2015 WL 9258144, at *3 (N.D. Cal. Dec. 18, 2015) (overruling
 16 objections which were “procedurally improper” and “were made by individuals who [did] not
 17 appear to be Class Members”); see *Miller*, 2015 WL 758094, at *10 (striking objections where
 18 objectors did not state under oath what products they purchased).¹⁹

19 In addition, each of the 16 objections fails to comply with Rule 23. Under Rule 23(e)(5), a
 20 settlement “objection must state whether it applies only to the objector, to a specific subset of the
 21 class, or to the entire class, and also state with specificity the grounds for the objection.” The
 22 objections at issue, however, do not specify whether they apply “only to the objector, to a specific
 23

24 ¹⁹ Each of the 16 objections states that “[r]equiring [] Class Members to submit a receipt for the
 25 purchase as a condition to object does not treat Class Members equitably relative to each other.”
 26 ECF Nos. 5739-5752, 5755. However, the Notice does not require Class Members to submit a
 27 receipt. It requires objectors to provide “[p]roof of membership in one or more of the 22 Indirect
 28 Purchaser State Classes,” such as a declaration under oath describing which CRT product(s) the
 objector purchased. ECF No. 5587-2 at 18. Such a requirement is consistent with those approved
 by other courts within the Ninth Circuit. See, e.g., *Miller*, 2015 WL 758094, at *9-10 (striking
 objections which failed to provide “documents or testimony sufficient to establish membership in
 the Settlement Class”); *In re Hydroxycut*, 2013 WL 5275618, at *2 (striking objections where
 objectors did not provide evidence of their purchases, and therefore of class membership).

1 subset of the class, or to the entire class.” *See* ECF Nos. 5739-5752, 5755. Nor do they state the
 2 grounds for their objections “with specificity.” *See id.* Instead, they offer vague assertions
 3 regarding “lack of adequate representation,” “lawyers who made multiple errors,” and a settlement
 4 agreement which “does not treat Class Members equitable relative to each other” and “is not fair,
 5 reasonable and adequate.” *See id.* These assertions are not accompanied by any explanation or
 6 supporting facts to specify *how* members of the 22 Indirect Purchaser State Classes were
 7 inadequately represented and inequitably treated. *See id.* The objections also contain no detail as
 8 to which of the lawyers’ “multiple errors” the objectors complain. *See id.* Accordingly, the Court
 9 strikes these objections “for failure to follow the objection procedures outlined in the Court–
 10 approved Class Notice” and failure to comply with Rule 23. *Kim v. Tinder, Inc.*, No. CV 18-3093-
 11 JFW(ASx), 2019 WL 2576367, at *10 (C.D. Cal. June 19, 2019) (overruling “boilerplate identical
 12 one page form objections” for failure to comply with Rule 23(e)).

13 **IV. FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

14 **A. Legal Standard**

15 “The claims, issues, or defenses of a certified class may be settled ... only with the court’s
 16 approval.” Fed. R. Civ. P. 23(e). “Adequate notice is critical to court approval of a class
 17 settlement under Rule 23(e).” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1025 (9th Cir. 1998). In
 18 addition, Rule 23(e) “requires the district court to determine whether a proposed settlement is
 19 fundamentally fair, adequate, and reasonable.” *Id.* at 1026. To assess a settlement proposal,
 20 courts in the Ninth Circuit use a multi-factor test which balances the following factors:

- 21 (1) the strength of the plaintiff’s case; (2) the risk, expense,
 22 complexity, and likely duration of further litigation; (3) the risk of
 23 maintaining class action status throughout the trial; (4) the amount
 24 offered in settlement; (5) the extent of discovery completed and the
 stage of the proceedings; (6) the experience and view of counsel;
 (7) the presence of a governmental participant; and (8) the reaction of
 the class members of the proposed settlement.

25 *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944 (9th Cir. 2015) (quoting *Churchill*
 26 *Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)).

27 “Recent amendments to Rule 23 require the district court to consider a similar list of
 28 factors before approving a settlement.” *Theodore Broomfield v. Craft Brew Alliance, Inc.*, No. 17-

1 cv-01027-BLF, 2020 WL 1972505, at *5-6 (N.D. Cal. Feb. 5, 2020). These factors include
 2 whether: (1) “the class representatives and class counsel have adequately represented the class;”
 3 (2) “the proposal was negotiated at arm’s length;” (3) “the relief provided for the class is
 4 adequate;” and (4) “the proposal treats class members equitably relative to each other.” Fed. R.
 5 Civ. P. 23(e)(2). The “specific factors added to Rule 23(e)(2) are not intended to ‘displace’ any
 6 factors currently used by the courts, but instead aim to focus the court and attorneys on ‘the core
 7 concerns of procedure and substance that should guide the decision whether to approve the
 8 proposal.” *Theodore Broomfield*, 2020 WL 1972505, at *6 (quoting Advisory Committee Notes
 9 to 2018 Amendments, Fed. R. Civ. P. 23(e)(2)). “Accordingly, the Court applies the framework
 10 set forth in Rule 23 with guidance from the Ninth Circuit’s precedent.” *Id.*

11 Settlements that occur before formal class certification “require a higher standard of
 12 fairness.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F. 3d 454, 458 (9th Cir. 2000). In reviewing
 13 such settlements, the court must ensure that “the settlement is not the product of collusion among
 14 the negotiating parties.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F. 3d 935, 946-47 (9th
 15 Cir. 2011).

16 **B. Adequacy of Notice**

17 A court must “direct notice [of a proposed class settlement] in a reasonable manner to all
 18 class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1). “The class must
 19 be notified of a proposed settlement in a manner that does not systematically leave any group
 20 without notice.” *Officers for Justice v. Civil Serv. Comm’n of City & Cty. of S.F.*, 688 F. 2d 615,
 21 624 (9th Cir. 1982) (citation omitted). “Notice is satisfactory if it ‘generally describes the terms of
 22 the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come
 23 forward and be heard.’” *In re Hyundai and Kia Fuel Economy Litig.*, 926 F.3d 539, 567 (9th Cir.
 24 2019) (quoting *Churchill*, 361 F.3d at 575). If a fairness hearing leads to “substantial changes” in
 25 the settlement which “adversely affect[] some members of the class, additional notice, followed by
 26 an opportunity to be heard, might be necessary.” *In re Anthem*, 327 F.R.D. at 330.

27 Class members of the 22 Indirect Purchaser States have already received “the best notice
 28 that is practicable under the circumstances.” *See* Fed. R. Civ. P. 23(c)(2)(B). After this Court

1 preliminarily approved the original settlements, the claims administrator carried out a notice plan
2 which included: (1) mail and email notices sent to 10,082,690 unique addresses, (2) publication of
3 notice on the settlement website, (3) advertisements on Google, Facebook, and other popular
4 websites, and (4) print and online publications throughout the United States, in both English and
5 Spanish. *See* ECF No. 4071-1 ¶ 114; ECF No. 4371 ¶¶ 4-13. These notices directed recipients to
6 the settlement website. *See* ECF No. 4371 ¶¶ 9-13. They also advised class members of material
7 settlement terms, the plan of distribution, and Class Counsel’s intent to apply for an attorney fee
8 award of up to one-third of the settlement fund. ECF No. 4071-1 ¶ 115. As the Court found in its
9 prior Final Approval Order, this plan “provided the best practicable notice to class members.”
10 ECF No. 4712 at 9.

11 The IPP Plaintiffs’ amendments to the settlement agreements did not require additional
12 notice. ECF No. 5695 at 18-19. As the Court noted in its Preliminary Approval Order, the
13 amended settlements “provide the same benefits to the members of the 22 Indirect Purchaser State
14 Classes.” ECF No. 5587 at 32; *see* ECF No. 5587-1 at 7-8, 13-14, 19-20, 26-26, 31-33, 38-39.
15 While the amendments reduce the gross settlement fund by \$29,000,000, “that reduction is fully
16 offset by a \$29,000,000 reduction in Class Counsel’s fee request.” *Id.* Therefore, the settlement
17 does not have a “material adverse effect on the rights of class members” and there is no reason to
18 conclude that those class members who failed to object or opt out of the original agreements
19 would now choose to do so. *See In re Anthem*, 327 F.R.D. at 330 (finding that, where amendment
20 did not adversely affect class members, “there is no overriding reason to conclude that those
21 Settlement Class Members who failed to opt out would now choose to do so”). The amendments
22 also do not adversely affect the rights of the ORS and NRS Subclasses which were included in the
23 original settlement. Because the amendments narrow the settlement Class, the release no longer
24 applies to the ORS and NRS Subclasses. *See* ECF No. 5587-1 at 7, 13, 19, 25, 31, 38. These
25 groups retain the claims that they previously possessed, if any, and they are free to pursue those
26 claims against the Defendants.

27 Although not required, the Court granted the IPP Plaintiffs’ request to provide additional
28 notice to certain class members. ECF No. 5695 at 19. The settlement administrator, The Notice

1 Company, Inc., carried out the limited notice procedure as outlined in the Preliminary Approval
2 Order. ECF No. 5758-1. On March 27, 2020, the Notice Company updated the Settlement
3 Website “to include a Detailed Notice concerning the Amendments to the Settlements.” *Id.* ¶ 7.
4 The Notice Company then sent an email notice to 92,170 class members and mailed Postcard
5 Notices to 2,151 class members. *Id.* ¶ 5. During the initial dissemination of notices by email,
6 8,562 emails “bounced” and were not deliverable; consequently, a Postcard Notice was sent to the
7 mailing address of those recipients. *Id.* During the initial dissemination of notice by mail, 711
8 Postcard Notices were returned as undeliverable. *Id.* The Notice Company then “conducted skip
9 traces in an effort to obtain additional address information for recipients with undeliverable
10 addresses, which resulted in re mailing of the Postcard Notice to 378 recipients.” *Id.* In sum,
11 “direct notice was sent to 100% of the persons or entities on the Notice List but was not received
12 by 0.7%, for an overall success rate of 99.3%.” *Id.*

13 The notices “each (a) provided a summary of the Amendments to the Settlements and the
14 reduced fee award, (b) stated that May 29, 2020, was the deadline for submitting objections or
15 comments, (c) stated that the Fairness Hearing was scheduled for July 8, 2020, and (d) directed
16 recipients to obtain the Detailed Notice and additional information at www.CRTclaims.com (the
17 “Settlement Website”).” *Id.* ¶ 6. Because “the amended settlements provide the same benefits to
18 class members as were available in the original settlement, the Court [found] it unnecessary to
19 provide opt-outs an opportunity to rejoin the settlement.” ECF No. 5695 at 19.

20 Due process requires “notice reasonably calculated, under all the circumstances, to apprise
21 interested parties of the pendency of the action and afford them an opportunity to present their
22 objections.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). In light of the
23 adequacy of the original notice plan and IPP Plaintiffs’ provision of additional notice of settlement
24 amendments, the Court finds that the parties have provided adequate notice to class members.

25 C. Fairness, Adequacy, and Reasonableness

26 With the exception of the reaction of class members, the Court analyzed the necessary
27 factors and found the settlement to be fair, adequate, and reasonable when it granted preliminary
28 approval of the amended settlements. ECF No. 5695 at 13-17. The Court likewise found it proper

1 to conditionally certify the proposed settlement class. *Id.* at 8-11. IPP Plaintiffs have now
 2 provided additional notice to class members who filed claims, objected, requested updates, or
 3 requested exclusion from the original settlements. ECF No. 5758-1. Class members have also
 4 been provided an opportunity to object to the amendments, object to the requested fee award, and
 5 appear at the fairness hearing. The Court finds no reason to alter either of its conclusions now that
 6 class members have been provided additional notice and an opportunity to be heard and the
 7 amended settlements are before the Court for final approval.

8 **1. Adequacy of Representation – Rule 23(e)(2)(A)**

9 The Ninth Circuit has explained that “adequacy of representation ... requires that two
 10 questions be addressed: (a) do the named plaintiffs and their counsel have any conflicts of interest
 11 with other class members and (b) will the named plaintiffs and their counsel prosecute the action
 12 vigorously on behalf of the class?” *In re Mego*, 213 F.3d at 462.

13 In its Preliminary Approval Order, the Court found that there was no evidence of a conflict
 14 between either class representatives or Class Counsel and the rest of the settling class members.
 15 ECF No. 5695 at 10. No contrary evidence has emerged.

16 The Court also found that IPP Plaintiffs’ and Class Counsel have vigorously prosecuted
 17 this action on behalf of the 22 Indirect Purchaser State Classes through extensive discovery and
 18 participation in multiple formal mediation and negotiation sessions. *Id.* Discovery leading up to
 19 the settlements has required production and review of millions of documents and the taking of
 20 hundreds of depositions, all conducted over eight-plus years. *See* ECF No. 3862 ¶¶ 12, 15. IPP
 21 Lead Counsel has “invested considerable time in this case and ha[s] substantial experience with
 22 class action litigation.” ECF No. 5695 at 10; ECF No. 4073-1 at 6-15. The Court therefore finds
 23 that counsel “possessed ‘sufficient information to make an informed decision about settlement.’”
 24 *Hefler v. Wells Fargo & Co.*, No. 16-cv-05479-JST, 2018 WL 6619983, at *6 (N.D. Cal. Dec. 18,
 25 2018) (quoting *In re Mego*, 213 F.3d at 459).

26 During the 2016 final approval process, several objectors argued that the absence of
 27 recovery by the ORS and NRS Subclasses suggested a conflict of interest between the 22 Indirect
 28 Purchaser State Classes and certain members of the Nationwide Class. *See, e.g.*, ECF No. 4113 at

1 8; ECF No. 4125 at 4-5; *see Ellis*, 657 F.3d at 985 (“To determine whether named plaintiffs will
 2 adequately represent a class, courts must resolve” whether “the named plaintiffs and their counsel
 3 have any conflict of interest with other class members.”). The amended settlements eliminate
 4 these concerns. On remand, the Court appointed separate counsel to represent the ORS Subclass
 5 and NRS Subclass. ECF Nos. 5535, 5518; *see Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 819, 856
 6 (1999) (discussing division of a class “into homogeneous subclasses . . . with separate
 7 representation to eliminate conflicting interests of counsel” when class members have divergent
 8 interests). Additionally, by narrowing the settlement Class to include only the 22 Indirect
 9 Purchaser State Classes, the amendments remove potential conflicts of interests that could result
 10 from differences in claims and relief sought by the 22 Indirect Purchaser State Classes verses the
 11 ORS and NRS Subclasses. *See Campbell v. Best Buy Stores, L.P.*, No. LA CV 12-07794 JAK
 12 (SHx), 2015 WL 12744268, at *5 (noting conflicts of interest that arise from “differences in the
 13 type of relief sought, the amount or seriousness of damages sought,” and “the theories of law or
 14 fact that may benefit some class members”). Therefore, the amendments moot the adequacy-of-
 15 representation concerns expressed by objectors to the original settlement.

16 Accordingly, the Court concludes that this factor weighs in favor of approval.

17 2. Arm’s Length Negotiations – Rule 23(e)(2)(B)

18 In its Preliminary Approval Order, the Court found that both the original and amended
 19 settlements were the product of arm’s length negotiations. ECF No. 5695 at 14. Two former
 20 jurists “provided their experienced input into the parties’ [original] settlement negotiations.” ECF
 21 No. 4351 at 34; *see Advisory Committee Notes, Fed. R. Civ. P. 23, subdiv. (e)(2) (2018)* (“[T]he
 22 involvement of a neutral or court-affiliated mediator or facilitator in [] negotiations may bear on
 23 whether they were conducted in a manner that would protect and further the class interests.”). The
 24 amended settlements were a product of negotiations conducted during two mediation sessions
 25 supervised by Magistrate Judge Corley. ECF No. 5587-1 ¶¶ 2-3; *see Hefler*, 2018 WL 6619983,
 26 at *6 (noting mediation sessions supervised by former judge as an indication of arm’s length
 27 negotiations).

28 The Court also “examine[d] the settlements for additional indicia of collusion that would

1 undermine seemingly arm’s length negotiations” and found “no indicia of collusion that would
 2 undermine the amended settlements.” ECF No. 5695 at 14-15; *see In re Bluetooth*, 654 F.3d at
 3 946 (“Prior to formal class certification, . . . agreements must withstand an even higher level of
 4 scrutiny for evidence of collusion or other conflicts of interest.”). The amended settlements
 5 request an attorney fee award of 23.66 percent of the settlement fund. ECF No. 5587 at 29; *see*
 6 ECF No. 5587-1 at 7-8, 13-14, 19-20, 25-26, 31-32, 38-39; *In re Bluetooth*, 654 F.3d at 942
 7 (“[C]ourts typically calculate 25% of the fund as the ‘benchmark’ for a reasonable fee award.”).
 8 The amended settlements also do not contain a reversion clause. ECF No. 4712 at 15. Although
 9 the agreements contain a “clear sailing” provision, the Court finds no cause for concern because
 10 Class Counsel’s fee will be awarded from the same common fund as the recovery to the class.
 11 *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 961 n.5 (9th Cir. 2009); *see also Bayat v. Bank of*
 12 *the West*, No. C-13-2376 EMC, 2015 WL 1744342, at *7 (N.D. Cal. Apr. 15, 2015) (“[B]ecause
 13 any attorneys’ fees award will come out of the common fund, there is no ‘clear sailing’ agreement
 14 here that would warrant against settlement approval.”). The findings from the Court’s Preliminary
 15 Approval order remain applicable. Further, as discussed in greater detail when evaluating the fees
 16 motion, the Court finds that the requested fees are in fact reasonable.

17 The Court therefore concludes that this factor weighs in favor of approval.

18 **3. Adequate Relief for the Class – Rule 23(e)(2)(C)**

19 To determine whether the relief provided for the class is adequate, courts must consider:

20 (a) the costs, risks, and delay of trial and appeal, (b) the effectiveness of any proposed method of
 21 distributing relief to the class, (c) the terms of any proposed award of attorney’s fees, and (d) any
 22 agreement required to be identified under Rule 23(e)(3). Fed. R. Civ. P. 23(e)(2)(C).

23 **a. Costs, Risks, and Delay**

24 In its previous Final Approval Order, the Court found that the IPP Plaintiffs would have
 25 faced several hurdles in the absence of a settlement – hurdles that “weigh[ed] strongly in favor of
 26 approving the Proposed Settlements.” ECF No. 4712 at 9. The Court noted that there was a
 27 “great risk to IPPs in continuing to pursue litigation, including both uncertainty over the results of
 28 pending motions and challenges (and delay) in collecting any winnings.” *Id.* (internal quotation

1 marks omitted); *see also* ECF No. 4351 at 30-32. In light of these costs, risks, and potential
 2 delays, the Court determined that the settlements were “a good recovery and firmly in line with the
 3 recoveries in other cases.” ECF No. 4712 at 10.

4 The Court need not revisit these findings. The proposed amended settlements reduce the
 5 amounts paid by each Defendant but fully offset these amounts by requested corresponding
 6 reductions in Class Counsel’s attorney fee award. ECF No. 5587 at 17; *see* ECF No. 5587-1 at 7-
 7 8, 13-14, 19-20, 25-26, 31-32, 38-39. Because the net settlement fund available for distribution to
 8 class members remains the same, these settlements remain a “good recovery” in light of the costs,
 9 risks, and delay of trial and appeal. If anything, the litigation that has taken place since the
 10 Court’s prior order, and the accompanying passage of time, serve to underscore the Court’s
 11 findings about risk and delay.

12 **b. Distribution Method**

13 In the prior Final Approval Order, the Court examined and approved the settlements’
 14 proposed plan of distribution. ECF No. 26-29. This plan provides for (1) a “weighted pro-rata
 15 distribution to all members of the 22 Indirect Purchaser State Classes that filed valid claims,” (2) a
 16 minimum payment of at least \$25 per claimant, and (3) a maximum payment of “three times the
 17 estimated money damages per claimant.” ECF No. 5587 at 30; *see* ECF No. 3862 ¶¶ 43-50. The
 18 amended settlements do not alter this proposed allocation plan, and the Court again approves it.

19 **c. Attorney’s Fees**

20 Class Counsel request an award of attorneys’ fees totaling 23.66 percent of the settlement
 21 fund along with expenses incurred during the litigation. *See In re Bluetooth*, 654 F.3d at 942
 22 (“[C]ourts typically calculate 25% of the fund as the ‘benchmark’ for a reasonable fee award.”).
 23 The Court previously awarded \$158,606,250 in attorney’s fees in connection with the prior IPP
 24 Settlement after considering counsels’ motion for attorney’s fees and any objections thereto. ECF
 25 No. 4740 at 2. Class Counsel request the Court to reduce that fee award by \$29,000,000 to fully
 26 offset the reduction in the settlement amounts, and ensure that the reductions do not adversely
 27 affect the funds available for distribution to claimants. ECF No. 5587 at 17. In addition, all
 28 interest earned on the original settlement amounts from the date of deposit in 2015—

1 approximately \$13,000,000—will remain in the fund for the benefit of class members (except that
 2 Class Counsel shall still be entitled to seek a share of the accrued interest on the fund
 3 proportionate to their fee and expense award).²⁰ *Id.* Accordingly, the Court finds that this factor
 4 weighs in favor of approval.

5 4. Equitable Treatment of Class Members – Rule 23(e)(2)(D)

6 Consistent with Rule 23’s instruction to consider whether “the proposal treats class
 7 members equitably relative to each other,” Fed. R. Civ. P. 23(e)(2)(C)(i), the Court now considers
 8 whether the Settlement “improperly grant[s] preferential treatment to class representatives or
 9 segments of the class.” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal.
 10 2007).

11 In the previous Final Approval Order, the Court examined and approved the allocation of
 12 settlement funds among the 22 Indirect Purchaser State Classes. As noted above, the original
 13 settlement provided for (1) a “weighted pro-rata distribution to all members of the 22 Indirect
 14 Purchaser State Classes that filed valid claims,” (2) a minimum payment of at least \$25 per
 15 claimant, and (3) a maximum payment of “three times the estimated money damages per
 16 claimant.” ECF No. 5587 at 30; *see* ECF No. 3862 ¶¶ 43-50. The plan “assign[ed] different
 17 weights to different CRT products based on the overcharge evidence for each.” ECF No. 5587 at
 18 30; *see* ECF No. 3862 ¶¶ 44-49. The amended settlements do not alter this proposed allocation.

19 As discussed in the prior Final Approval Order, “[i]t is reasonable to allocate the
 20 settlement funds to class members based on . . . the strength of their claims on the merits.” *In re*
 21 *Omnivision Techs., Inc.*, No. C-04-2297 SC, 2007 WL 4293467, at *7 (N.D. Cal. Dec. 6, 2007)
 22 (internal quotation marks and citations omitted). Because “reimburs[ing] class members based on
 23 the extent of their injuries is generally reasonable,” the Court finds that this factor weighs in favor
 24 of approval. *See In re Oracle Sec. Litig.*, No. 90-cv-00931-VRW, 1994 WL 502054, at * 1 (N.D.
 25 Cal. June 18, 1994); *In re Citric Acid Antitrust Litig.*, 145 F. Supp. 2d 1152, 1154 (N.D. Cal.

26
 27
 28 ²⁰ By definition, that award will be lower both in absolute numbers and on an hourly basis than the
 award the Court approved in 2016 – particularly given that counsels’ work in reaching the current
 agreement will not be separately compensated.

1 2001) (“A plan of allocation that reimburses class members based on the type and extent of their
2 injuries is generally reasonable.”); *In re Anthem*, 327 F.R.D. at 332 (same).

3 **5. Reaction of the Class**

4 Finally, the Court considers the reaction of class members to the amended settlements. In
5 this case, the Court received 17 objections, consisting of one objection from the excluded
6 ORS/NRS Subclasses and 16 identical objections from individuals who purport to be members of
7 the 22 Indirect Purchaser State Classes. ECF Nos. 5739-5752, 5755, 5756, 5732. As discussed
8 above, the Court strikes these objections because each objector has failed to carry its “burden of
9 proving standing as a class member.” *In re Hydroxycut*, 2013 WL 5275618, at *2; *see Moore*,
10 2013 WL 4610764, at *9 (“[A] court need not consider the objections of nonclass members
11 because they lack standing.”).

12 The Court has received no other objections to the amended settlements. “[T]he absence of
13 a large number of objections to a proposed class action settlement raises a strong presumption that
14 the terms of a proposed class settlement action are favorable to the class members.” *In re*
15 *Omnivision*, 559 F. Supp. 2d at 1043 (citation omitted).

16 After reviewing all of the required factors, the Court continues to find the amended
17 settlements to be fair, reasonable, and adequate, and finds certification of the settlement class to be
18 proper. As such, the Court grants final approval of the amended settlements.

19 **V. ATTORNEY’S FEES**

20 **A. Legal Standard**

21 “While attorneys’ fees and costs may be awarded in a certified class action where so
22 authorized by law or the parties’ agreement, Fed. R. Civ. P. 23(h), courts have an independent
23 obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties have
24 already agreed to an amount.” *In re Bluetooth*, 654 F.3d at 941. Courts have discretion to “award
25 attorneys a percentage of the common fund in lieu of the often more time-consuming task of
26 calculating the lodestar.” *Id.* at 942.

27 For more than two decades, the Ninth Circuit has set the “benchmark for an attorneys’ fee
28 award in a successful class action [at] twenty-five percent of the entire common fund.” *Williams*

1 v. *MGM-Pathe Commc'ns Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997). Courts in the Ninth Circuit
 2 generally start with the 25 percent benchmark and adjust upward or downward depending on:

3 the extent to which class counsel “achieved exceptional results for the
 4 class,” whether the case was risky for class counsel, whether
 5 counsel’s performance “generated benefits beyond the cash ... fund,”
 6 the market rate for the particular field of law (in some circumstances),
 the burdens class counsel experienced while litigating the case (e.g.,
 cost, duration, foregoing other work), and whether the case was
 handled on a contingency basis.

7 *In re Online DVD-Rental*, 779 F.3d at 954-55 (quoting *Vizcaino v. Microsoft Corp.*, 290 F.3d
 8 1043, 1047-50 (9th Cir. 2002)).

9 Courts often also cross-check the amount of fees against the lodestar. “Calculation of the
 10 lodestar, which measures the lawyers’ investment of time in the litigation, provides a check on the
 11 reasonableness of the percentage award.” *Vizcaino*, 290 F.3d at 1050.

12 **B. Discussion**

13 In its prior Fee Order, the Court approved an attorney’s fees award of \$158,606,250 to
 14 Class Counsel, an amount which comprised 27.5% of the aggregate common fund.²¹ ECF No.
 15 4740 at 2, 5-9. In determining Class Counsel’s entitlement to this fee award, the Court conducted
 16 a benchmark analysis by examining: “(1) the results achieved for the class; (2) the complexity of
 17 the case and the risk of and expense to counsel of litigating it; (3) the skill, experience, and
 18 performance of counsel (both sides); (4) the contingent nature of the fee; and (5) fees awarded in
 19 comparable cases.” *Id.* at 5-9; *see Vizcaino*, 290 F.3d at 1043; *see In re Bluetooth*, 654 F.3d at
 20 941-42. The Court then “perform[ed] a lodestar cross-check to ensure the reasonableness of its
 21 selected percent-of-the-fund award.” ECF No. 4740 at 10. The Court applied a “10 percent
 22 across-the-board reduction” to the lodestar and, thereby, “reduce[d] the lodestar from
 23 \$90,075,076.90 to \$81,067,569.20.” *Id.* “Applying this lodestar to a 27.5 percent fee of
 24 \$158,606,250 result[ed] in a multiplier of 1.96, which is well within the range of acceptable
 25

26 _____
 27 ²¹ The aggregate common fund includes the \$541,750,000 paid to resolve all claims brought by the
 28 Indirect Purchaser State Classes against the settling Defendants, as well as the amounts paid in
 the settlements between IPP Plaintiffs and the Chunghwa and LG defendants. *See* ECF No. 4712
 at 3; ECF No. 4740 at 1.

1 multipliers.” *Id.*

2 Class Counsel now request that the Court reconsider its prior Fee Award “in accordance
3 with the Amendments to the settlement agreements” and “reduce the aggregate fee award to Class
4 Counsel from \$158,606,250 plus interest to \$129,606,250 plus interest.”²² ECF No. 5587. This
5 newly requested fee award comprises 23.66 percent of the aggregate settlement fund, which is
6 below the Ninth Circuit’s 25 percent benchmark for a reasonable fee award. *See In re Bluetooth*,
7 654 F.3d at 942. When the adjusted lodestar employed in its prior Fee Award – \$81,067,569.20 –
8 is applied to the 23.66 percent fee, this results in a multiplier of 1.6, which is well within the range
9 of acceptable multipliers.

10 The ORS/NRS Objectors oppose the requested fee award on the basis that it “deducts an
11 unduly small value for the ORS and NRS claims” and “should be reduced” or “delayed until the
12 ORS and NRS can participate in negotiations regarding the value of their claims.” ECF No. 5732
13 at 5-6. As discussed above, ORS/NRS Objectors are not members of the settlement class and,
14 therefore, lack standing to object to the requested fee award. *Rodriguez v. Disner*, 688 F.3d 645,
15 660 n.11 (9th Cir. 2012) (“[O]bjectors who do not participate in a settlement lack standing to
16 challenge class counsel’s . . . fee award because, without a stake in the common fund pot, a
17 favorable outcome would not redress their injury.” (citation omitted)).

18 In addition, 16 objections assert that Class Counsel “will attempt to bill more for the
19 resultant increased costs and time related to their negotiations and work that arise from their
20 inadequate representation and errors.”²³ ECF Nos. 5739-5752, 5755. As discussed above, the
21 Court strikes these objections because the objectors have failed established that they purchased
22 any CRT products and, thus, have not “carried [their] burden of proving standing as a class
23 member.” *In re Hydroxycut*, 2013 WL 5275618, at *2. The Court also notes that, even if it were
24 to consider these objections, it would find that the “generalized” statements asserted therein “do
25

26 _____
27 ²² As the Court noted in its Preliminary Approval Order, “[u]nder these circumstances, there [was]
no need for class counsel to file a further motion for attorney’s fees.” ECF No. 5695 at 16 n.13.

28 ²³ As the Court noted in its Preliminary Approval Order, Class Counsel does not request additional
fees for work performed after the filing of the original fee motion. ECF No. 16 n.13 (“[C]ounsel’s
work in reaching the current agreement will not be separately compensated.”).

1 not provide a basis to contravene the Court’s benchmark analysis and lodestar cross-check.”
 2 *Hefler*, 2018 WL 6619983, at *15 (citation omitted); *see Asghari v. Volkswagen Grp. of Am., Inc.*,
 3 No. CV 13-02529 MMM (VBKx), 2015 WL 12732462, at *30 (C.D. Cal. May 29,
 4 2015) (overruling objections that “conclusorily assert that the fees are too high as compared to the
 5 benefits class members will receive”).

6 Because the Court has verified under both the lodestar method and the percentage-recovery
 7 method that the amount of requested fees is reasonable, the Court awards 23.66 percent of the
 8 \$576,750,000 aggregate settlement amount, or \$129,606,250, to Class Counsel.

9 **VI. EXPENSES**

10 An attorney is entitled to “recover as part of the award of attorney’s fees those out-of-
 11 pocket expenses that would normally be charged to a fee paying client.” *Harris v. Marhoefer*, 24
 12 F.3d 16, 19 (9th Cir. 1994) (internal quotation marks and citation omitted). To support an expense
 13 award, Plaintiffs should file an itemized list of their expenses by category, listing the total amount
 14 advanced for each category, allowing the Court to assess whether the expenses are reasonable.
 15 *Wren v. RGIS Inventory Specialists*, No. 06-cv-05778-JCS, 2011 WL 1230826, at *30 (N.D. Cal.
 16 Apr. 1, 2011), *supplemented*, No. 06-cv-05778-JCS, 2011 WL 1838562 (N.D. Cal. May 13, 2011).

17 In its prior Fee Order, the Court examined the “aggregate itemized claimed costs from the
 18 Litigation Expense Fund and the Future Expense Fund” and considered two objections related to
 19 the payment of these expenses. ECF No. 4740 at 17. The Court found “the expenses to be fair
 20 and reasonable.” *Id.* at 18. No contrary evidence has emerged. As such, the Court adopts the
 21 findings of its prior Fee Order and “approves the \$4,495,878.02 already paid from the Future
 22 Expense Fund, and grants the motion for the reimbursement in the reduced amount of
 23 \$3,174,647.55.” *Id.*

24 **VII. INCENTIVE AWARDS**

25 “Incentive awards are payments to class representatives for their service to the class in
 26 bringing the lawsuit.” *Radcliffe*, 715 F.3d 1157, 1163 (9th Cir. 2013). “It is well-established in
 27 this circuit that named plaintiffs in a class action are eligible for reasonable incentive payments,
 28 also known as service awards.” *Wren v. RGIS Inventory Specialists*, 2011 WL 1230826, at *31.

1 An incentive award of \$5,000 is presumptively reasonable, and an award of \$25,000 or even
2 \$10,000 is considered “quite high.” *See Dyer v. Wells Fargo Bank*, 303 F.R.D. 326, 335 (N.D.
3 Cal. 2014) (citing *Harris v. Vector Mktg. Corp.*, No. 08-cv-5198 EMC, 2012 WL 381202, at *7
4 (N.D. Cal. Feb. 6, 2012)). Nonetheless, a higher award may be appropriate where class
5 representatives expend significant time and effort on the litigation and face the risk of retaliation
6 or other personal risks; where the class overall has greatly benefitted from the class
7 representatives’ efforts; and where the incentive awards represent an insignificant percentage of
8 the overall recovery. ECF No. 4399 at 4-5; *Wren*, 2011 WL 1230826, at *32.

9 In its prior Fee Order, the Court considered the factors set forth above and approved
10 payments of “\$15,000 for each of 25 Court-appointed class representatives and \$5,000 for an
11 additional 15 named plaintiffs not appointed by the court but who acted as state representatives for
12 a period of time before being replaced.” ECF No. 4740 at 18. No contrary evidence has emerged,
13 and no one has objected to the requested incentive awards. As such, the Court adopts the findings
14 of its prior Fee Order and “authorizes total incentive payments of \$450,000 as set forth above.”
15 *Id.* at 19.

16 CONCLUSION

17 For the foregoing reasons, the Court orders as follows:

- 18 1. For the reasons set forth in its March 11, 2020 Preliminary Approval Order, the
19 Court confirms its certification of the class for settlement purposes only.
- 20 2. The Court grants final approval of the proposed amended settlements and plans of
21 allocation.
- 22 3. The class members who made timely requests to opt out of the settlement are
23 excluded from the class.
- 24 4. The Court grants Class Counsel’s request to reduce the aggregate fee award to
25 \$129,606,250 plus interest.
- 26 5. For the reasons set forth in its August 3, 2016 Fee Order, the Court approves the
27 \$4,495,878.02 already paid from the Future Expense Fund, and grants the motion for
28 reimbursement in the amount of \$3,174,647.55.

