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8
 9 **IN THE UNITED STATES DISTRICT COURT**
FOR THE NORTHERN DISTRICT OF CALIFORNIA
 10 **OAKLAND DIVISION**

11
 12 In re DYNAMIC RANDOM ACCESS
 13 MEMORY (DRAM) ANTITRUST
 LITIGATION

Case No. M-02-1486-PJH

MDL No. 1486

14 This Document Relates to:
 15 ALL INDIRECT PURCHASER ACTIONS and

Case No. C 06-4333 PJH
 Case No. C 06-6436 PJH
 Case No. C 07-1347 PJH
 Case No. C 07-2589 PJH
 Case No. C 12-5213 PJH
 Case No. C 12-5214 PJH
 Case No. C 12-5215 PJH
 Case No. C 12-5230 PJH
 Case No. C 12-5229 PJH
 Case No. C 12-5231 PJH

16 *The State of California v. Infineon Technologies*
AG,

17 *State of New York v. Micron Technology Inc.,*

18 *State of California v. Samsung Electronics Co.,*
 19 *Ltd.,*

20 *State of California v. Winbond Electronics Co.,*

**GOVERNMENT PURCHASER CLASSES’
 NOTICE OF MOTION AND JOINT
 MOTION FOR FINAL APPROVAL OF CY
 PRES RECIPIENTS FOR REMAINING
 GOVERNMENT PURCHASER CLASSES
 SETTLEMENT FUNDS**

21 *Petro Computer Systems, Inc. v. Hitachi, Ltd.,*

22 *Petro Computer Systems, Inc. v. Mitsubishi*
Electric Corporation,

23 *Petro Computer Systems, Inc. v. Toshiba*
 24 *Corporation,*

Date: 18 April 2018
 Time: 9:00 AM
 Courtroom: 3 - Third Floor
 Judge: Hon. Phyllis J. Hamilton
 Special Master: Hon. Charles B. Renfrew (ret.)

25 *State of California v. Toshiba Corporation,*

26 *State of California v. Mitsubishi Corporation,*

27 *State of California v. Hitachi, Ltd.*

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1 **NOTICE OF MOTION AND MOTION**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD. Please take notice that on
3 April 18, 2018, at 9:00 AM in Courtroom 3 of the above captioned Court located at 1301 Clay
4 Street, Oakland, California, 94612, counsel for the Government Purchasers Classes, Emilio E.
5 Varanini, will and hereby does move the Court for a final order approving the proposed *cy pres*
6 recipients of the Government Purchasers Classes.

7 This motion is based upon this Notice; the attached Memorandum of Points and
8 Authorities; the Declaration of Emilio E. Varanini; the Declaration of Harry M. Snyder; the
9 Honorable Charles B. Renfrew’s (ret.) Report and Recommendation of Special Master (DKT.
10 2132); and all matters of which this Court may take judicial notice, including all pleadings in this
11 matter, and such evidence and argument as the Court may permit at the hearing. This motion is
12 unopposed by the Defendants in this matter.¹

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I. INTRODUCTION**

15 This matter represented several extensive, complex, and protracted multi-district litigation
16 and *parens patriae* actions brought on behalf of DRAM indirect purchasers which resulted in
17 global settlements totaling \$310,720,000 plus injunctive relief. After briefing on preliminary and
18 final approval of the proposed settlements and a hearing at which no objections were raised, and
19 no objectors appeared, to contest the Government Purchaser Settlement Classes (Dkt. 2235, p.2,
20 In 16-20), this Court granted final approval for the settlements in its ORDER GRANTING FINAL
21 APPROVAL OF SETTLEMENTS, PLANS OF DISTRIBUTION AND CLAIMS PROTOCOLS, CERTIFYING
22 SETTLEMENT CLASSES, FINALLY ADOPTING SPECIAL MASTER’S REPORT AND RECOMMENDATION,
23 PARTS I AND II; FINAL JUDGMENT OF DISMISSAL WITH PREJUDICE (“FINAL ORDER”) (Dkt 2235).

24 In Section XI of the REPORT AND RECOMMENDATION OF SPECIAL MASTER (“SPECIAL
25 MASTER’S REPORT”) (DKT 2132, ¶¶ 293-363) the Special Master, the Honorable Charles B.

26 ¹ “No objections were raised to the certification of the Government Purchaser Settlement
27 Classes, to the plans of distribution recommended by the Special Master for those classes, or to
28 the claims protocols for the Indirect Purchaser Settlement Class.” Final Order at 2. The
Defendants agreed in their respective settlement agreements not to oppose this motion nor any of
the proposed *cy pres* recipients. VARANINI DECL. at ¶ 4.

1 Renfrew (ret.), conducted a thorough review of the distribution plans proposed by Class States
2 California, New Mexico, Ohio, and the Commonwealth of Pennsylvania (the “Class States”). *Id.*
3 Special Master Renfrew observed, “[e]ach class state has proposed its own plan for the
4 distribution of its share of the settlement proceeds to its members of the Government Purchaser
5 Settlement Classes.” SPECIAL MASTER’S REPORT at ¶ 41.

6 Special Master Renfrew found that California’s, New Mexico’s, Ohio’s, and the
7 Commonwealth of Pennsylvania’s distribution plans comported with, or declared that their
8 distribution plans would comport with the Ninth Circuit’s *Nachshin* standard and the California
9 Attorney General’s best practices for *cy pres* distributions. *Id.* at ¶¶ 321, 345, 349, 362. The
10 Special Master recommended that the individual plans, each of which is described in Section XI
11 of his report, all be approved by this Court as fair, reasonable and adequate. *Id.* at ¶ 41. This
12 Court adopted and fixed the Plans for Distribution for the Government Purchaser Settlement
13 Classes that were recommended by the Special Master in the Report, Part I, at ¶¶ 24, and 293 -
14 363. FINAL ORDER at ¶ 15.

15 The Special Master’s Report and Recommendation details the parties’ reports to him that *cy*
16 *pres* distributions of funds for both the indirect purchaser plaintiffs (natural persons and
17 corporations) and the government purchasers (i.e., the Class States) would be necessary. SPECIAL
18 MASTER’S REPORT at ¶ 293 – 363. The parties also envisioned, and the Special Master
19 recommended, that the *cy pres* recipients could be picked at a later date once the precise amount
20 of the funds available became known. *Id.* at ¶ 288. The Special Master further recommended
21 that this Court find a later designation of *cy pres* recipients to be consistent with precedent from
22 the United States Court of Appeals for the Ninth Circuit.² This Court’s Final Order adopted the

23 ² The Special Master, and the parties, specifically addressed the aspect of the distribution
24 plan that did not identify the *cy pres* recipients until the condition precedent was met following
25 the issuance of *Dennis v. Kellogg Company*, 687 F.3d 1149 (9th Cir. 2012) (“*Kellogg*”), vacated
26 and reissued as *Dennis v. Kellogg Company*, Slip Op. 10527, D.C. No. 3:09-cv-01786-IEG-EMC,
27 2012 U.S. App. LEXIS 18576 (9th Cir. Sept. 4, 2012) (“*Kellogg II*”). SPECIAL MASTER’S
28 REPORT at ¶ 286.

The question presented in *Kellogg* was whether 9th Circuit Precedent required selecting *cy pres* recipients before final approval of a settlement. *Id.* at ¶ 287. On September 4, 2012, the *Kellogg* panel issued an Order vacating its prior opinion and replacing it with a revised opinion that specifically stated that where a *cy pres* distribution is contingent on the outcome of the claims

1 Special Master’s recommendation of selecting the recipients after the precise amounts of *cy pres*
 2 funds was known. FINAL ORDER at ¶ 15.

3 Following the resolution of appeals by objectors from this Court’s Final Approval Process,
 4 the incurrence of costs for the claims process and the distribution of funds, and the resolution of
 5 accounting issues, the condition precedent for selecting *cy pres* recipients for those Class States
 6 with partial or full *cy pres* distribution plans was met. VARANINI DECL. ¶ 5. There were three
 7 categories of settlement funds allotted to the Class States. *Id.* at 4.

8 The Attorneys Generals of the Class States agreed that these funds would first be divided
 9 into three pots: one for state agencies, one for political subdivisions (e.g., cities, counties, K-12
 10 school districts and other special districts) and one for public colleges and universities. SPECIAL
 11 MASTER’S REPORT at ¶ 294. The Special Master recommended approval of this division of
 12 government purchaser funds. This Court adopted the Special Master’s recommendation in its
 13 Final Order. FINAL ORDER at ¶ 15.

14 Special Master Renfrew (ret.) recommended Emilio E. Varanini as class counsel for each of
 15 the government purchaser classes. SPECIAL MASTER’S REPORT at ¶ 34. The Court appointed, “as
 16 a final matter Emilio E. Varanini, Deputy Attorney General of the California Attorney General’s
 17 Office, as counsel for each of the government purchaser classes.” FINAL ORDER at ¶ 6. The
 18 Court also adopted as a final matter the Special Master’s finding of facts and conclusions of law
 19 as to the qualifications of Mr. Varanini to serve as class counsel. *Id.*

20 As Class Counsel for the Class States, Mr. Varanini submitted to the Special Master
 21 distribution plans for the Government Purchaser Classes for each of the Class States. SPECIAL
 22 MASTER’S REPORT at ¶ 293 and Exs. 46 through 48. Specifically, California’s plan is a mix of *cy*
 23 *pres* and direct distribution, New Mexico and Ohio’s plans are 100% *cy pres* distribution, and
 24

25 _____
 26 process for a cash distribution, issues regarding the identification of the recipients, “will not be
 27 ripe until it is determined that available cash remains in th[e] fund after the claims process has
 28 concluded,” *Kellogg II*, 2012 U.S. App. LEXIS 18576, at* 11-12. *Id.* The Special Master
 therefore found that it was fair, reasonable and adequate to defer the selection of the *cy pres*
 recipients “until the claims experience triggers the need for a *cy pres* distribution under the
 provisions of the plan of distribution, or this Court determines that *cy pres* is the appropriate
 disposition of any residual remaining from uncashed checks.” *Id.* at ¶ 288.

1 Pennsylvania's plan involved only a *cy pres* distribution of the residue from its settlement
2 distribution. *Id.*

3 For Class State California, the California colleges and universities received a direct *pro rata*
4 distribution which exhausted all of the California settlement funds allocated to colleges and
5 universities. Therefore, there are no *cy pres* distributions to California colleges and universities.
6 *Id.*

7 Class State California received \$1,277,223.00 to distribute to its local government entities,
8 which are part of the Class of Governmental Purchasers.³ See SPECIAL MASTER'S REPORT at ¶
9 313. Pursuant to the distribution plan submitted to the Special Master, California distributed two
10 thirds (2/3) of those funds to local government entities with large numbers of full time employees.
11 See SPECIAL MASTER'S REPORT at ¶ 310. After making the initial distributions, one third of those
12 funds or \$619,694.12⁴ remained to be distributed *cy pres* to California local government entities
13 pursuant to the distribution plan.⁵ See SPECIAL MASTER'S REPORT at ¶ 313. Pursuant to the
14 distribution plan submitted by Class Counsel on its behalf and adopted by this Court, Class State
15 Pennsylvania also distributed most of its funds directly to its government entities, leaving only a
16 residue of \$31,197 to be distributed *cy pres*. See SPECIAL MASTER'S REPORT at ¶ 357.

17 Class State Ohio, participating in only two settlements in this case, submitted a plan for
18 100% *cy pres* distribution of funds that included an up-front designation of *cy pres* recipients.
19 See SPECIAL MASTER'S REPORT at n. 317 (200). The Special Master recommended approval of

20 _____
21 ³ The amounts cited in the Special Master's Report are approximations because at the time
22 the report was drafted the costs associated with notice had not been fully determined nor had the
23 states and the private plaintiffs reached agreement regarding how much the Class States would
24 contribute to the overall administrative costs. VARANINI DECL. ¶ 4.

25 ⁴ The actual amount to be distributed will be less than this amount because the *cy pres*
26 administrator's fee is 9% of all funds distributed in addition to reductions in the total settlement
27 fund for administrative costs. SNYDER DECL. ¶ 4.

28 ⁵ Class State California also received \$666,768.00 to distribute to state agencies. After
distributing two-thirds of those funds directly to state agencies with the largest number of full-
time employees, California had approximately \$340,589.00 to be distributed *cy pres* to California
state agencies. California state agencies are not part of the Class of Government Purchasers in this
case (SPECIAL MASTER'S REPORT at ¶ 306 (n.262, 176)) and this Court does not have to approve
the designation of state agency *cy pres* recipients.

1 this plan, including the designation of recipients. SPECIAL MASTER’S REPORT at ¶ 352. This
 2 Court adopted the Special Master’s Recommendation in its Final Order. FINAL ORDER at ¶ 15.
 3 However, because of the passage of time before its funds became available, Class State Ohio has
 4 had to change several of the originally proposed recipients for others. VARANINI DECL. ¶ 26 &
 5 Ex. B. Therefore, Class State Ohio is before this Court, through Class Counsel, requesting
 6 approval for the change in recipients.

7 Class State New Mexico proposed a 100% *cy pres* distribution plan for those funds
 8 allocated to its local government entities using the same process as Class States California, Ohio,
 9 and the Commonwealth of Pennsylvania — it distributed all of its other funds directly to its state
 10 agencies and public universities/colleges. SPECIAL MASTER’S REPORT at ¶¶ 343 – 345. The
 11 Special Master recommended approval. This Court adopted the Special Master’s
 12 recommendation in its Final Order. FINAL ORDER at ¶ 15.

13 This Court granted final approval over these distribution plans finding that they were all
 14 fair, reasonable, and adequate. FINAL APPROVAL at ¶ 15. This Court retained jurisdiction over
 15 the designation of any *cy pres* recipients and the *cy pres* disposition of settlement funds. *Id.* at ¶
 16 18. Class States California, New Mexico, Ohio, and the Commonwealth of Pennsylvania hereby
 17 move the Court for an order granting final approval of the proposed *cy pres* recipients pursuant to
 18 their distribution plans for government purchaser entities in the Class submitted to the Court. The
 19 Class States assert that their respective distribution plans and proposed *cy pres* recipients have a
 20 substantial nexus with the underlying lawsuit and comport with the Ninth Circuit *Nachshin*
 21 standard and California best practices for approving *cy pres* recipients. VARANINI DECL. ¶ 10.
 22 Consequently, they respectfully request that the Court grant this motion.

23 II. ARGUMENT

24 A. The Ninth Circuit Standard and California Attorney General’s Best 25 Practices for Reviewing Proposed *Cy Pres* Recipients.

26 A *cy pres* remedy, sometimes called “fluid recovery,” *Mirhashi v. Fleet Mortg. Corp.*, 356
 27 F.3d 781, 784 (7th Cir. 2004), is a settlement structure wherein class members receive an indirect
 28 benefit (usually through a portion of defendant’s payment granted to a third party) rather than a

1 direct payment. *Lane v. Facebook Inc.*, 696 F.3d 811, 819 (9th Cir. 2011). *Cy pres* doctrine
2 allows a court to distribute unclaimed or non-distributable portions of a class action settlement
3 funds for the “next best” class of beneficiaries. *Id.* at 819. “Moreover, numerous courts have
4 utilized *cy pres* or fluid recovery procedures to ensure that wrongdoers do not retain “ill gotten
5 gains” simply because of the administrative difficulties traditionally associated with small per
6 individual charges.” *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1305
7 (9th Cir. 1990) (internal citation omitted).

8 The Special Master found that there is, “no conflict between state and federal law on the
9 applicable standards for reviewing the *cy pres* component of a settlement distribution plan,
10 (SPECIAL MASTER’S REPORT, at n. 231 (166)) and recommended approval of the Class States
11 distribution plans as comporting with federal principles and California best practices for *cy pres*
12 distributions. SPECIAL MASTER’S REPORT at ¶¶ 321, 345, 352, 363. In his report, the Special
13 Master outlined the Ninth Circuit’s standard, and California Attorney General’s best practices, for
14 reviewing the *cy pres* component of a settlement distribution plan. SPECIAL MASTER’S REPORT at
15 ¶ 285, 291.

16 In the Ninth Circuit, as reflected in this Court’s standing orders, *Nachshin v. AOL, LLC*,
17 663 F.3d 1034 (9th Cir. 2011) is controlling authority regarding *cy pres* distributions. In
18 *Nachshin*, the Ninth Circuit addressed the question of what kind of safeguards are necessary to
19 ensure the fairness and adequacy of a distribution plan that proposes to distribute some or (as in
20 that case) all of the settlement proceeds *cy pres* for the indirect benefit of a settlement class.
21 SPECIAL MASTER REPORT at ¶ 285. The Ninth Circuit held that any proposed direct beneficiaries
22 of a *cy pres* distribution must be, “tethered to the nature of the lawsuit and the interests of the
23 silent class members.” *Id.* The Ninth Circuit further held that any *cy pres* award must: (1)
24 address the underlying objectives of the statutes involved; (2) target the interests of the plaintiff
25 class; (3) provide reasonable certainty that members of the settling class will benefit; and (4)
26 account for the broad geographic distribution of the class. *Id.* Here, the broad geographic
27 distribution of the class is interpreted as having a statewide distribution or impact in various areas
28 within each Class State rather than focused in one area.

1 Regarding the California Attorney General’s best practices for reviewing the *cy pres*
2 component of a settlement distribution plan, the Special Master found that although California
3 courts have not set out express criteria to be met for *cy pres* distributions, the California Attorney
4 General suggests some best practices for *cy pres* relief derived from considerable first-hand
5 experience with *cy pres* settlements. SPECIAL MASTER’S REPORT at ¶ 291. The Attorney
6 General’s best practices include:

7 Nexus with the interests of the class and/or purpose of the litigation;

8 Accountability of recipients to the court;

9 An overall *cy pres* plan that identifies goals, standards and process;

10 Incorporation of the plan into the fairness proceedings to the extent feasible;

11 Written proposals documenting the competence of recipients, the work to be done, the
12 timetable involved, and benefit to the class;

13 Safeguards against favoritism or self-interest in recipient selection, including self-interest of
14 Settling Defendants; and monitoring of recipients to insure use of funds in accordance with the
15 court order. *Id.*

16 One element of the *cy pres* review process which is common to both the Ninth Circuit and
17 the California Attorney General’s best practices is that there must be a substantial nexus with the
18 purpose of the litigation and/or the interests of the class. This litigation was brought to redress
19 the antitrust harm caused by manufacturers fixing the prices of DRAM modules and DRAM
20 containing products. Rather than seeking to merely replace computers using the manufacturer’s
21 DRAM chips (which would add to the Defendant’s profits), the Class States sought *cy pres*
22 recipients and projects that would ensure a broader benefit to their taxpayers by approving grants
23 that allowed state, local, and municipal agencies and charities to better serve their constituents.
24 Varanini Decl. ¶ 8. Here, it is noteworthy that the Class States have been represented in this
25 litigation by Attorneys General who are: (1) politically accountable, and (2) who are in the best in
26 the position to recommend the disposal of settlement funds involving Governmental Purchaser
27 Plaintiffs. *Id.* at 9. As Attorneys General, they understand which projects create a substantial
28 nexus with the underlying case, maximize geographic diversity, and meet the public interest of

1 their citizens served by these Government Purchaser Plaintiffs within their respective states. *Id.*
 2 Moreover, the Special Master found that, “[i]nsofar as this proposed distribution plan from the
 3 Pennsylvania Attorney General is different from the one proposed by the California Attorney
 4 General, an Attorney General is in the best position to know how allocation in his or her State
 5 would work based on conditions pertaining to their Government Purchaser Plaintiffs.
 6 Accordingly, an Attorney General in California or Pennsylvania can exercise his or her discretion
 7 in choosing from a broad range of allocation options based on his or her knowledge of local
 8 conditions, and that choice may differ from state to state without either plan falling below the
 9 standard of fair, reasonable and adequate.” SPECIAL MASTER’S REPORT at ¶ 359.

10 **B. The Class States’ Proposed Recipients Meet the Ninth Circuit’s Standard
 11 and the California Attorney General’s Best Practices for *Cy Pres* Approval
 and Should Be Approved.**

12 **1. Class State California’s Proposed Grantees Meet the Ninth Circuit’s
 13 Standard for *Cy Pres* Approval of Recipients and the California
 14 Attorney General’s Best Practices for Designation of *Cy Pres*
 Recipients and Should Be Approved.**

15 Class State California presented for preliminary and final approval a distribution plan that,
 16 after deducting costs, amounted to \$558,740 for local government agencies which Special Master
 17 Renfrew recommended that the Court approve. In its distribution plan, California committed to
 18 ensure that the safeguards it set out as part of its best practices and the standards required as part
 19 of the Ninth Circuit’s *Nachshin* opinion would be followed in proposing *cy pres* recipients.
 20 SPECIAL MASTER’S REPORT at ¶ 321.

21 One of the California Attorney General’s best practices requires the California Department
 22 of Justice to “safeguard against favoritism or self-interest in recipient selection.” Special
 23 Master’s Report at ¶ 291. The California Attorney General retains a neutral, third-party *cy pres*
 24 expert to manage its *cy pres* application, review, and distribution process. VARANINI DECL. ¶ 13.
 25 In this matter, the California Attorney General retained Mr. Harry Snyder, an experienced *cy pres*
 26 distribution expert, to distribute Class State California’s portion of *cy pres* funds. SNYDER DECL.
 27 ¶ 4; VARANINI DECL. ¶ 13. In conducting the application and review process for California’s *cy*
 28 *pres* distribution in this matter, Mr. Snyder required that each recipient’s use of the funds were

1 tethered to the underlying objectives of the statutes involved (the Cartwright Act - Cal. Bus. &
 2 Prof. Code § 16720 *et seq.* and the Unfair Competition Law, Cal. Bus. Code § 17200 *et seq.*) by
 3 requiring that the funds “be distributed via *cy pres* distribution for the purpose of utilizing
 4 innovative technology or software to improve and modernize operational capabilities of the state,
 5 local or municipal governments.” SNYDER DECL. ¶ 4. Requiring the projects to have this focus
 6 ensured the funds would be used for technology-related ends that would have a substantial nexus
 7 to the underlying case without just purchasing more electronic equipment containing Defendants’
 8 DRAM chips and thus rewarding Defendants.

9 After conducting a lengthy, thorough, and competitive application review, approval and
 10 process (*see* SNYDER DECL. ¶¶ 7-13; VARANINI DECL. ¶ 14.), the California Attorney General
 11 presents the following organizations for the Court’s review and approval:

- 12 i. **Alameda County Social Services Agency: Proposed grant of \$200,000 over 24**
 13 **months** to enable the launch and expansion of innovative technology to serve over
 14 220,000 low-income, needy individuals and families in Alameda County, currently
 15 eligible yet un-enrolled in CalFresh (federally titled SNAP, or food stamp) benefits.
 16 The goal of the Project is to expand access, increase enrollment and retention, and
 17 improve application processing timelines for CalFresh, namely by utilizing an
 18 innovative Interactive and Visual Interactive Voice Response (IVR/VIVR) phone and
 19 smartphone technology to provide a toll-free 24-hour hotline to apply for food stamps.
 20 The IVR/VIVR phone and smartphone system will increase opportunities to qualify
 21 people for CalFresh with the goal of having more families and individuals use these
 22 tools in order to apply for, and report income or household status changes, through the
 23 system – using their mobile phones. The innovative mobile phone food stamp
 24 application pilot will disseminate project cost-benefit results to other interested county
 25 social services agencies across the state.
- 26 ii. **El Dorado County Elections Department: LiveBallot Portal. Proposed grant of**
 27 **\$198,000 over a period of 24 months** for the deployment of a fully accessible,
 28 American Disabilities Act-compliant online balloting portal for a consortium of five
 California counties. Inyo County is one and the remaining three will join when the
 grant is approved. The remotely accessible online balloting portal, called LiveBallot,
 is a proven Web-based solution that will enable participating counties to extend voter
 information and vote-by-mail to voters with disabilities and remotely stationed
 military personnel. The “LiveBallot” solution has been reviewed and approved by
 relevant federal agencies. The proposed grant for the deployment of this portal would
 allow voters who happen to be blind, disabled or remotely stationed and/or living
 abroad access to their ballot and balloting information. Funding would not only help
 these five participating counties and their voters, but also could enable their project, if
 successful, to serve as a model for all voters throughout the state and the country to

1 have access to their ballot regardless of physical or cognitive challenges.

- 2 iii. **Sierra Nevada Conservancy (SNC): LIDAR/IS Demonstration Project with a**
 3 **proposed grant of \$150,000) over a period of 24 months** for a two-year pilot project
 4 that will use airborne collected Light Detection and Ranging (LiDAR) and Imaging
 5 Spectroscopy (IS) data to assess forest and watershed condition and support forest
 6 management as part of the Watershed Improvement Program (WIP) in the Plumas
 7 National Forest administrative boundary (private and public lands). This largely
 8 forested region makes up about 25 percent of California’s land area. It is the state’s
 9 principal watershed, supplying more than 60 percent of the developed water supply.
 10 The technology has the potential to advance government administration in several
 11 ways: 1) it is used to map the natural and constructed environment with very high
 accuracy and precision over large areas (millions of acres); 2) it provides better
 information about the environment, thereby reducing expenses associated with field
 assessments and environmental review (e.g. NEPA and CEQA); 3) and it facilitates
 cost-effective decision-making to target financial and personnel resources. The
 DRAM request of \$150,000 will be matched by \$259,000 in contributions from SNC
 and the USFS, which will multiply the effectiveness of the DRAM fund.

12 SNYDER DECL. ¶¶ 15 - 18.

13 As part of the process for selecting local government agencies Mr. Snyder also conducted a
 14 review of, and selected for award, statewide projects for *cy pres* distribution. SNYDER DECL. ¶¶
 15 19 - 20. These projects are not presented for the Court’s review because the California Attorney
 16 General represented California statewide agencies in a non-class capacity. SPECIAL MASTER’S
 17 REPORT, n.33 (31). Class State California nonetheless presents them to the Court so it is
 18 appraised of how the California Attorney General intends to distribute grants *cy pres* to state
 19 agencies.

20 The two California state agencies selected using the California Attorney General’s internal
 21 process, concomitant with the selection of the three projects listed above are:

- 22 i. **Native American Heritage Commission (NAHC), an Agency within the Office**
 23 **of the Governor, for a grant of \$150,000 over 12 months.** This grant will be
 24 used to develop an online, multi-level and user-friendly portal that will document
 25 and increase access to information about the early history of the State and its
 26 indigenous peoples. As a “Digital Atlas,” this online portal will contain maps in
 27 multiple layers depicting former trade routes, settlements and cultural resources,
 28 tribal/language boundaries, original treaty boundaries, and other locales of
 historical interest. It will also allow users to immediately link to data and well as
 written, oral, visual and other forms of documentary data – including curated
 “crowd-sourced” data that will bring the hidden history of Native California alive.
 End-users include the 164 tribes in California and multiple state government

1 offices, university faculty, local libraries and K-12 schools, as well as museums
2 and other non-profit organizations.

- 3 ii. **The Regents of the University of California at Davis: CALRESA for Water**
4 **Infrastructure for a grant of \$149,390 over a period of 24 months** to enable the
5 purchase of a mobile, high-accuracy side-scan sonar and bathymetry instrument
6 that will enable rapid environmental and structural assessments (RESA) of levees,
7 dams and retaining structures throughout California. This grant will fund a new,
8 high-resolution capability to perform the real-time scanning of these underwater
systems that can reveal potential evidence of imminent failures that were
previously undetectable. If funded, UC Davis will cost share the project by
\$85,691 in equipment, salaries and support, thus multiplying the effectiveness of
the DRAM fund. This project is statewide.⁶

9 *Id.*

10 Each of these proposed cy pres recipients: (1) address the underlying statute involved by
11 redressing an antitrust injury, (2) target the interests of the plaintiff class by using technology to
12 advance and modernize innovative technology at the state, local, or municipal level, (3) provide
13 reasonable certainty that members of the settling class will benefit, and (4) is broadly distributed
14 throughout the State of California. Varanini Decl. ¶ 15. In addition, the Attorney General's cy
15 pres administrator has requested from each of these proposed recipients a detailed plan for how
16 the funds are to be used and will monitor the organization and the projects to ensure that the funds
17 are used in the manner for which they were granted. Snyder Decl. ¶ 5. Since the proposed three
18 cy pres recipients properly before the Court for approval meet the Ninth Circuit's standard for cy
19 pres approval and comport with the California Attorney General's cy pres best practices, Class
20 State California requests that the Court grant final approval of the following cy pres recipients:
21 Alameda County Social Services Agency, El Dorado County Elections Department: LiveBallot
22 Portal, and Sierra Nevada Conservancy (SNC): LIDAR/IS Demonstration Project. Any residual
23 funds after the grants have been disbursed and costs have been paid will be distributed to one or

24 _____
25 ⁶ The University of California is not a state agency for purposes of the Cartwright Act
26 claims, but rather is in the Class of Government Purchaser Entities. However, the California
27 Attorney General's Office only received one high-quality application for the state agency *cy pres*
28 funds that left an enormous "residue" of approximately \$149,000. The California Attorney
General's Office chose to allocate those funds to the proposed University of California project
given its direct benefit to local, rural counties in this State. VARANINI DECL. ¶ 17. Thus, Class
State California was able to secure an additional, albeit indirect, benefit for local government
entities by repurposing this residue. *Id.*

1 more of these three projects at Mr. Snyder’s discretion based on which project is best complying
 2 with their proposal. VARANINI DECL. ¶ 16; SNYDER DECL. ¶ 27.

3 **2. Class State New Mexico’s Proposed Grantees Meet the Ninth**
 4 **Circuit’s Standard for *Cy Pres* Approval and the California Attorney**
 5 **General’s Best Practices and Should Be Approved.**

6 Class State New Mexico received approximately \$141,182.00 from the Local Government
 7 Pool for *cy pres* distribution. VARANINI DECL. ¶ 19, Ex. A. “Class State New Mexico declared
 8 that its proposed distribution plan would follow the principles set down the Ninth Circuit’s
 9 *Nachshin* case and by the California Attorney General.” SPECIAL MASTER’S REPORT at ¶ 345.
 10 Class Counsel conducted an ongoing dialogue with Class State New Mexico as it developed its
 11 plans for designating *cy pres* recipients to ensure that Class State New Mexico complied with
 12 these principles. *Id.* at ¶ 19. Class State New Mexico asserts that the process it used was
 13 consistent with the representations Class Counsel made on its behalf to the Special Master. After
 14 reviewing the process New Mexico used, Class Counsel agrees with this representation. *Id.*
 15 Therefore, on behalf of Class State New Mexico, Class Counsel requests that the Court grant final
 16 approval for its proposed distribution.

17 In its *cy pres* grant application and approval process New Mexico broadly advertised the
 18 proposed process. *Id.* at ¶ 20 & Ex. A. In support of this process, the New Mexico Attorney
 19 General established a special, independent committee inside his office which reviewed
 20 applications for how closely the projects relate to the nature of the lawsuit. *Id.* The committee
 21 sought projects that utilized leading edge technology and software to significantly impact and/or
 22 enable new and improved government operational capabilities by requiring that the proposed
 23 projects hew to this directive and therefore ensure that the proposed project address the
 24 underlying objectives of the New Mexico Act, Section 57-1-1 *et seq.*, N.M.S.A. 1978 and New
 25 Mexico Unfair Practices Act, Section 57-12-1 *et seq.*, N.M.S.A. 1978. *Id.* Those objectives are
 26 the same as the objectives under the Cartwright Act. *Id.* As a result of this connection to the
 27 statutes upon which the lawsuit was based, the projects were closely tethered to the nature of the
 28 lawsuit. *Id.*

1 In addition, Class State New Mexico's *cy pres* selection and review committee reviewed
 2 the applications to ensure each project would provide reasonable certainty that members of the
 3 settling class — government purchasers — would benefit and that the projects would represent a
 4 broad geographic area of New Mexico. *Id.* at ¶ 21 & Ex. A. Class Counsel discussed with Class
 5 State New Mexico whether it too should use an independent *cy pres* expert. *Id.* Class State New
 6 Mexico, with the concurrence of Class Counsel, decided it did not need to use a *cy pres* expert in
 7 administering its distribution because it had the expertise and resources in-house to run such a
 8 process. *Id.* Class State New Mexico's proposed *cy pres* recipients are:

- 9 1) **City of Bloomfield Public Library:** Grant amount \$12,279.33 to be used for
 10 updated equipment/cabling and Wi-Fi installation enabling the city library for
 optimal use of the existing fiber optic loop.
- 11 2) **Doña Ana County:** Grant amount \$30,000.00 to be used for development of a
 12 web application to handle the intake, processing and public dissemination of
 Inspection of Public Records Act (IPRA) requests.
- 13 3) **Las Vegas Police Department:** Grant amount \$28,029.00 to be used for an
 14 electronic evidence management system. This will include software licenses,
 installation, and training.
- 15 4) **Torrance County:** Grant amount \$42,525.00 to be used for public access sites at
 16 customer service counters; implementation of online archival search program and
 marriage licensing software; and improvements to the emergency operations center
 17 CPU.
- 18 5) **Village of Edgewood:** Grant amount \$12,000.00 to be used for state of the art
 19 equipment and wireless technology to provide free Wi-Fi to two public parks and a
 large open space.
- 20 6) **Village of Questa:** Grant amount \$17,267.00 to be used for website design for
 21 access to records information; public meeting software and equipment to provide
 more accurate and timely delivery of information; and data management, backup,
 22 and archival system to protect critical information.
- 23 7) **College of New Mexico:** Grant amount \$80,267.00 to be used for Blockchain
 24 utilization and development; training up to ten Deep Dive Coding instructors;
 implement Production Blockchain services cloud or infrastructure architecture;
 25 provide a development and production environment for service to government
 agencies.

26 *Id.*

27 Each of the proposed projects meets the Ninth Circuit's standard for *cy pres* distribution
 28 because: (1) they target the interests of the plaintiff class by using technology at the state, local, or

1 municipal level to significantly impact and/or enable new and improved government operations
2 capabilities; (2) target the interests of government purchasers by directly supporting government
3 entities, (3) provide reasonable certainty that members of the settling class will benefit, and (4)
4 are broadly distributed throughout New Mexico. *Id.* at ¶ 22. Class Counsel endorses the process
5 and results reached by Class State New Mexico. *Id.* at ¶ 23. Because Class State New Mexico’s
6 seven proposed *cy pres* recipients meets the Ninth Circuit’s standard for *cy pres* approval and the
7 California Attorney General’s best practices for *cy pres* distributions, Class State New Mexico
8 through Class Counsel respectfully requests that the Court grant approval for the above listed
9 projects.

10 **3. Class State Ohio’s Proposed Change of Certain *Cy Pres* Grantees**
11 **Meet the Ninth Circuit’s Standard for *Cy Pres* Approval and Should**
12 **Be Approved.**

13 Class State Ohio proposed a *cy pres* distribution plan to the Special Master for the funds it
14 received from the Samsung/Winbond settlements that involved a designation of specific *cy pres*
15 recipients. SPECIAL MASTER’S REPORT at ¶ 352. Class Counsel recalls pointing out to counsel for
16 Class State Ohio that it may be premature to designate these recipients, but also recalls that Class
17 State Ohio wished to designate the recipients in the hope that they would still need the funds by
18 the time they became available for distribution. VARANINI DECL. ¶ 26. The Special Master
19 reviewed Class State Ohio’s proposed plan, found the plan to be “fair and reasonable,” and
20 recommended that this Court approve the plan. SPECIAL MASTER’S REPORT at ¶ 352.

21 The Special Master found that, “Class State Ohio’s *cy pres* distribution plan already
22 complies with the principles set out by the Ninth Circuit’s *Nachshin* decision and by the
23 California Attorney General. SPECIAL MASTER’S REPORT at ¶ 349. In its Final Order, this Court
24 granted approval for Ohio’s distribution plan, which included its designation of specific *cy pres*
25 recipients. FINAL ORDER at ¶ 15. The Court also adopted as a final matter the “findings of fact,
26 conclusions of law and recommendations contained in the Special Master’s Report, Part I, as to
27 the process employed in arriving at and fixing, and the fairness, recommendation and adequacy of
28 the Plans of Distribution for the Settlement Classes.” *Id.*

1 However, by the time that Class State Ohio's settlement funds became available for *cy pres*
 2 distribution, some of Class State Ohio's proposed recipients could no longer accept and/or use
 3 those funds. VARANINI DECL. ¶ 26. Class State Ohio is, with the concurrence of Class Counsel,
 4 proposing to replace four previously proposed recipients with new recipients. *Id.* at ¶ 26 & Ex.
 5 A.

6 In 2016, the Ohio Attorney General amended the 2012 proposed *cy pres* recipients list
 7 because too much time had elapsed since the original recipients had been chosen and those
 8 entities had changed, their priorities had changed, and/or there was a legal or administrative
 9 impediment to them accepting the funds after a significant time had elapsed from their original
 10 application. *Id.* at ¶ 27. Even though this list was transmitted to Class Counsel in 2016, Class
 11 State Ohio has assured Class Counsel as of 2018 that it remains current and no further changes
 12 will need to be made prior to the anticipated disbursement of funds this year. *Id.* Therefore, the
 13 Ohio Attorney General proposes the following changes to his 2012 list of proposed recipients
 14 with the concurrence of Class Counsel (*id.*):

- 15 - Remove
 - 16 o The BEGUN Center for Violence Prevention
 - 17 o The Norwalk Salvation Army
 - 18 o The Law Enforcement Foundation
 - 19 o Columbus NAACP

20 The entities listed immediately above are to be replaced with the following entities:

- 21 a) **Organization:** Inspiring Minds
 Amount: \$10,820.81
 Use of Funds: To buy computers, tables, printers and other equipment as well
 as software and use licenses.
- 22 b) **Organization:** Big Brothers and Big Sisters of Northwestern Ohio
 Amount: \$10,937.14
 Use of Funds: To upgrade computer systems and technology. This includes
 buying new computers, computer memory upgrades, hard drives, backup
 drives, network adaptor(s), server(s), keyboards, monitors and software needed
 for the project.
- 23 c) **Organization:** Boys & Girls Club of Erie County – in association with the Ohio
 Alliance of Boys & Girls Clubs
 Amount: \$10,820.81

1 **Use of Funds:** To buy new computers, copiers, laptops, netbooks, operating
2 software for the computers, educational software, and internet access.

3 **d) Organization:** The Childhood League Center

4 **Amount:** \$21,641.63

5 **Use of Funds:** To buy computers, tablets, and printers.

6 **e) Organization:** Boys & Girls Club of Hamilton – in association with the Ohio
7 Alliance of Boys & Girls Clubs

8 **Amount:** \$10,937.14

9 **Use of Funds:** To buy computers, copiers, laptops, net-books, operating
10 software, educational software and internet access.

11 Varanini Decl. ¶ 27, Ex. B.

12 In selecting proposed *cy pres* recipients, the Ohio Attorney General specifically chose
13 organizations that are Ohio cyber safety organizations or are Ohio organizations that provide
14 technology to economically disadvantaged schools or school children. SPECIAL MASTER’S
15 REPORT at Ex. 47 (DKT. 2143-1 (4)). These projects target the interests of the plaintiff class by
16 granting funds to charitable organizations that deal with technology related issues to be used to
17 purchase technology at the state, local, and municipal level. By granting funds to charitable
18 organizations that have committed to using the funds for technology related projects the
19 distributions: (1) address the underlying objectives of Ohio’s Antitrust Law, Ohio Revised Code,
20 §§ 109.81 and 1331.01, *et seq.* and the Common Law of the State of Ohio, by protecting
21 consumers from antitrust injury and are therefore tethered to the nature of the lawsuit; (2) target
22 the interests of the plaintiff class; (3) provide reasonable certainty that members of the settling
23 class will benefit; and (4) are broadly distributed throughout the State of Ohio. VARANINI DECL.
24 ¶ 28. The proposed changes do not deviate from any of these principles in any respect
25 whatsoever. *Id.* Since Class State Ohio’s proposed *cy pres* recipients for 2018 meet the Ninth
26 Circuit’s standard for *cy pres* distribution and the California Attorney General’s best practices for
27 distributions, Class Counsel respectfully requests on behalf of Class State Ohio that this Court
28 grant approval of Class State Ohio’s proposed swap of certain of its designated *cy pres* recipients.

1 **4. Class State Commonwealth of Pennsylvania’s Proposed Grantees**
 2 **Meet the Ninth Circuit and California Attorney General’s Standards**
 3 **for *Cy Pres* Approval and Should Be Approved.**

4 Class State Commonwealth of Pennsylvania, through Class Counsel, presented a
 5 distribution plan that involved a *cy pres* distribution of a residue of approximately \$31,197.
 6 SPECIAL MASTER’S REPORT at ¶ 357. In his report, the Special Master recommended approval of
 7 Pennsylvania’s *cy pres* distribution plan. *Id.* at ¶ 363. The Court adopted the Special Master’s
 8 recommendation. FINAL ORDER at ¶ 15. The Special Master reported that, “Class State
 9 Pennsylvania is expected to follow the *cy pres* principles set out in the Ninth Circuit decision of
 10 *Nachshin* as well as by the California Attorney General by adopting the arguments made by Class
 11 State California in support of its proposed plan. There is no reason to believe Class State
 12 Pennsylvania would later deviate from these principles when it comes time for it to make its *cy*
 13 *pres* grant.” SPECIAL MASTER’S REPORT at ¶ 362. Class Counsel has engaged in an ongoing
 14 dialog with Class State Pennsylvania representatives to ensure that the process used was
 15 consistent with the representations they made to the Special Master. VARANINI DECL. ¶ 30.

16 Class Counsel asserts on behalf of Class State Commonwealth of Pennsylvania that
 17 Pennsylvania conducted its application process and review of proposed projects and recipients
 18 consistent with its representations to the Special Master. *Id.* at ¶ 31, Ex. C. Class State
 19 Commonwealth of Pennsylvania’s *cy pres* process and proposed grantees for the residue meet the
 20 Ninth Circuit’s standard for approving proposed *cy pres* grantees and the California Attorney
 21 General’s best practices for *cy pres* distributions. *Id.*

22 The school districts Class State Pennsylvania selected as proposed *cy pres* recipients are
 23 either underfunded and not receiving a distribution from the DRAM settlement or have a high
 24 level of enrollment from low income families. *Id.* at ¶ 32, Ex. C. The proposed school districts
 25 serve the public interest and their receipt of *cy pres* funds provides a significant opportunity for
 26 state and local governments to serve their constituents. *Id.* As part of this proposed plan, Class
 27 State Commonwealth of Pennsylvania proposes, with the concurrence of Class Counsel, to
 28 distribute \$2,214.88 each to twenty (20) school districts in Pennsylvania. *Id.* The
 Commonwealth of Pennsylvania’s Attorney General determined that a sum of greater than

1 \$2,200.00 to each school district would provide school districts the flexibility to purchase “two
2 higher-end personal computers or seven entry-level desktop computers (assuming a cost of
3 \$1,100.00 for the higher-end machines and \$300.00 for the entry-level machines), a dozen or
4 more inexpensive tablets or to provide incremental upgrades to existing systems as required by
5 the individual recipients.” *Id.*

6 There were two different categories of schools chosen to receive \$2,214.88 each. The first
7 category of school district recipients were chosen based on per pupil total current spending for
8 each school district. *Id.* at ¶ 33. This methodology selected ten school districts as recipients. The
9 second category of school district recipients were chosen based on the highest percentage of
10 students enrolled who come from low income families. *Id.* This methodology also produced ten
11 school districts. *Id.*

12 State Class Commonwealth of Pennsylvania proposes \$2,214.88 per recipient in *cy pres*
13 distributions to each of the following Pennsylvania school districts:

- 14 a) Cornell School District in Allegheny County.
- 15 b) York School District in York County.
- 16 c) New Kensington-Arnold School District in Westmoreland County.
- 17 d) Reading School District in Berks County.
- 18 e) Aliquippa School District in Beaver County.
- 19 f) Farrell Area School District in Mercer County.
- 20 g) Lancaster School District in Lancaster County.
- 21 h) Greater Johnstown School District in Cambria County.
- 22 i) Steelton-Highspire School District in Dauphin County.
- 23 j) Chester-Upland School District in Delaware County.
- 24 k) Shamokin Area School District in Northumberland County.
- 25 l) Juniata County School District in Juniata County.
- 26 m) Norwin School District in Westmoreland County.
- 27 n) Lebanon School District in Lebanon County.
- 28 o) Shippensburg Area School District in Cumberland County.
- p) Tamaqua Area School District in Schuylkill County.
- q) Dunmore School District in Lackawanna County.

- 1 r) Crestwood School District in Luzerne County.
- 2 s) Kiski Area School District in Westmoreland County.
- 3 t) Charleroi Area School District in Washington County.

4 *Id.* at ¶ 34, Ex. C.

5 Each of the proposed grant recipients meet the Ninth Circuit’s standard for *cy pres*
6 distribution because: (1) the funds target the interests of the plaintiff class by using technology at
7 the local level for public school districts in the Commonwealth of Pennsylvania to expand their
8 current computer technology or enhance their existing assets by upgrading current assets; (2)
9 these proposed *cy pres* distributions address the underlying objections of 71 P.S. § 732-204(c)
10 and the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201 *et*
11 *seq.* by protecting consumers from antitrust injury and are tethered to the lawsuit by seeking to
12 redress that injury through making technology related grants; (3) they target the interests of the
13 plaintiff class by replacing or augmenting technology that succeeded DRAM components and
14 DRAM containing products and provide reasonable certainty that members of the settlement class
15 will benefit; and (4) are broadly distributed throughout the Commonwealth of Pennsylvania. *Id.*
16 at ¶ 35. Given Class State Commonwealth of Pennsylvania’s proposed distribution meets the
17 Ninth Circuit standard for *cy pres* distributions, Class State Commonwealth of Pennsylvania
18 respectfully requests through Class Counsel that the Court grant final approval for the proposed
19 *cy pres* recipients.

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CONCLUSION

Class Counsel for the Government Purchaser Classes hereby presents for, and requests approval of, the proposed *cy pres* recipients detailed in this motion for the disposition of remaining or residual Government Purchaser Plaintiff settlement funds for Class States California, New Mexico, Ohio, and the Commonwealth of Pennsylvania.

Dated: March 12, 2018

Respectfully Submitted,

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/s/ Paul A. Moore
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