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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO
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16
17 **THE PEOPLE OF THE STATE OF**
CALIFORNIA, et al.,

18 Plaintiffs,

19 v.
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21 **SAMSUNG SDI, CO., LTD., et al,**

22 Defendants.
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Case No. CGC-11-515784

**MEMORANDUM OF POINTS
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENTS WITH
LG, PANASONIC, HITACHI, TOSHIBA
AND SAMSUNG, AND CONDITIONAL
CERTIFICATION OF SETTLEMENT
CLASS OF GOVERNMENT ENTITIES**

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I. INTRODUCTION

The Attorney General brought this action for alleged price-fixing, market allocation, and bid-rigging of Cathode Ray Tubes (“CRTs”) that were incorporated into televisions and computers. The Attorney General sought damages for overcharges paid by California natural persons and government entities that purchased televisions and computers, general damages for the injury suffered to the State’s own economy (i.e., deadweight loss), civil penalties, injunctive relief, and equitable disgorgement of profits.

Having previously obtained final approval of settlements with defendants’ co-conspirators in a related case, the Attorney General now, pursuant to California Rules of Court 3.769(c), respectfully moves this Court for an order preliminarily approving her settlements with defendants LG,¹ Panasonic,² Hitachi,³ Toshiba,⁴ and Samsung.⁵ Combined, these five settlements provide \$4.95 million in monetary relief and include significant non-monetary relief that (1) enjoins illegal conduct in products beyond CRTs and, for certain defendants, extends to foreign companies and foreign subsidiaries, (2) requires compliance training in products that goes beyond CRTs and, for certain defendants, extends to foreign parents and foreign subsidiaries, and (3) requires cooperation which the Attorney General benefitted from in this case and/or will benefit from in a separate confidential investigation.

The Attorney General proposes to allocate the \$4.95 million settlement fund as follows: \$75,000 for the costs of notice and settlement administration; \$975,000 for attorneys’ fees and

¹ LG refers to defendant LG Electronics, Inc.

² Panasonic refers to defendants Panasonic Corporation f/k/a Matsushita Electric Industrial Co., Ltd., Panasonic Corporation of North America, Panasonic Consumer Electronic Co., Matsushita Electronics Corporation (Malaysia) SDN. BHD., MT Picture Display Co., Ltd. f/k/a Matsushita-Toshiba Picture Display Co., Ltd. (“MTPD”), and Beijing Matsushita Color CRT Co., Ltd.

³ Hitachi refers to defendants Hitachi, Ltd., Hitachi Displays, Ltd., Hitachi Electronic Devices (USA), Inc., Hitachi America, Ltd., and Hitachi Asia, Ltd.

⁴ Toshiba refers to defendants Toshiba Corporation, Toshiba America Electronic Components, Inc., P.T. Tosumrnit Electronics Devices Indonesia, and Toshiba Display Devices (Thailand) Company, Ltd.

⁵ Samsung refers to defendants Samsung SDI, Co., Ltd. F/K/A Samsung Display Device Co. Ltd., Samsung SDI America, Inc., Samsung SDI Mexico, S.A. DE C.V., Samsung SDI Brasil Ltda., Shenzhen Samsung SDI Co., Ltd., Tianjin Samsung SDI Co., Ltd., and Samsung SDI (Malaysia) SDN. BHD.

1 litigation costs; \$330,000 for incentive payments to the individually named government entities
2 whose claims are represented by the Attorney General in this action; \$1,214,250 for the
3 settlement class of local government entities and for state agencies, split into \$1,032,113 for the
4 settlement class and \$182,137 for state agencies; \$195,000 for California natural persons;⁶
5 \$865,000 for civil penalties; and 1,295,750 for deadweight loss and equitable disgorgement of
6 profits, split into \$863,833 for deadweight loss and \$431,917 for disgorgement.

7 The Attorney General further requests that this Court conditionally certify a class of local
8 government entities plus the University of California and the State Bar of California (“Settlement
9 Class”)⁷ for settlement purposes only. The certification of such a class enables the Attorney
10 General to give defendants the global release of California government entity claims that they
11 bargained for.

12 As the State’s chief law enforcement officer who acted in the public interest in the pursuit
13 of these claims, the Attorney General is entitled to receive deference from courts in the review of
14 her settlements. Here, given the significant non-monetary and monetary relief obtained, the
15 settlements are well within the range of reasonableness to warrant preliminary approval.

16 II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

17 The Attorney General opened a formal investigation into allegations of a global price-fixing
18 conspiracy involving CRTs and conducted the investigation for a substantial period of time prior
19 to filing this lawsuit, using *inter alia*, her investigatory powers under California Government
20 Code section 11180 *et al.*, by issuing investigative subpoenas on a number of CRT manufacturers.

21
22
23 ⁶ The settlements provide for a nominal monetary amount for the Attorney General’s
24 *paren patriae* claims, which will be distributed *cy pres*, leaving intact California natural persons’
25 rights to receive monetary payment from the Indirect Purchaser Plaintiffs’ (“IPPs”) class action in
26 the federal MDL, where the IPPs have recovered a total of \$577 million. The federal court
27 recently acknowledged that California natural persons may obtain monetary relief for the
28 Attorney General’s *parens patriae* action through the federal IPP settlement fund. (Varanini
Decl., Exh. V[Order].)

⁷ The reason these two state agencies are included in the settlement class of local
government entities is that these agencies are autonomous under the California Constitution and
so cannot be represented by the Attorney General acting in a law enforcement capacity. (See,
e.g., Cal. Const., art. IX, sections 9 and 9(a).)

1 (Declaration of Emilio Varanini (“Varanini Decl.”), ¶ 8.) The Attorney General filed the present
2 complaint on November 8, 2011.

3 **Early Settlements and Cooperation in the Related *Chunghwa* Case.** At the same time
4 this lawsuit was filed, the Attorney General filed a parallel settlement complaint in this court
5 against Chunghwa Picture Tubes Ltd. (“Chunghwa”), *The State of California, et al. v. Chunghwa*
6 *Pictures Tubes Ltd.*, No. CGC-11-515786 (the “*Chunghwa* case”), which was later amended to
7 add Philips Electronics North America Corporation (“Philips”) as a defendant. (Varanini Decl., ¶
8 9.) Both complaints alleged that numerous CRT manufacturers engaged in a global conspiracy to
9 fix the price of CRTs and that California natural persons and government entities were
10 overcharged. Early in the Attorney General’s investigation, Chunghwa provided important
11 cooperation to the Attorney General’s development of evidence regarding the Asian aspects of the
12 conspiracy. (*Id.*) Philips provided important cooperation as to the European aspects of the
13 conspiracy and regarding North American information-exchange meetings. (*Id.*) Both the
14 Chunghwa and Philips settlements received final approval from the Court on December 10, 2013.
15 (*Id.*, Exh. K.) The Court found the non-monetary relief, including cooperation and injunctive
16 relief and compliance training to be valuable to Plaintiffs. (*Id.*, Exh. M at 73-75 [Tr. of Final
17 Approval Hg].)

18 **Coordinated Discovery with the Related MDL Case.** This case is related to parallel
19 federal cases filed on behalf of direct purchaser plaintiffs (DPPs), direct action plaintiffs (DAPs),
20 and indirect purchaser plaintiffs (IPPs), pending in the Northern District of California in *In Re:*
21 *Cathode Ray Tube (CRT) Antitrust Litigation*, Case No. 07-5944 SC, MDL No. 1917 (N.D. Cal.)
22 (the “MDL”), involving the same conduct and including the same defendants alleged here.
23 (Varanini Decl., ¶13.) Because of this overlap and to avoid duplicative discovery, the Attorney
24 General’s case was coordinated with the MDL for purposes of fact and expert discovery. (See
25 *Id.*, Exh. N [MDL Discovery Order].) As part of the coordination, the Attorney General’s Office
26 (“AGO”) attended over 95 depositions, examining witnesses in over 45 of those depositions,
27 often using the benefits of the cooperation provided from the AGO’s prior settlements. (*Id.*, ¶ 15.)
28 Indeed, the AGO took the lead in deposing a key European witness based on cooperation received

1 from Philips. (*Id.*) The AGO reviewed hundreds of written discovery responses and reviewed
2 tens of thousands of documents produced in the MDL as part of the coordinated work-up on
3 depositions as well as with respect to trial preparation. (*Id.*) The AGO also submitted its own
4 expert reports and was subjected to extensive expert discovery, including expert depositions on
5 subjects such as damages for government entities, natural persons, and deadweight loss. (*Id.*, ¶
6 16.)

7 **Independent Discovery in State Court.** After coordinated discovery in the MDL ended,
8 the AGO continued to conduct its own independent discovery in state court. The AGO
9 propounded interrogatories and requests for admissions. The AGO also responded to extensive
10 discovery requests, including answering numerous sets of special interrogatories and requests for
11 admissions, producing documents, and defending the depositions of six local government entities.
12 (*Id.*, ¶17.) The parties also engaged in numerous discovery disputes over the relevance and
13 burden of various discovery requests, the applicability of the MDL discovery cutoff date to the
14 state case, the timeliness of supplemental expert reports, and the scope of the government
15 investigation privilege. (*Id.*)

16 **Unsettled Legal Issues That Would Lead to Prolonged Appeals.** In spite of the
17 overwhelming evidence of defendants' participation in a global price-fixing conspiracy, the
18 Attorney General also recognized that there were a number of significant and unsettled legal
19 issues that could potentially reduce defendants' liability and recoverable damages and whose
20 resolution would likely involve prolonged appeals. (Varanini Decl., ¶18.)

21 These issues include the following:

22 Does the Foreign Trade Antitrust Improvements Act ("FTAIA") under state antitrust
23 laws and, if so, how is to be applied in this international price fixing case?⁸

24 Can collateral estoppel apply to the factual findings and legal conclusions in
Samsung's federal criminal guilty plea for the same conduct alleged in this case?

25 Can collateral estoppel apply to the factual findings and legal conclusions of the
26 European Commission's decision for the same conduct alleged in this case?

27 ⁸ The issue regarding FTAIA's applicability was fully briefed and a hearing was pending
28 when the final settlement in this case was reached. (Varanini Decl., ¶18.)

1 Is deadweight loss recoverable under either the injunctive or *parens patriae*
2 provisions of the Cartwright Act?

3 Is injunctive relief moot if CRTs are a nearly defunct technology but defendants
4 manufacture other products? Can the Attorney General obtain disgorgement of
5 profits as part of injunctive relief in order to restore competition?

6 To what extent can extrapolation be used to prove the government entities' claims for
7 damages?

8 How would the settlement of Indirect Purchaser Plaintiffs' class claims, which
9 includes Californian natural persons, impact this case?

10 (See, e.g., Varanini Decl., Exh. O [Feb. 11, 2015 Joint CMC Statement].)

11 **Settlement Negotiations and Agreements.** Settlement discussions between the AGO and
12 counsel for defendants began even before final approval of the earlier Chunghwa and Philips
13 settlements. (Varanini Decl., ¶19.) During mid to late-2014, the Attorney General settled with
14 LG and Panasonic. Thereafter, during early to mid-2015, she settled with Hitachi and Toshiba.
15 Finally, in February 2016, after vigorous litigation, she settled with Samsung.

16 All of these settlements were negotiated at arm's length and on a non-collusive basis by
17 counsel experienced in antitrust law. (*Id.*) The Honorable Vaughn A. Walker (Ret.), a former
18 federal judge experienced in antitrust law, mediated the Panasonic and Samsung settlements, and
19 he encouraged mediation in the Toshiba settlement. (*Id.*) Factors that shaped those settlement
20 discussions included: (1) the certification of an IPP class in federal court that included California
21 natural persons, lessening the need for the Attorney General to recover sums of money sufficient
22 to allow for such persons to obtain direct reimbursement of their claim in this action; (2) the
23 damages suffered by the California government entity plaintiffs were modest—\$5 million, and
24 the deadweight loss suffered by the state economy was also modest—\$9 million; (3) only
25 Samsung had pled guilty as a company and it paid only a \$32 million criminal fine; (4) non-
26 monetary relief was important to the Attorney General as the chief law enforcement officer acting
27 in the public interest; and (5) the risks, expense, complexity, and likely duration of further
28 litigation. (*Id.*)

29 All of the settlements provide for the certification of a Class of Government Entities for
30 settlement purposes only. (See, e.g., Varanini Decl., Exh. A at 2, Exh. B at 2-3.) All of the

settlements also have Amendments that serve two functions: (1) to ensure compliance with Code of Civil Procedure Section 664.6 such that the Court can retain jurisdiction over this case,⁹ and (2) to provide a slightly modified definition of the Settlement Class of Government Entities consistent with the court's suggestion in the *Chunghwa* case, should this Court so require.¹⁰ Copies of these five settlement agreements (and Amendments thereto) are attached as Exhibits A through J to the Varanini Decl.

III. SUMMARY OF SETTLEMENT TERMS

A. SUMMARY OF SETTLEMENT TERMS

The table below summarizes the components of the Attorney General's settlements:

Entity	LG	Panasonic/ MTPD	Hitachi	Toshiba	Samsung
Settlement Date	September 2014	December 2014	February 2015	August 2015	February 2016
Monetary	\$750,000	\$1,100,000	\$625,000	\$875,000	\$1,600,000
Injunction (enjoining price fixing, market allocation, and bid rigging which are per se illegal conduct under the Cartwright Act) ¹¹	3 years; applies to CRTs and other display screens	3 years for MTPD; applies to CRTs and other display screens	3 years for JDI (a spin-off of Hitachi, Toshiba, and Sony Corporation); extends to flat panel displays	4 years; applies to CRTs and other display screens; extends to parents and subsidiaries, and extends to JDI, as covered by the Hitachi settlement	5 years; applies to CRTs and other display screens; extends to all parents and subsidiaries

⁹ In reviewing the *Chunghwa* and *Philips* settlements, the court stated that its ability to retain jurisdiction over the case under Code of Civil Procedure section 664.6 requires signatures from a non-attorney representative for the settling defendant, a non-attorney representative for the City and County of San Francisco as the class representative, and counsel on behalf of the AGO given that the Attorney General is the representative for the State of California and the *parens patriae* claims brought on behalf of natural persons under California antitrust law and the California Constitution. (See Varanini Decl., ¶ 49.) The Amendments thus serve this function.

¹⁰ The original class definition set out in the Settlement Agreements is one that is typically used by the Attorney General in her settlements, and the federal court in *DRAM* case certified a nearly identical class to the one proposed here. (Varanini Decl., ¶ 35.) Mindful, however, that this Court may wish to follow the modified class definition used by its predecessor, the Amendments provide for the modified definition to be applicable to these settlements should this Court so require. (*Id.*)

¹¹ See Exhs. A at 6; C at 6; E at 7; G at 6; and I at 6.

Entity	LG	Panasonic/ MTPD	Hitachi	Toshiba	Samsung
Compliance Training (antitrust compliance education)¹²	Must certify they have compliance program; 3-year annual reporting requirement if reenter CRT market (compliance training for LCDs was covered by separate case)	Must certify they have compliance program; 3 year annual reporting requirement if reenter CRT market (compliance training for LCDs was covered by separate case)	JDI must certify it has compliance program; 3-year annual reporting requirement for JDI (a spin-off of Hitachi, Toshiba, and Sony Corporation)	Toshiba America must conduct compliance program; 3-year annual reporting requirement for Toshiba America across all product lines, including any Japanese employees seconded to Toshiba America	Must establish compliance training program; 5-year annual reporting requirement; extends to other display screens and lithium ion batteries
Cooperation¹³	Proffer; provide and authenticate documents; make employees available for depositions and trial	Provide confidential statements and materials from foreign enforcement agency; authenticate documents; make employees available for depositions and trial	Authenticate documents; make employees available for depositions and trial	Authenticate documents; make employees available for depositions and trial	Authenticate documents; make employees available for depositions and trial; Provide proffer and documents beyond CRT-price fixing conspiracy ¹⁴

(See Varanini Decl, Exh. A, C, E, G, and I.)

B. SCOPE OF RELEASE

In return for the monetary payment and non-monetary relief described above, the Settling Defendants are released from all claims relating to the allegations asserted or that could have been asserted in the Attorney General's complaint, up to the date of execution of the settlement agreements. (Varanini Decl., Exh. A at 8-11, Exh. C at 8-10, Exh. E at 9-11, Exh. G at 9-11, Exh.

¹² See Exhs. A at 6-7; C at 6-7; E at 7; G at 6-7; and I at 6.

¹³ See Exhs. A at 7, 11-13; C at 7, 11-13; E at 7, 11-13; G at 7, 11-13; and I at 76, 12-15.

¹⁴ The cooperation provisions applicable to Samsung include cooperation in a separate confidential investigation. (Varanini Decl., ¶ 28.)

1 I at 8-9.) Thus, the release does not cover future conduct. Indeed, it is the AGO's policy not to
2 release future conduct in settlement agreements. (*Id.*, ¶ 20.)

3 IV. PROPOSED ALLOCATION/DISTRIBUTION PLAN

4 The settlement agreements provide for the settlement funds to be used for any of the
5 following purposes, within the limits of applicable law: (1) reimbursement of Settling Plaintiffs'
6 attorney's fees and expenses; (2) compensation for damages sustained by Settling Plaintiffs, for
7 *inter alia*, harm to the general California economy; (3) deposit into an antitrust or consumer
8 protection account (e.g., revolving account, trust account, special fund) for use in accordance with
9 the laws governing such an account; (4) antitrust or consumer protection enforcement by the
10 Attorney General, and (5) costs of notice and settlement administration.¹⁵ (Varanini Decl., Exh. A
11 at 5-6, Exh. C at 6, Exh. E at 5-6, Exh. G at 6, Exh. I at 5-6.) The settlement agreements thus
12 recognize that the Attorney General acts in a law enforcement capacity in her claims for monetary
13 and injunctive/equitable relief in a price-fixing case, with the exception for the statutory
14 assignment of the damages claims of local government entities under the Cartwright Act.

15 The mix of monetary and equitable claims includes (1) damages/restitution for overcharges
16 paid by state and local government entities for computer monitors containing CRTs; (2)
17 damages/restitution for overcharges paid by natural persons under the Cartwright Act and the
18 Unfair Competition Law granting the Attorney General the authority to seek such damages in a
19 *parens patriae* capacity; (3) damages for deadweight loss to the general economy; (4) civil
20 penalties; and (5) equitable relief, including injunctive relief and disgorgement of profits. The
21 balancing of these claims in any allocation plan requires the Attorney General to account for
22 public interest considerations that involve compensation and deterrence considerations in this
23 case and in the future.

24 Accordingly, the Attorney General proposes the following allocation plan for the settlement
25 funds:

26 ¹⁵ Out of the \$625,000 from Hitachi, \$25,000 is to be used for the costs of notice and
27 settlement administration. (Varanini Decl., Exh. A at 6.) Out of the \$875,000 from Toshiba,
28 \$50,000 may be used for the costs of notice and settlement administration. (*Id.*, Exh. G at 6.)

1. \$75,000 for the costs of notice and settlement administration;
2. \$975,000 (20% of the settlement funds) for attorneys' fees and litigation costs;
3. \$330,000 for payments to the government entities whose claims are represented by the Attorney General in this action and who had to respond to discovery requests;
4. \$1,214,250 to be distributed *cy pres* for the benefit of the settlement class of government entities and for state agencies, split into \$1,032,113 for the settlement class and \$182,137 for state agencies;
5. \$195,000 to be distributed *cy pres* for the benefit of natural persons;
6. \$865,000 for civil penalties; and
7. \$1,295,750 to cover the deadweight loss and disgorgement claims, split into \$863,833 for deadweight loss to be distributed *cy pres* for the indirect benefit of the general economy of the State, and \$431,917 for disgorgement to the AGO pursuant to state and analogous federal law.

V. ARGUMENT

A. STANDARD FOR PRELIMINARY APPROVAL

California Rules of Court, Rule 3.769 requires court approval of class action settlements.¹⁶ The settlement of the Attorney General's *parens patriae* claims under the Cartwright Act also requires court approval. (Bus. & Prof. Code § 16709(c).) Court approval of a class action settlement is a two step-process involving a motion for preliminary approval, followed by a final approval hearing. (See Rule 3.769(c)-(g).) Neither Rule 3.769 nor state case law, however, specifies the standards governing preliminary approval. The Cartwright Act also does not specify the procedure or the standards for approving settlements obtained under *parens patriae*. However, this Court may look to federal law for guidance. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 239-40; cf. *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1392, fn. 18 [California courts may look to federal authority for guidance on matters involving class action procedures. (Citations omitted)].)

Federal courts apply the same two-step process for approving class action settlements to combined class action and *parens patriae* proceedings. (See *In re Mid-Atlantic Toyota Antitrust*

¹⁶ The Attorney General's action does not involve class claims except insofar she seeks provisional certification of a settlement class of government entities.

1 *Litig.* (1983) 564 F.Supp. 1379, 1383; see also *California v. eBay, Inc.* (N.D. Cal. Sept. 3, 2015)
2 No. 5:12-CV-05874-EJD, 2015 WL 5168666, at *2 [“Neither the Clayton Act nor the Cartwright
3 Act sets forth a standard by which proposed *parens patriae* settlements are approved, thus federal
4 courts have adopted the approval procedure and standards used for approval in class action
5 settlements.”].)

6 In the first step, the court reviews the proposed settlement to determine whether it is within
7 the “range of possible approval” to proceed with notice to the class and to schedule a fairness
8 hearing. (*In re Mid-Atlantic Toyota, supra*, 564 F.Supp. at p. 1384 [preliminary approval “is
9 simply a determination that there is, in effect, ‘probable cause’ to submit the proposal to members
10 of the class and to hold a full-scale hearing on its fairness”], citing *Manual for Complex Litigation*
11 § 1.46 at 62, 64-65 (5th Ed. 1982).) In the second step, following preliminary approval and
12 publication of class notice, “the court must conduct an inquiry into the fairness of the proposed
13 settlement” and enter judgment. (Cal. Rules of Court, rule 3.769, subds. (g) and (h).)

14 While the Attorney General’s pursuit of her claims, and her settlements, involve an
15 assessment of the public interest to which courts can and should defer, the court must still
16 determine if these settlements fall within the range of reasonableness if, as here, entry of a final
17 judgment that functions like a consent decree will be involved. (Cf. *United States Securities &*
18 *Exchange Commission v. Citigroup Global Markets, Ltd.* (2d Cir. 2014) 752 F.3d 285, 294-97
19 [discussing deference to and court assessment of SEC’s proposed consent decree].) As explained
20 below, these settlements fall well within the range of reasonableness.

21 **B. THE SETTLEMENTS FALL WITHIN THE RANGE OF REASONABLENESS,**
22 **ESPECIALLY IN ACCORDING DEFERENCE TO THE ATTORNEY GENERAL’S**
ASSESSMENT OF THE PUBLIC INTEREST.

23 **1. Arm’s Length Negotiations, Significant Investigation and Discovery,**
24 **Experience of Counsel, and Involvement of Government Plaintiffs.**

25 At the outset, all of the settlements were negotiated through arms-length bargaining by
26 experienced counsel, including experienced government attorneys in antitrust law, after
27 conducting extensive investigation and discovery, and with a full awareness of the strengths and
28

1 weaknesses of the case.¹⁷ (*See supra* at section II; Varanini Decl., ¶ 19.) Thus, this Court may
2 presume these settlements fall within the range of reasonableness for purposes of granting
3 preliminary approval. (*See In re Lorazepam & Clorazepate Antitrust Litigation* (D.D.C. 2002)
4 205 F.R.D. 369, 380 [settlement negotiated by government attorneys committed to protecting
5 public interest entitled to greater weight]; *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87
6 F.R.D. 15, 18, *aff'd*, (9th Cir. 1981) 661 F.2d 939 [“The fact that experienced counsel involved in
7 the case approved the settlement after hard-fought negotiations is entitled to considerable
8 weight.”]; see also, e.g., *Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723 [citing above
9 factors, including presence of government participant, as bearing on determination of
10 reasonableness]; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801-02 [same].) Indeed,
11 based on similar reasoning, this Court’s predecessor granted approval of the two earlier
12 Chunghwa and Philips settlements. (See Varanini Decl., Exh. M at 73-75 [Tr. of Final Approval
13 Hg].)

14 **2. Applicability of *Kullar v. Footlocker*.**

15 The following claims are before this Court in connection with the approval of these
16 settlements and allocation of settlement proceeds: (1) a class claim primarily on behalf of local
17 government entities; (2) a quasi-sovereign *parens patriae* claim brought on behalf of natural
18 persons resident in California; (3) law enforcement claims for civil penalties, deadweight loss,
19 and damages to the State of California itself; and (4) an equitable claim for disgorgement of
20 profits. The threshold question is whether *Kullar v. Footlocker* (2008) 168 Cal.App.4th 116,
21 which calls for a comparison of the value obtained in settlement for released claims versus a
22 hypothetical result on a good day had these claims gone to trial applies to each of these claims.

23 The first claim on behalf of the local government entities resembles the class claims at issue
24 in *Kullar* such that *Kullar* would apply, albeit with some additional deference to the Attorney
25 General in managing intergovernmental relations. Insofar as the second claim, the *parens* claim,

26
27 ¹⁷ In particular, the Panasonic and Samsung settlements were arrived at through mediation
28 by a very experienced former federal district court judge and antitrust expert, who also
encouraged mediation of the Toshiba settlement. (Varanini Decl., ¶ 19.)

1 is concerned, it is the Attorney General’s position that *Kullar* does not apply because, in contrast
2 to class actions, public interest considerations plays an important role in prosecuting *parens*
3 claims. (See, e.g., *State of Washington and People of the State of California et al. v. Chimei*
4 *Innolux Corp.* (9th Cir. 2011) 659 F.3d 842, 848 [noting “great distinction” between a *parens*
5 *patriae* lawsuit and a class action].)¹⁸ However, even assuming *Kullar* were to apply to *parens*
6 claims, the settlements fall well within the range of reasonableness in comparing what was
7 obtained in settlement versus what hypothetically could have been obtained at trial given the
8 strengths and weaknesses of the Attorney General’s claims and the risks and expense of
9 continued litigation.

10 The remaining claims are a different story as *Kullar* does apply to them at all. For the
11 damages suffered by the state government entities who paid overcharges, court approval of the
12 settlement is not required. The Attorney General brought these claims on behalf of the State, as
13 permitted by the Cartwright Act—Bus. & Prof. Code § 16750(b), as the chief law enforcement
14 officer of the State—Cal. Const., art. V, § 13. These claims are law enforcement claims that
15 cannot be brought by other parties and can be settled without court approval. (Compare, e.g.,
16 Bus. & Prof. Code § 16750(b) [no mention of need for court approval for compromise or
17 dismissal of claims brought by the Attorney General on behalf of the State of California] with id.
18 § 16760(c) [court approval required for compromise or dismissal of *parens patriae* claim brought
19 on behalf of California natural persons]; see generally *Citigroup*, 752 F.3d at 296-97 [discussing
20 need of courts to defer to public interest determinations of government enforcement agencies].)
21 Thus, the Court need not compare the settlements for any hypothetical result reached at trial as to
22 these claims, although court approval is still needed for the proposed allocation of some
23 settlement funds to these claims.

24 Similarly, the claims for deadweight loss, disgorgement of profits, and civil penalties are
25 claims that only belong to the State of California in which the Attorney General represents the

26 ¹⁸ Indeed, the court in the related *Chunghwa* case expressly questioned the applicability of
27 *Kullar* to *parens* cases. (See Varanini Decl., Exh. M [Tr. of Final Approval Hearing at 74-75 (“Is
28 *Kullar* even applicable here? . . . I think there is a substantial question as to whether the *Kullar*
analysis does apply to the *Parens Patriae* portion . . .”)]).

1 State as the chief law enforcement officer. (See, e.g., Bus. & Prof. Code §§ 16754.5, 17203,
2 17204.) Those claims do not involve the release of claims of third parties such as natural persons
3 or California local government entities. (See *id.*) No statutory provision requires the approval of
4 the Court prior to their release or dismissal. (See *id.*) And their release for consideration involves
5 only public interest considerations. (Cf. *Citigroup*, 752 F.3d at 294-95, 296-97 [deferring to
6 public interest determinations of government enforcement agency and contrasting aspects of a
7 government law enforcement agency's consent decree that involve damages for other parties with
8 aspects that involve other measures].) The Court thus need not compare the settlements to any
9 hypothetical result reached at trial as to these claims although it must still approve any allocation
10 of settlement funds to these claims as part of its overall assessment of the reasonableness of the
11 settlements so that it may enter a final judgment akin to a consent decree that includes a release of
12 these claims. (See *In re Tobacco Cases I* (2010) 186 Cal.App.4th 42, 45; cf. *Citigroup*, 752 F.3d
13 at 294-95, 296-97.)

14 Keeping in mind the foregoing as to the scope of *Kullar's* application to the Attorney
15 General's various claims, the settlements fall well within the range of reasonableness.

16 3. The Significance of Non-Monetary Relief.

17 The non-monetary components of the settlements by themselves are significant and
18 reasonable. In considering the public interest, the Attorney General has valued non-monetary
19 relief, such as injunctive relief and compliance training, in nationwide and international price-
20 fixing cases as a means of bringing value back to the California economy, California natural
21 persons, and California government entities. (Varanini Decl., ¶ 21, Exh. Q at pp. 19-22 [Tr. of
22 *DRAM* Preliminary Approval Hg].) Indeed, in approving the earlier Chunghwa and Philips
23 settlements, the court found the injunctive relief, compliance training, and cooperation to be of
24 great value. (See *Id.*, Exh. M at 80-81 [Tr. of Final Approval Hg].) Further, non-cash
25 components in similar price-fixing cases where the Attorney General has been involved were
26 found to be of great value even though they were not as far reaching as the ones here. (See
27 Report & Recommendation of Special Master, Part I: Settlement Class Certifications and Plans of
28 Allocation and Distribution of the Settlement Proceeds to the Settlement Classes, pp. 70-74, *In re*

1 *DRAM Antitrust Litigation*, MDL No. 1486 (N.D. Cal. June 27, 2014), Dkt. 2235 (hereinafter
2 “*DRAM R&R I*”),¹⁹ attached as Exhibit P to the Varanini Decl.) And while it is not possible to
3 place a cash equivalent value to the non-monetary relief obtained, it is noteworthy that the non-
4 monetary relief secured here is close to what the Attorney General would have sought at trial.
5 (*Id.*, ¶ 21.)

6 **a. Injunctive Relief**

7 As the State’s chief law enforcement officer, injunctive relief is highly valued by the
8 Attorney General. (Varanini Decl., ¶ 24.) Recognizing the importance of injunctive relief, the
9 Cartwright Act authorizes the Attorney General to secure any relief necessary “*to restore and*
10 *preserve fair competition.*” (Bus. & Prof. Code, §16754.5 (*emphasis added*).) In addition, the
11 Unfair Competition Law authorizes the Attorney General to seek injunctive relief against any
12 person engaged in unfair competition, and further authorizes the Attorney General to obtain civil
13 penalties for violation of such injunction. (Bus. & Prof. Code §§ 17203, 17207.) The California
14 Supreme Court has also affirmed the importance of injunctive relief to the Attorney General.
15 (See *People v. Pacific Land Research Co.* (1977) 20 Cal.3d 10, 17 [“An action filed by the People
16 seeking injunctive relief and civil penalties is fundamentally a law enforcement action designed to
17 protect the public and not to benefit private parties. . . . The request for restitution on behalf of
18 vendees in such an action is only ancillary to the primary remedies sought for the benefit of the
19 public.”].)

20 Here, the injunctive relief bans price fixing, market allocation, and bid-rigging, which are
21 *per se* violations of the Cartwright Act. The ban applies not only to CRTs but extends to other
22 display screens and, with one exception, applies to foreign parents and multiple subsidiaries over
23 a time period of three to five years.²⁰ (Varanini Decl., ¶ 24.) The bans are particularly notable for

24 ¹⁹ The Special Master in *DRAM* provided a thoughtful analysis of many of the same issues
25 raised in this Motion, and because his report was fully adopted by the court, it is referenced
26 throughout this Motion. (See Order Granting Preliminary Approval, *In re DRAM Antitrust*
27 *Litigation*, MDL No. 1486, Dkt. 2235 (N.D. Cal. Filed Jan. 17, 2014), Order Granting Final
28 Approval, *In re DRAM Antitrust Litigation*, MDL No. 1486, Dkt. 2235 (N.D. Cal. Filed June 27,
2014), *last appeal dismissed*, Order Dismissing Appeal, *In re DRAM Antitrust Litigation*, No. 14-
16342, Dkt.33 (9th Cir. Dec. 3, 2015).)

²⁰ The one exception, Panasonic, involved a more complex set of trade-offs between

(continued...)

1 Hitachi and Samsung: Hitachi because JDI is subject to that injunctive relief even though it is a
2 company that took over the display manufacturing arms of Hitachi, Toshiba, and Sony; and
3 Samsung, because the ban lasts five years, includes Samsung's parent in Korea and all its foreign
4 subsidiaries sued by the Attorney General. (*Id.*) Moreover, the significance and value of the
5 injunctive relief obtained by the Attorney General goes beyond a mere promise to obey the law.
6 The ban is clear and understandable on its face and its violation could enable the Attorney
7 General to ask for civil or criminal contempt.²¹

8 **b. Compliance Training**

9 The compliance training is important to restore a culture of competition within the
10 defendant companies, thus aiding the injunctive relief obtained in restoring competition in the
11 market, which is valuable to the Attorney General.²² (Varanini Decl., ¶ 25.) The compliance
12 training applies to employees responsible for pricing and sales of CRTs and other display
13 technologies and will include training on antitrust laws. Annual reports are required on the
14 progress of that training, for a period ranging from three to five years for foreign parents and
15 various subsidiaries.²³ The compliance training obligations are again particularly significant for
16 Hitachi, Toshiba, and Samsung: Hitachi's obligations extend to JDI; Toshiba's obligations extend
17 across all of the product lines handled by its U.S. subsidiary as well as to any Toshiba employees
18 from Japan seconded to the U.S. subsidiary; and Samsung's obligations extend to its foreign
19 parent and those foreign and domestic subsidiaries sued by the Attorney General as well as to its
20 CRTs, flat panels, and lithium ion battery products.

21 (...continued)

22 cooperation and injunctive relief brokered by the mediator based on Panasonic's contention that
23 the evidence was insufficient to hold the parent company in Japan liable for the CRT conspiracy.
(Varanini Decl., ¶ 24.)

24 ²¹ See, e.g., *Wanke v. Sup. Ct.* (2012) 209 Cal.App.4th 1151, 1165-66; *People ex rel.*
Lockyer v. R.J. Reynolds Tobacco Co., (2004) 116 Cal.App.4th 1253, 1283-1288; see also *United*
States v. Microsoft (D.D.C. 1998) 147 F.3d 935, 940; accord, *FTC v. Kuykendall* (10th Cir. 2004)
371 F.3d 745, 763.

25 ²² The United States Department of Justice ("USDOJ") has also recognized the
26 importance of implementing verifiable compliance training as a means of restoring a culture of
27 competition to affected companies to the benefit of future consumers. (Varanini Decl., Exh. R.)

28 ²³ The annual reporting requirement applies to LG and Panasonic/MTPD only if they
reenter the CRT market; however, they are still required to certify that they have an antitrust
compliance training programs in place. (*Id.*, Exhs. A at 6; C at 6.)

1 **c. Early and Continuing Benefits of Cooperation**

2 The Attorney General has already benefitted significantly in this case from the cooperation
3 provided by LG and Panasonic pursuant to their early settlements. (Varanini Decl., ¶ 27.) LG
4 provided a proffer. (*Id.*) Panasonic's cooperation, which was unique in the experience of the
5 AGO, involved obtaining (1) documents generated by a foreign antitrust enforcer and potential
6 access to documents seized by that enforcer and (2) a jurisdictional declaration by a Chinese
7 company. (*Id.*) This cooperation was important to developing evidence on FTAIA issues and on
8 further developing the Asian aspects of the conspiracy. (*Id.*) The cooperation requirements for
9 all five defendants are also designed to facilitate the introduction of evidence at trial, including
10 providing access to employees for deposition and trial, and authenticating documents. Should a
11 defendant terminate its settlement agreement or otherwise backslide on their commitments, these
12 provisions will become an important part of the AGO's trial preparation against that defendant
13 and facilitate the introduction and use of documents and data and the presentation of fact
14 witnesses. Finally, the cooperation provisions applicable to Samsung are valuable to the Attorney
15 General because it includes cooperation in a separate confidential investigation.²⁴ (*Id.*, ¶ 28.)

16 **4. The Significance and Value of Monetary Relief.**

17 The monetary relief secured by the Attorney General is also reasonable. The reasonableness
18 of monetary relief secured in an antitrust action should be compared with actual damages, rather
19 than trebled damages (which one would obtain only after trial). (See, e.g., Varanini Decl., Exh. P
20 at pp. 151-52, 156-57 [DRAM R&R Part I] (summarizing case law supporting the imposition of a
21 single damages cap in *DRAM* as a means of balancing out the interests of small claimants against
22 corporate claims); see also, e.g., *In re Lupron Marketing and Sales Practices Litig.*, 677 F.3d 21,
23 34-35 (1st Cir. 2012) [payment of residual funds to *cy pres* recipients preferable to payment of
24 trebled damages as such trebled payment is overcompensation].)

25
26
27 ²⁴ USDOJ has recognized the importance of securing cooperation not just from those who
28 first disclose a price-fixing conspiracy but also from those who follow and provide important
information as to the conspiracy and as to other conspiracies. (Varanini Decl., Exh. S.)

1 To the extent that cases like *Kullar* and *Citigroup* call for a comparison of the settlement
2 amounts to damages sought, such comparison is required only where a settlement will release the
3 rights of third parties and prevent them from filing their own suits. (See, e.g., *Kullar*, *supra*, 168
4 Cal.App.4th at pp. 128-30; *Citigroup*, 752 F.3d at pp. 294-95.) As noted above, the only aspects
5 of the monetary relief secured by the Attorney General that fit within that bucket are the class
6 claims of primarily local government entities and, for the sake of argument, the quasi-sovereign
7 *parens* claims brought on behalf of Californian natural persons. However, both sets of claims
8 satisfy a *Kullar* analysis.

9 **a. *Kullar* analysis to the class of local government entities.**

10 In applying *Kullar*, this Court should apply a measure of deference to the Attorney General
11 given that her choice to allocate settlement processes to this class, as well as to bargain for non-
12 monetary versus monetary relief, involves public interest determinations made by her in
13 managing intergovernmental relationships, (Varanini Decl., ¶ 38.) Applying such deference, the
14 settlement of this aspect of the Attorney General's case satisfies *Kullar* when viewed in the
15 context of the overall monetary aspects of her settlements. The State's expert estimated total
16 damages for the State and local government entity plaintiffs named in the complaint at \$5.2
17 million. (*Id.*, ¶ 37.) Because the settlement class of government entities includes all political
18 subdivisions and public agencies in the State, plus the University of California and the State Bar
19 of California, it is estimated that the damages for the proposed settlement class is roughly \$8.7
20 million. (*Id.*) Thus, the proposed allocation of \$1,032,113 plus \$330,000 in incentive payments to
21 the local government entities (plus the University of California) named in the Complaint is
22 inherently reasonable as 15.66% of total single damages. (See, e.g., *Sullivan*, 667 F.3d at 324
23 [settlement that is 10.93% of potential recovery is reasonable]; *County of Suffolk v. Long Island*
24 *Lighting Co.* (2nd Cir. 1990) 907 F.2d 1295, 1324 & n. 17 [settlement that is 11.4% of potential
25 recovery is reasonable].) Plus, the forward-looking injunctive relief and compliance training
26 obtained has considerable value to the settlement class as it helps ensure that they will pay low
27 prices for non-CRT products going forward. (Varanini Dec., ¶ 25.) And the value of this
28 monetary relief goes up when compared against the litigation risks as discussed below.

1 **b. *Kullar* analysis (if applicable) to the *parens patriae* claim.**

2 If *Kullar* is to be applied to the *parens* claim, it must be done taking account of two factors.
3 First, the Attorney General can and has here made public interest determinations of the
4 appropriate mix of non-monetary and monetary relief that would benefit her citizens. (Varanini
5 Decl., ¶¶ 21, 38.) Those public interest determinations inherent in her mandate and absent from
6 class actions deserve respect without the need for a formal (and likely speculative) quantification
7 of the non-monetary relief. (See *People v. Pacific Land Research Co.*, *supra*, 20 Cal.3d at p. 17.)

8 Second, because any recovery of *parens* damages is statutorily required to be offset by
9 private class recoveries attributable to California natural persons' damages—see Bus. & Prof.
10 Code § 16760(b), those recoveries must be factored into any *Kullar* analysis. (See *Citigroup*,
11 *supra*, 752 F.3d at pp. 294-95 [noting that because private parties are free to file their own claims,
12 the extent to which a federal government enforcement agency recovers private losses is not as
13 important as it would be in class actions].)

14 As this Court is aware, there is a parallel IPP class action in the MDL that includes the
15 same claims made here on behalf of California natural persons. (Varanini Dec., ¶ 13.) That class
16 action has achieved settlements (the “IPP settlement”) that the Attorney General believes, based
17 on her assessment of this case and her involvement with class counsel in past international price-
18 fixing cases, to be reasonable (see *id.* at ¶ 31) and that have already received preliminary approval
19 (*id.*). Indeed, this outcome motivated the Attorney General's coordination of her case with the
20 IPPs, a point recognized by the MDL federal court when it recently extended the claims deadline
21 for California natural persons precisely to enable coordination between the settlement process in
22 this court and the federal settlement process. (*Id.*, Exh. V.) Thus, to the extent that *Kullar* applies
23 to *parens* claims, a comparison of the settlement amount to damages sought must also take into
24 consideration the monetary recovery obtained in the IPP settlement. Based on the total IPP
25 settlement of \$577 million, and based on calculations by the IPP's expert indicating that
26 approximately 9.4% of the nationwide class damages can be ascribed to California natural
27 persons, it is estimated that, after deducting for attorneys fees and costs, roughly \$36 million of
28 the IPP settlement can be ascribed to California natural persons. (*Id.*, ¶¶ 30-31, Exhs. T and U.)

1 Given that the State's expert estimated damages for California natural persons to be roughly \$249
2 million, the Attorney General believes the IPP's settlement for California natural persons to be
3 entirely reasonable as it is approximately 14.46% of single damages. (Varanini Decl., ¶ 31; see
4 also *Sullivan, supra*, 667 F.3d at p. 324 [settlement that is 10.93% of potential recovery is
5 reasonable]). The Attorney General's settlement thus provides for only a nominal monetary
6 amount of \$195,000 for the *parens* claims, to be distributed *cy pres*, precisely because California
7 natural persons have been and still will be able to file direct claims for compensation from the IPP
8 settlement. And again the value of the settlement of the *parens* claim only increases when
9 litigation risk is taken into account.

10 **c. Litigation risk factoring into the reasonableness of settlements**
11 **and *Kullar* analyses.**

12 As discussed above in Section II, while there was overwhelming evidence of defendants'
13 participation in a global price-fixing conspiracy, there were a number of significant legal issues,
14 including the applicability of the FTAIA, that raised questions as to defendants' liability, and that
15 likely would have required appellate resolution. (Varanini Decl., ¶18.) There were also other
16 litigation risks involving the scope of a defendant's liability to the extent a defendant claimed a
17 change corporate form or exit from the CRT manufacturing market. (Varanini Decl., ¶ 18.) For
18 example, LG, Toshiba, and Panasonic all claimed to have turned over CRT manufacturing to joint
19 ventures; these defendants would have argued that the change of corporate form insulated them
20 from liability. (*Id.*) Hitachi claimed to have stopped manufacturing CRTs by 2003 which it
21 would have argued constitutes withdrawal. (*Id.*) While the Attorney General believes it could
22 have successfully defeated these arguments, these issues remained unsettled. Given the risks,
23 expenses, and lengthy duration of further litigation, and given the Attorney General's public
24 interest considerations, the non-monetary and monetary relief obtained can be viewed as a
25 reasonable compromise that falls well within the range of reasonableness.

26 For all of the foregoing reasons, these settlements fall within the range of reasonableness
27 and, as such, should receive preliminary approval. They offer no ground to doubt their fairness or
28

1 reveal any other obvious deficiencies. (*Dunk, supra*, 48 Cal.App.4th at pp. 1802-03; see also 7-
2 *Eleven Owners v. Southland Corp.* (2001) 85 Cal.App.4th 1135, 1145.)

3 **C. THE PROPOSED ALLOCATION/DISTRIBUTION IS REASONABLE**

4 Allocation plans involve the exercise of equitable discretion, and here the Attorney
5 General's proposed plan involves public interest considerations that warrant deference; thus, they
6 are reviewed for reasonableness and with the understanding that no plan of allocation can be
7 perfect. (See, e.g., *DRAM R&R*, Part I, *supra*, pp. 87-89, 144-47 [collecting and discussing
8 cases], attached as Exh. P to the Varanini Decl.) Because several components of the proposed
9 allocation plan involve *cy pres* distribution, *cy pres* will be discussed first, followed by a
10 discussion of how the proposed allocation plan otherwise is reasonable.

11 **1. Cy Pres.**

12 *Cy pres* is greatly valued under California law and has been found appropriate when it is
13 difficult or impossible to compensate direct victims of the alleged wrong doing. (See, e.g.,
14 Historical and Statutory Notes to Bus. & Prof. Code, § 16760, subd. (e)(1), Stats.2001, c. 74
15 [A.B.260] [the California *parens* statute was amended to provide that “[i]n exercising its
16 discretion, the court may employ *cy pres* or fluid recovery mechanisms as a way of providing
17 value to persons injured as a result of a violation of this chapter.”]; *State of California v. Levi*
18 *Strauss* (1986) 41 Cal.3d 460, 479; *In re Vitamin Case* (2003) 107 Cal. App. 4th 820, 823, 830 &
19 n. 2 (approving \$38 million in cash, distributed to charitable and non-profit organizations which
20 promote the health and nutrition of consumer class members]; see also *DRAM R&R I, supra*, at
21 pp. 157-62 [collecting and discussing Ninth Circuit and state cases], attached as Exh. P to
22 Varanini Decl.)

23 Here, the allocation plan proposes the following three *cy pres* distributions: (1) \$195,000
24 for the benefit of natural persons; (2) \$1,032,113 for the benefit of the settlement class of local
25 government entities; (3) \$ 182,137 for the benefit of state agencies; and (4) \$863,833 for the
26 indirect benefit of the general economy of the State. All four proposed *cy pres* distributions are
27 appropriate. First, with respect to California natural persons, given there are over a million
28 potential claimants, allowing for individual claims is clearly impracticable as distribution and

1 administrative costs would certainly exceed recovery. (Varanini Decl. ¶ 33; see also *In Re*
2 *Vitamins Case*, *supra*, 107 Cal.App. at 830 [noting that allowing for individual claims would be
3 incongruous where distribution and administrative costs would exceed recovery].) Second, with
4 respect to the settlement class of local government entities, allowing for individual claims also
5 would be impracticable because there are approximately 4,000 class members and they would
6 receive only *de minimus* awards even without factoring in administrative costs. (*Id.*) Similarly,
7 for the state agencies, allowing for individual claims would be impracticable because there are
8 approximately 150 state agencies and they would receive only *de minimus* awards even without
9 factoring in administrative costs. (*Id.*) Finally, with respect to the general economy of the State,
10 direct distribution is impossible because the harm suffered is to the general economy and there are
11 no “direct” victims. *Id.*)

12 In selecting *cy pres* recipients, the Attorney General follows a strict policy to ensure a
13 selection of geographically diverse recipients who will use the grants for the indirect benefit of
14 natural persons, government entities, or the economy of the State respectively as well as to avoid
15 self-dealing. (Varanini Dec., ¶ 38; see also *DRAM R&R I*, *supra*, pp. 159-61 [describing policy],
16 attached as Exh. P to Varanini Decl.) That policy matches the requirement imposed by the Ninth
17 Circuit in *Nachshin v. AOL* (9th Cir. 2011) 663 F.3d 1034, 1040.

18 This Court has indicated that it would be preferable to select the *cy pres* recipient at the
19 time of preliminary approval. (See Judge Curtis E.A. Karnow, Class(ic) Settlement Problems,
20 Selected Works (Oct. 2014) available at http://works.bepress.com/curtis_karnow/18/ <visited on
21 January 10, 2016>.) However, as the AGO previously testified in the DRAM matter, it would be
22 premature to select *cy pres* recipients before knowing the amount of funds available for
23 distribution and when they will be available; by the time the funds are ready to be disbursed, new
24 *cy pres* recipients may well need to be selected. (See Varanini Decl. Exh. U [Declaration of
25 Kathleen E. Foote at ¶¶ 7-8]; see also *id.*, Exh. V [Declaration of Harry Snyder, noted *cy pres*
26 expert, at ¶ 8]; see also *California v. eBay, Inc.* (N.D. Cal. Aug. 29, 2014) Order Granting
27 Preliminary Approval, No. 5:12-CV-05874-EJD, 2014 WL 4273888, at *6 [“ . . . this court grants
28 preliminary approval of the *cy pres* provision, reserving comment on the proposed recipients at

1 final approval.”].) Further, courts in the Northern District of California have held that there is no
2 requirement for, or need to, disclose the *cy pres* recipients in advance in the class notice. (See
3 *Winans v. Emeritus Corporation* (N.D. Cal., Jan. 11, 2016, No. 13-CV-03962-HSG) 2016 WL
4 107574, at *4 [finding no requirement that a specific *cy pres* recipient must be identified in the
5 class notice]; see also *Zeisel v. Diamond Foods, Inc.* (N.D. Cal. Oct. 16, 2012, No. 10-cv-01192-
6 JSW) 2012 WL 4902970, at *2 [approving settlement where parties did not identify *cy pres*
7 recipient in class notice].) Accordingly, the AGO respectfully requests deferring the selection of
8 *cy pres* recipients until after the amounts and timing of any *cy pres* distributions have been
9 determined.

10 **2. Reasonableness of Allocation Plan Among Different Types of Claims.**

11 The rest of the proposed allocation plan falls well within the range of reasonableness. First,
12 California natural persons will have an additional opportunity to make direct claims against the
13 federal IPP settlement fund; thus, it is appropriate to reserve only a nominal amount of these
14 settlements funds to be distributed *cy pres* for their indirect benefit. (Cf., e.g., *In re Compact Disc*
15 *Minimum Advertised Price Litigation* (D. Me. 2003) 216 F.R.D. 197, 208-210, 214 [split
16 distribution plan proposed by state attorneys general with direct distribution of cash, and *cy pres*
17 distribution of music CDs plus cash residue, approved by court]; *In re Mexico Money Transfer*
18 *Litigation* (N.D. Ill. 2000) 164 F.Supp.2d 1002, 1010-11, *aff'd*, (7th Cir. 2001) 264 F.3d 743
19 [split distribution plan with cash and *cy pres* residue approved by court].)

20 Second, allocating less than the total amount of settlement funds (minus an amount to cover
21 notice, attorneys’ fees, and litigation costs) to state and local government entities recognizes that
22 their damages were a relatively smaller part of a law enforcement case alleging a global price-
23 fixing conspiracy, and in which claims for deadweight loss, civil penalties, and disgorgement of
24 profits were important and quite sizeable. (Varanini Dec., ¶ 34.) And all of these law
25 enforcement claims involve claims of the State itself in which the State is politically accountable
26 for how it allocates settlement proceeds amongst those claims. (See *Citigroup, supra*, 752 F.3d at
27 p. 294.)
28

1 Moreover, although every claim had its strengths and weaknesses, those law enforcement
2 claims involving monetary equitable relief (e.g., deadweight loss, disgorgement, and civil
3 penalties) had a greater chance of surviving dismissal on the FTAIA grounds. (See, e.g.,
4 *Motorola Mobility LLC v. AU Optronics Corp.* (7th Cir. 2015) 775 F.3d 816, 826 [noting that
5 there was a difference between a government suit seeking to impose penalties or injunctive relief
6 and a private action seeking damages for purposes of applying the FTAIA].) Further, there were
7 special risks and uncertainties in proving damages for the government entity claims as it would
8 involve questions as to what extent extrapolation can be used to prove up these individual claims.
9 (See, e.g., *Duran v. U.S. Bank Nat'l Assn.* (2014) 59 Cal.4th 1, 38-40, 49 [noting that
10 extrapolation to prove classwide liability and damages involve issues that are far from settled and
11 must account for case-specific deviations in the evidence even if there is more tolerance of
12 uncertainty as to damages than as to liability].)

13 Recognition of these equitable considerations is appropriate in devising an allocation plan
14 where the settlement funds are inadequate to fully satisfy all claims. (See, e.g., *Curtiss-Wright*
15 *Corp. v. Helfand* (7th Cir. 1982) 687 F.2d 171, 174-75; accord, e.g., *In re Holocaust Victim*
16 *Assets Litig.* (2d Cir. 2001) 413 F.3d 183, 186; *7-Eleven Owners, supra*, 85 Cal.App.4th at 1162-
17 63 [citing *Curtiss-Wright* and noting that such differences need only be rational].) It is especially
18 appropriate here where the Court may defer to the Attorney General's calculus of the public
19 interest in allocating rationally among competing claims. (Cf. *Citigroup*, 752 F.3d at p. 296
20 noting substantial deference is owed to public interest determinations by a government
21 enforcement entity insofar as a consent decree is concerned].)

22 Finally, to allow the Attorney General to allocate portions of the settlement funds to satisfy
23 these different claims would also comport with the terms of the settlement agreements that allow
24 for such an allocation in the equitable discretion of the Attorney General in exchange for the
25 release of the underlying claims. (See, e.g., *Kiler v. Elf Atochem N. Am., Inc.* (5th Cir. 2011) 658
26 F.3d 468, 475-79 [in determining distribution questions such as the distribution of remaining
27 funds, a court must give controlling effect to the terms of the settlement agreement].)
28

1 **D. THE PROPOSED ALLOCATIONS TO COVER ATTORNEYS’ FEES AND COSTS**
2 **AND TO AWARD INCENTIVE AWARDS ARE REASONABLE.**

3 The reasonableness of a claim for fees and costs requires an independent assessment from
4 the reasonableness of the settlement itself. (See, e.g., *In re Consumer Privacy Cases* (2009) 175
5 Cal.App.4th 545, 555.) The Attorney General proposes that 20% of the common fund be
6 allocated to cover fees and costs. As set out *supra* at section II, the AGO engaged in significant
7 fact and expert discovery – both in coordination with discovery in the MDL and independently in
8 state court after coordination in the MDL ended. (Varanini Dec., ¶¶ 15-17.) The proposed
9 amount is below a typical 25% benchmark for reasonable common fund attorneys fees (see, e.g.,
10 *In re Consumer Privacy Cases, supra*, 175 Cal.App.4th at p. 557 fn.13; *In re Bluetooth Headset*
11 *Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 942), and is consistent with the statutory
12 minimum of 10% (see Bus. & Prof. Code § 16750, subd. (c)). The proposed amount also is far
13 below the actual amount expended by the AGO in pursuing this litigation.²⁵ (Varanini Dec., ¶ 47.)

14 The Attorney General also proposes that the 33 individually named local government
15 entities (plus the University of California) whose claims were represented by the Attorney
16 General in this case each be awarded \$10,000. While only the City and County of San Francisco
17 is serving as the class representative, individual claims were brought on behalf of all 33 entities,
18 and their role in this case is distinguishable from that of the absent members of the settlement
19 class. (*Id.*, ¶ 48.) Unlike the absent class members, all 33 entities provided meaningful and
20 valuable assistance to the Attorney General’s Office by gathering and producing documents and
21 information in response to numerous discovery requests. (*Id.*) Indeed, six of the entities
22 expended even more considerable resources by giving depositions. (*Id.*) Accordingly, incentive

24 ²⁵ The California Supreme Court has accepted review in a case involving the issue of
25 whether a trial court may “anchor its calculation of a reasonable attorney’s fees award in a class
26 action on a percentage of the common fund recovered.” (*Laffitte v. Robert Half International, Inc.*
27 (*Brennan*), review granted Feb. 25, 2015, S222996.) Should the Supreme Court rule, prior to the
28 final approval hearing, that a common fund approach is inappropriate in class actions, the
 Attorney General is prepared to either (a) distinguish her actions under the Cartwright Act from
 class actions and/or (b) provide a lodestar cross-check in which she will demonstrate that her fees
 and costs far exceed 20% of the common fund. (Varanini Dec., ¶ 47.)

awards are appropriate these 33 entities. (See, e.g., *Sullivan, supra*, 667 F.3d at p. 333; see also *DRAM R&R*, Part I, *supra*, pp. 187-194, attached as Exhibit P to the Varanini Decl.)

E. THE PROPOSED CLASS OF GOVERNMENT ENTITIES SATISFIES THE CRITERIA FOR CLASS CERTIFICATION AND SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES.

In accordance with the Settlement Agreements, the Attorney General requests that this Court certify the following class (“Settlement Class of Government Entities”) for purposes of these settlements only:

All political subdivisions and public agencies in California (i.e., counties, cities, K-12 school districts, and utilities), plus the University of California and the State Bar of California, that have purchased CRTs and/or CRT products during the Relevant Period [defined as March 1, 1995 through November 30, 2007]. Excluded from this definition are all state agencies that either constitute an arm of the State of California under the Eleventh amendment of the U.S. Constitution or are not otherwise treated under California law as being autonomous from the State of California itself.

This Court’s predecessor previously certified for settlement purposes an identical class of government entities with the identical class representative (the City and County of San Francisco) after methodically going through the criteria involved for class certification.²⁶ (See Varanini Decl., Exh. M at 72-73 [Tr. of Chunghwa Final Approval Hg].) And the United States District Court for the Northern District of California certified a nearly identical class, with the current proposed class representative being one of three class representatives, for purposes of settlement in the *DRAM* price-fixing case. (Varanini Decl., Exh. Y at 3-5 [Order Granting Final Approval].)

When certifying a settlement class as opposed to a litigation class, courts may use a lower level of scrutiny. (*Dunk*, 48 Cal.App.4th at p. 1807, fn. 19.) This is because litigation manageability is not an issue in the context of settlement, and protection of “the interests of the nonrepresentative class members ... as it relates to commonality of issues...are protected by the

²⁶ The court used a modified definition for purposes of clarification, but the modified definition did not otherwise change the substance of the class. (Varanini Decl., ¶ 35.) This modified definition is set forth in the Amendments and provides as follows: All political subdivisions of the State of California, plus the University of California and the State Bar of California, that indirectly or directly purchased Cathode Ray Tubes (“CRTs”) and/or products containing CRTs (including but not limited to computer monitors and televisions) between March 1, 1995 and November 25, 2007 (the “relevant period”). The term “political subdivisions” is defined as all government entities authorized under California state law but without statewide jurisdiction. (Varanini Decl., Exhs. B, D, F, H, J.)

trial court's fairness review of the settlement.” (*Id.*; see also *Sullivan v. DB Investments, Inc.* (3d Cir. 2011) 667 F.3d 273, 303-04.)

Certifying a settlement class is appropriate when (1) common questions of law and fact predominate over questions affecting the individual members; advantageous for litigants; (2) the class representative's claims are typical of the class; and (3) the class representative can fairly and adequately protect the interests of the class. (See, e.g., *Wershba, supra*, 91 Cal.App.4th at p. 238; see also *Sullivan*, 667 F.3d at p. 296). Class certification also requires that the class be sufficiently numerous that it would be a superior means of effectuating the settlement. (*Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1089.) These criteria are all met here.

1. There are common issues of law and fact that predominate over issues affecting individual members.

The commonality requirement is satisfied if “each member must not be required to individually litigate numerous and substantial questions” and the “issues which may be jointly tried, when compared with those requiring separated adjudication, [are] sufficiently numerous and substantial to make the class action advantageous to the judicial process and to the litigants.” (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1108.) Further, “[p]redominance is a comparative concept, and the ‘necessity for class members to individually establish eligibility and damages does not mean individual fact questions predominate.’” (*Save-On Drugs Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 334.)

Here, the class members share common questions of law and fact revolving around the defendants' alleged conspiracy to fix the price of CRTs, including the existence, scope, effectiveness, and implementation of the conspiracy that are central to each class member's claims. Similar common questions routinely satisfy the commonality requirement in other antitrust class actions. (See, e.g., *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.* (N.D. Cal. June 5, 2006) Case No. M 02-1486 PJH, 2006 WL 1530166, at *3 [“the very nature of a conspiracy antitrust action compels a finding that common questions of law and fact exist”], quoting *In re Rubber Chern. Antitrust Litig.* (N.D. Cal. 2005) 232 F.R.D. 346, 351.) Moreover, allegations of a conspiracy to fix prices generally establish common questions that

1 “predominates” over any questions affecting only individual members. (*B.W.I. Custom Kitchens*
2 *v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1348.) The court in the related Chunghwa
3 case found this criteria readily met as to the same settlement class as that proposed here.
4 (Varanini Decl., Exh. M at 73:2-6 [Tr. Final Approval Hg (“[The] class consist of numerous
5 government entities that share common questions of fact and law that predominate over
6 individual questions . . .”)].)

7 **2. The class representative’s claims are typical of class member’s claims.**

8 To satisfy the typicality requirement, the class representative’s claims must be similar to
9 those of other members of the proposed settlement class, but they need not be identical. (See, e.g.
10 *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46; *Richmond v. Dart Industries, Inc.* (1981) 29
11 Cal.3d 462, 470.) The class representative’s claims are typical of those of the settlement class as
12 a whole if they (1) arise from the same event or course of conduct that gives rise to the claims of
13 other class members, and (2) they are based on the same legal theory. (See *Classen, supra*, 145
14 Cal.App.3d at 47-48.)

15 Here, the claims of class representative City and County of San Francisco are typical of the
16 claims of the class members because they all purchased, directly or indirectly, CRTs and/or CRT
17 products sold by defendants or their co-conspirators at allegedly supra-competitive levels as a
18 result of the price-fixing conspiracy. Even if differences may exist in the amount of injury
19 suffered by each class member, such differences do not render the class representative’s claims
20 atypical. (*Jiminez v. Allstate Ins. Co.* (9th Cir. 2014) 765 F.3d 1161, 116, cert. den. (2015) 135
21 S.Ct. 2835.)

22 **3. The class representative fairly and adequately protects the interests of**
23 **the settlement class.**

24 Adequacy of representation is established if (1) the class representative is represented by
25 counsel qualified to conduct the pending litigation and (2) the class representative’s interests are
26 not antagonistic to those of the settlement class. (See, e.g., *Richmond, supra*, 29 Cal.3d. at p.
27 470; *Miller v. Woods* (1983) 148 Cal.App.3d 862, 874.)
28

1 The City and County of San Francisco (the “City”) satisfies both of these requirements.
2 First, the City is represented by the Attorney General whose Antitrust Section is highly qualified
3 to prosecute class actions and antitrust cases. (See Varanini Decl., ¶ 2.) Second, the City's
4 interests are co-extensive with those of the settlement class because they are all similarly
5 interested in obtaining prompt and valuable relief from defendants.

6 **4. The superiority requirement is met given the impracticality of**
7 **alternatives to the certification of a settlement class.**

8 Superiority is demonstrated where the class action “both eliminates the possibility of
9 repetitious litigation and provides small claimants with a method of obtaining redress for claims
10 which would otherwise be too small to warrant individual litigation.” (*Richmond, supra*, 29
11 Cal.3d at p. 469.) That is clearly the case in this action. It would be impractical for the thousands
12 of government entities that are members of the class to individually pursue and settle their claims
13 against defendants. And certification of a settlement class enables the Attorney General to grant
14 to defendants a global release of all of their claims with respect to California government entities.
15 (See, e.g., *Sullivan, supra*, 667 F.3d at pp. 310-311 [“We need not take judicial notice of the fact
16 that plaintiffs with non-viable claims do nonetheless commence legal action,” and “that release of
17 all claims serves the important policy interest of judicial economy by permitting parties to enter
18 into comprehensive settlements that prevent relitigation of settled questions at the core of a class
19 action.”][citation and quotations omitted].) Certifying the settlement class thus will confer
20 benefits on both class members and the judicial system. (See Varanini Decl., Exh. M at 73:5-6
21 [Tr. of *Chunghwa* Final Approval Hg (“[T]he mechanism of a class action for that group is
22 appropriate.”)]; see also *id.*, Exh. P at 16-18 [*DRAM* R&R I].)

23 **F. THE PROPOSED NOTICE PROGRAMS FOR THE GOVERNMENT SETTLEMENT**
24 **CLASS AND FOR THE PARENS PATRIAE GROUP BOTH FULFILL THE**
25 **REQUIREMENTS OF DUE PROCESS AND SHOULD BE APPROVED.**

26 The proposed settlements seek to bind unnamed members of the Settlement Class of
27 Government Entities as well as unnamed California individuals on whose behalf the Attorney
28 General filed Cartwright Act claims under *parens patriae*. While both groups are subject to due
process requirements for notice purposes (see, e.g., *Mullane v. Central Hanover Bank & Trust*

1 Co. (1950) 339 U.S. 306, 314-315), what notice process is owed to each group is governed by
2 different laws and by the different nature of these two groups. The California Rules of Court
3 (“CRC”) governing class action settlements closely regulate the process provided to unnamed
4 class members (see Cal. Rules of Court, rules 3.766 and 3.769), while the *parens patriae*
5 provisions of the Cartwright Act govern the process provided to California individuals less rigidly
6 (see Bus. & Prof. Code §16760).

7 Accordingly, two separate notice programs are before the Court for approval—one directs
8 notice to the unnamed class members (“Government Notice Program”) and the other to the
9 *parens patriae* group (“*Parens* Notice Program”). Both accord with due process to warrant court
10 approval and both follow similar notices previously approved in the *Chunghwa* case and also in
11 *LCD* and *DRAM*, insofar as the class of government entities is concerned. (Varanini Decl., ¶¶39,
12 43.) The AGO will be responsible for implementing the Government Notice Program while a
13 leading consumer notice company will implement the *Parens* Notice Program with oversight by
14 the AGO. (Varanini Decl., ¶¶ 40-41; Declaration of Daniel Burke (“Burke Decl.”), ¶¶ 1-9.)

15 **1. The proposed Government Notice Program complies with the CRC,**
16 **warranting court approval.**

17 While the CRC set specific parameters for the content of a class notice, courts have
18 “virtually complete discretion [to specify] the manner of giving notice.” (Cal. Rules of Court,
19 rules 3.766(e) and 3.769(f); *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th
20 1380, 1390.) Regarding content, for class actions that permit members to opt-out, the notice must
21 contain (1) a brief explanation of the case; (2) a statement that the court will exclude any member
22 that requests exclusion by a specified date; (3) a procedure for members to follow in requesting
23 exclusion; (4) a statement that the judgment, whether favorable or not, will bind all members who
24 do not request exclusion; and (5) a statement that any member who does not request exclusion
25 may enter an appearance through counsel. (Cal. Rules of Court, rule 3.766, subds. (d)(1)-(5).)
26 Additionally, on settlement of such action, class members must be apprised of (1) the final
27 approval hearing, (2) the proposed settlement, and (3) the procedures to follow in filing writing
28

1 objections to the proposed settlement and in arranging to appear at the settlement hearing and
2 state any objections to the proposed settlement. (Cal. Rules of Court, rule 3.769, subd. (f).)

3 The CRC requirements are satisfied here. The proposed Government Notice, a copy of
4 which is attached as Exhibit X to the Varanini Declaration, provides all of the required
5 information in plain English to fairly apprise class members of their rights and options under the
6 proposed settlements as well as the procedures for exercising them. Court approval is therefore
7 warranted. (See *In re Cellphone Fee Termination Cases*, *supra*, 186 Cal.App.4th at 1390 [class
8 notices drafted “with the goal of making it easy to understand for non-lawyers and to make
9 certain that the notice clearly explained the rights and obligations of class members in connection
10 with the settlement” accord with due process].)

11 Regarding the manner of giving notice, courts have held it “should have a reasonable
12 chance of reaching a substantial percentage of the class members....” (*Cartt v. Superior Court*
13 (1975) 50 Cal.App.3d 960, 974.) Here, the Settlement Class comprises all political subdivisions
14 and public agencies in the state that do not have statewide jurisdiction, as well as the University
15 of California and the State Bar of California. Thus, the following local government entities fall
16 within the Settlement Class: (1) all counties; (2) all cities and towns; (3) all K-12 school districts;
17 and (4) all special districts. (Varanini Decl., ¶ 43.) The AGO has obtained the emails and/or
18 mailing addresses for the vast majority of these entities. (*Id.*) The AGO has also reached out to
19 the County Counsels’ Association of California (“CCA”), the League of California Cities
20 (“LCC”), the California School Boards Association (“CSBA”), and the California Association of
21 Special Districts (“CASD”) to enlist their assistance in providing notice to their members. (*Id.*)

22 Based on the reachability of the ascertainable class members, the AGO proposes deploying
23 the Government Notice as follows:

24 **Direct E-mail or U.S. Mail:** For the class members who have an e-mail address, the AGO
25 will transmit a copy of the long form of the notice by e-mail directly to them, following up with
26 any bounce-backs, which based on the AGO past experience, is expected to be minimal.
27 (Varanini Decl., ¶ 43a.) Both the transmittal and the notice itself will also direct the recipient to
28 the Attorney General’s website (<http://oag.ca.gov>) for additional and more detailed information,

1 including copies of the Complaint, the Settlement Agreements, and other relevant court
2 documents. (*Id.*) For the remaining class members for whom the AGO has no email address but
3 has a mailing address, a postcard notice will be sent by U.S. Mail to each. (*Id.*) The postcard will
4 direct each recipient to the Attorney General’s website, where the long form of the notice will be
5 accessible. (*Id.*) Altogether, the vast majority of the class will receive direct notice either by
6 mailed postcards or by e-mail.

7 **Distribution by the Associations:** For class members who cannot be reached by e-mail or
8 U.S. Mail, the AGO has engaged the assistance of the CCA, the LCC, the CSBA, and the CASD
9 to publish either the long form notice, the short form notice, or the postcard notice to their
10 members either by a mass association e-mail or by publication in their respective print or online
11 newsletters. (*Id.*, ¶ 43b.)

12 **Broadcast on the Attorney General’s Website:** Copies of the long and short forms of the
13 notice also will be broadcast on the Attorney General’s website for class members who cannot be
14 reached directly or through an association as well as for the benefit of any unascertainable
15 members. (*Id.*, ¶ 43c.)

16 The foregoing proposed manner of giving notice comports with California’s class
17 notification standards and should be approved. The program would be sufficient with just the
18 direct notice component alone. (See *Cartt, supra*, 50 Cal.App.3d at 967 [sending individual
19 notices to one-third of the class that was “easily ascertainable” was sufficient]. The additional
20 distribution of the notice through the associations and broadcasting of the notice on the Attorney
21 General’s website further bolsters the sufficiency of this program to further warrant the Court’s
22 approval. (See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 58 [“Using the capability of the
23 Internet in [this] fashion [is] a sensible and efficient way of providing notice” especially when
24 class members routinely conduct business over the Internet and formal individual notice is not
25 cost-efficient.]); Cal. Rules of Court, rule 3.766(e) [in specifying the manner of giving notice,
26 courts must consider factors such as the stake of the individual class members, the cost of
27 notifying class members, and the parties’ resources].) Indeed, the proposed supplement is
28 expressly permitted by CRC Rule 3.766(f), which states:

1 If personal notification is unreasonably expensive or the stake of individual class
2 members is insubstantial, or if it appears that all members of the class cannot be
3 notified personally, the court may order a means of notice reasonably calculated to
4 apprise the class members of the pendency of the action--for example, publication in
a newspaper or magazine; broadcasting on television, radio, or the Internet; or posting
or distribution through a trade or professional association, union, or public interest
group.

5 Consistency also supports court approval of the proposed Government Notice Program.
6 Similar notice programs designed to reach the vast majority of the government class members
7 were approved in the Attorney General's related *Chunghwa* case and the *LCD* case, both filed in
8 this Court, as well as in the Attorney General's *DRAM* case in federal court. (See Varanini Decl.,
9 ¶¶ 39, 43.) The deployment of previously approved notice forms and methods is "perfectly
10 acceptable." (*In re Cellphone Fee Termination Cases*, *supra*, 186 Cal.App.4th at p. 1392
11 [adopting the court-approved notice program in the unrelated *Chavez* case].) Thus, the Attorney
12 General respectfully requests the Court's approval of this Government Notice Program.

13 **2. The proposed *Parens* Notice Program complies with the Cartwright**
14 **Act's due process requirements, warranting court approval.**

15 The proposed *Parens* Notice Program also follows previously approved notice programs
16 targeting the same group and also should be approved here. (Varanini Decl., ¶ 44.) Unlike the
17 CRC, the *parens patriae* provisions of the Cartwright Act leave both the content of the notice and
18 the manner of giving notice in the court's discretion. (Bus. & Prof. Code § 16760, subds. (b) and
19 (c).) It requires only that notice be given to California individuals when Cartwright Act claims
20 brought on their behalf under *parens patriae* are set up for dismissal and compromise. (*Id.*)
21 Section 16760, subdivision (b)(2) states that, if the proposed settlement seeks to release an
22 individual's "claim of monetary relief," then the notice must tell the affected individuals that they
23 "may elect to exclude" their claim from the Attorney General's lawsuit. (Bus. & Prof. Code, §
24 16760, subd. (b)(2)). In addition, the notice must inform those individuals of the procedure and
25 deadline for requesting exclusion. (*Id.*) Regarding the manner of providing notice, the
26 Cartwright Act permits the Attorney General to "cause notice thereof to be given by publication."
27 (Bus. & Prof. Code, § 16760, subd. (b)(2).) But if "the court finds that notice given solely by
28 publication would deny due process of law to any person or persons, the court may direct further

1 notice to the person or persons according to the circumstances of the case.” (*Id.*) The proposed
2 *Parens* Notice Program here accords with due process and should be approved.

3 A copy of the proposed long form *Parens* Notice is attached as Exhibit 8 to the Declaration
4 of Daniel Burke (“Burke Decl.”). Mr. Burke’s declaration also describes in detail the proposed
5 notification methods. (Burke Decl., ¶¶ 11-23.) Mr. Burke is the Executive Vice President of
6 Gilardi & Co. LLC (“Gilardi”), a Kurtzman Carson Consultants LLC company (“KCC”). Gilardi
7 is a leading notice and claims administration firm retained by the parties to administer the notice
8 program for the *parens patriae* group. (Burke Decl., ¶¶ 1-6.) Gilardi also developed and
9 administered the notice program for the *parens patriae* group in the related Chunghwa case.
10 (Varanini Decl., ¶ 40.) The present program builds on that court-approved program and also has
11 been certified by Gilardi to meet the due process standards for consumer notices. (*Id.*, Burke
12 Decl., ¶ 27)

13 Regarding content, the Attorney General erred on the side of precaution and adopted the
14 CRC requirements for the *Parens* Notice as well. (See Varanini Decl., ¶ 42.) Thus, like the
15 proposed Government Notice, the *Parens* Notice states in plain English all the information
16 required by Rules 3.766(d) and 3.769(f) concerning the case, the proposed settlements, and the
17 recipients’ rights and obligations in connection with the settlements. (See Burke Decl., ¶¶ 24-25,
18 Exh. 8.) But unlike the Government Notice, the *Parens* Notice presents the required information
19 in the context of the *parens patriae* provisions. (*Id.*) It also apprises California individuals about
20 events unique to them, specifically that they have the right to make a claim for payment in the
21 IPPs’ federal class action, including the new June 30, 2016 claims deadline,²⁷ while at the same
22 time supporting the *cy pres* distribution of the portion of the Attorney General’s settlement funds
23 obtained under *parens patriae*. (*Id.*) The *Parens* Notice is therefore adequate and should be
24 approved. (*Id.*, ¶¶ 25, 26, and 28; see also *In re Cellphone Fee Termination Cases*, *supra*, 186
25 Cal.App.4th at p. 1390 [notices drafted in language accessible to the public and that explained the

26 ²⁷ In light of the federal court’s recent order extending the claims deadline to June 30,
27 2016 for California natural persons in the IPP action, the *parens* notice also serves to provide
28 supplemental notice of the IPP settlement and to stimulate additional claims for money by
California natural persons from that settlement. (Varanini Decl., ¶ 46.)

1 rights and obligations of affected parties in connection with the settlement accord with due
2 process].)

3 The proposed manner of providing notice to the *parens* group also satisfies due process
4 requirements. Here, the target group is California individuals who are 25 years old and older,
5 because those individuals would have been at least 18 years of age during the end of the relevant
6 time period, i.e., old enough to have been a purchaser of products containing CRTs. (Burke
7 Decl., ¶ 10.) There are approximately 24-25 million California individuals 25 years of age of
8 older. (*Id.*) Data shows this group favors online materials much more than print materials. (See
9 *id.*, ¶¶ 18-21.) In fact, internet usage and online advertising expenditures have been surpassing
10 newspaper readership and print advertisement expenditures at an exponential rate. (*Id.*) And
11 87.5% of our target group do indeed “have access to the internet at home using a computer” and
12 approximately 82% of the target group “have looked at or used the internet in the past 30 days.”
13 (*Id.*, ¶ 20.) In contrast, only about 16% of the target group are newspaper readers. (*Id.*)
14 Therefore, “Girardi believes that the best practicable notice for this matter should include an
15 online component in addition to the direct notice and print publication efforts.” (*Id.*, ¶ 22.)

16 Incorporating the Federal Judicial Center’s guidelines on giving notice to consumers,
17 Gilardi appropriately designed a mix media notice program a dominant Internet presence. (*Id.*, ¶¶
18 8-23 and 26-27.) Furthermore, because the affected parties are those who purchased televisions
19 and computer monitors, transmitting the notice via the Internet that will end up on a display
20 platform that is either the product itself or a successor product, would be a sensible, cost-
21 effective, and efficient way of providing notice to the affected group. (Varanini Decl., ¶ 45.)

22 If approved, the *Parens* Notice will be deployed as follows:

23 **20 Million Online Advertisements and other Sponsor Links:** The predominant Internet
24 users of the target group, particularly those with any interest in the overcharged products alleged
25 in this lawsuit, will be targeted through online advertisements and sponsor links. (Burke Decl., ¶¶
26 8, 12a, 12b, 23a, 23b, and 26.) To that end, 20 million advertisements about the settlements will
27 be placed on “the nationally recognized Xaxis Run of Network list of websites” targeted to this
28 group. (*Id.*) Viewers who click on the advertisement will be directed to the settlement website

1 (www.CaliforniaCRTlawsuit.com). (*Id.*) In addition, online users who conduct searches
2 containing buzz words related to televisions and computer monitors during the notice period also
3 will be shown links to the settlement website. (*Id.*) This online campaign is expected to reach at
4 least 6.6 million individuals in the target group. (*Id.* at ¶ 24b.)

5 **Direct E-Mail:** Girardi will transmit a copy of the short form notice to 60,000 potentially
6 affected individuals whose names and addresses have been ascertained by the AGO as having
7 submitted claims for monetary payment in the LCD case, and who thus would be the most likely
8 objectors, if any, to the *parens* settlement. (Varanini Decl., ¶ 44; Burke Decl., ¶¶ 8, 11, 15 and
9 26.)

10 **Two-Time Insertion in USA Today for the California Zones:** The short form notice also
11 will be published twice in USA Today in the zones covering California. (Burke Decl., ¶¶ 8, 12c,
12 16, 17, 22, 23c and 26.) This paper has 106,934 California subscribers and is the only newspaper
13 that serves the entire state. (*Id.* at ¶¶ 16 and 23c.) Gilardi picked this newspaper because, when
14 combined with the online campaign described above, the reach percentage will be 27%, while the
15 top five newspapers in state's centers have a combined reach of only about 7%. (*Id.*, 16-17.)
16 Moreover, as cautioned by the Federal Judicial Center, "Class members choose to live in small
17 towns as well as large cities. Be careful with notice exclusively targeted to metropolitan
18 newspapers." (*Id.*, ¶ 16 [quoting FJC's Judges Class Action Notice and Claims Process Checklist
19 and Plain Language Guide, 2010].) Indeed, the court in the related *Chunghwa* case recognized
20 that publication in a local newspaper would not confer benefits to persons residing elsewhere in
21 the State, and noted that "sometimes you just can't do it better than a single newspaper of
22 statewide circulation plus the other things that are available, the e-mails or whatever." (Varanini
23 Decl., Exh. L at 9-15 [Tr. of Preliminary Approval Hg].)

24 **Broadcast on Two Websites:** Copies of the notice, the Complaint, the Settlement
25 Agreements, and other relevant court documents will be provided on the dedicated settlement
26 website created by Gilardi (Burke Decl., ¶¶ 12e and 23f), as well as on the Attorney General's
27 website (Varanini Decl., ¶ 43c).

1 **Additional Publicity by the AGO:** The Attorney General also will issue statements
2 concerning these settlements either on her website or through media outlets in California.
3 (Varanini Decl., ¶ 43c; Burke Decl., ¶¶ 12d and 23f.)

4 “Gilardi/KCC believes this plan is sufficient and is consistent with other *parens patriae*
5 notification efforts, as well as class action notice plans that have been approved by California
6 State courts.” (Burke Decl., ¶ 13; see also ¶¶ 26 and 27.) Indeed, the proposed notification
7 methods satisfy due process either as a whole or taken apart. The leading case on due process
8 standards governing notification in non-class cases when absent parties may be involved is
9 *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306. The United States Supreme
10 Court held that publication of the settlement in a single notice in one publication in the forum
11 state, where the notice was published once a week for four weeks, sufficed to meet due process
12 requirements insofar as absent beneficiaries were concerned whose whereabouts or interests were
13 unknown to the trustee. (*Id.* at pp. 317-18.) The Court further observed that the trustee did not
14 have to incur the practical difficulties and costs involved in trying to more precisely determine the
15 status of absent beneficiaries, especially when the numbers are great. (*Id.* at pp. 317-18; see also
16 Cal. Rules of Court, rules 3.766(e) [the notification method should account for the stake of the
17 individual class members, the cost of notifying class members, and the parties’ resources]; Cal.
18 Rules of Court, rules 3.766(f) [“broadcasting [the notice] on the Internet” is reasonable when “it
19 appears that all members of the class cannot be notified personally”]; *Chavez, supra*, 162
20 Cal.App.4th at p. 58 [approving the use of the Internet to provide notice in technology-related
21 cases]; *Cartt, supra*, 50 Cal.App.3d at p. 967 [due process does not require direct notice by US
22 mail].) Court approval of the *Parens* Notice Program is therefore warranted here.

23 Moreover, a similar *parens* program has been approved and deployed in the related
24 *Chunghwa* case and should be redeployed here. (See *In re Cellphone Fee Termination Cases*,
25 *supra*, 186 Cal.App.4th at p. 1392.) But with 16 million more online impressions added to the
26 deployment here, this notice program will be even more robust than its predecessor.

1 **G. THE COURT SHOULD SET A FINAL APPROVAL HEARING SCHEDULE.**

2 The last step in the settlement approval process is the final approval hearing, at which time
3 the Court may hear all evidence and argument necessary to evaluate the proposed settlements.

4 The Attorney General respectfully requests that the Court set the following final approval
5 schedule:

6

7 Event	8 Date
9 Notice of Publication Date	10 Within 30 days of Order Granting Preliminary Approval
11 Final Hearing	12 90 days from Order Granting Preliminary Approval

13 **VI. CONCLUSION**

14 The Attorney General respectfully submits that the proposed settlements with LG,
15 Panasonic, Hitachi, Toshiba, and Samsung are fair, adequate, and reasonable insofar as her
16 *parens patriae* and government entity class claims are concerned, and are otherwise in the best
17 interest of the settlement class of government entities. The Attorney General therefore
18 respectfully moves this Court to: (1) grant preliminary approval of the settlement; (2)
19 conditionally certify, for settlement purposes only, the class of government entities specified in
20 the LG, Panasonic, Hitachi, Toshiba, and Samsung settlements and appoint the City and County
21 of San Francisco as class representative and the Attorney General as counsel for the settlement
22 class; (3) approve the proposed form of notices; (4) approve the proposal for the dissemination on
23 the proposed notices; and (5) schedule a hearing on final approval of the LG, Panasonic, Hitachi,
24 Toshiba, and Samsung settlements.

1 Dated: February 23, 2016

Respectfully Submitted,

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6
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