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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO
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15

16 **THE PEOPLE OF THE STATE OF**
17 **CALIFORNIA, et al.,**

18
19 Plaintiffs,

20 v.
21

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23 **SAMSUNG SDI, CO., LTD., et al.,**

24
25 Defendants.
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Case No. CGC-11-515784

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
SETTLEMENTS WITH LG,
PANASONIC, HITACHI, TOSHIBA AND
SAMSUNG, DISMISSAL OF PARENS
PATRIAE CLAIMS, AWARDS TO
NAMED GOVERNMENT ENTITIES,
AND AWARD OF ATTORNEY'S FEES
AND COSTS**

Date: September 27, 2016
Time: 9:00 a.m.
Dept: 304
Judge: Curtis E.A. Karnow
Action Filed: November 8, 2011

TABLE OF CONTENTS

	Page
I. Introduction	1
II. Procedural Background	2
III. Settlement Terms	3
A. Summary of Key Settlement Terms	3
B. Scope of Release	4
IV. Certification of the Plaintiff Government Class Remains Appropriate	4
V. Adequate Notice Has Been Provided	5
A. The Approved Notice Plan for the Plaintiff Government Class Has Been Successfully Implemented	5
B. The Approved Notice Plan For the <i>Parens Patriae</i> Group Has Been Successfully Implemented	6
VI. The Settlements Warrant Final Approval	7
A. The Settlements are Presumed Fair	7
B. Evaluation of the Settlements Under <i>Kullar v. Footlocker</i>	7
1. Strength of Case; Risk, Expense and Length of Further Litigation	8
2. The Monetary Relief and Non-Monetary Relief are Significant	8
a. The Monetary Relief is Significant	8
b. The Non-Monetary Relief is Significant	10
(1) Compliance Training	10
(2) Early and Continuing Benefits of Cooperation	11
(3) Injunctive Relief	11
3. Extent of Discovery Completed and Stage of Proceedings	12
4. Experience and Views of Counsel; Presence of Governmental Participant	12
5. No Objectors to Settlements	13
VII. Dismissal of the <i>Parens Patriae</i> Claims Should Be Approved	13
VIII. The Allocation/Distribution Plan Is Reasonable for the Plaintiff Government Class	14
IX. The <i>Cy Pres</i> Plan for Distribution of the Settlement Funds Is Reasonable	16
A. Proposed Recipients of Government Class <i>Cy Pres</i> Fund	18
B. Proposed Recipients of <i>Parens Patriae Cy Pres</i> Fund	20
X. The Requested Awards for the Named Government Entities Are Appropriate and Should Be Approved	21
XI. The Requested Amount for Litigation Costs and Attorney's Fees Is Reasonable	23
A. The Litigation Costs Incurred Were Reasonable and Necessary	24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS
(continued)

	Page
B. The Attorney General’s Office Incurred Significant Amounts of Attorney Time	25
XII. Conclusion	25

TABLE OF AUTHORITIES

	<u>Page</u>
CASES	
<i>Carnegie v. Household Intern., Inc.</i> (N.D. Ill 2006) 445 F.Supp.2d 1032	9
<i>City of Detroit v. Grinnell Corp.</i> (2d Cir. 1974) 495 F.2d 448.....	9, 10
<i>County of Suffolk v. Long Island Lighting Co.</i> (2nd Cir. 1990) 907 F.2d 1295.....	9
<i>Curtiss-Wright Corp. v. Helfand</i> (7th Cir. 1982) 687 F.2d 171.....	16
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	7
<i>Duran v. U.S. Bank Nat'l Assn.</i> (2014) 59 Cal.4th 1	15
<i>FTC v. Kuykendall</i> (10th Cir. 2004) 371 F.3d 745.....	12
<i>In re Cathode Ray Tube</i> (CRT) Antitrust Litigation, Case No. 07-5944 SC, MDL No. 1917 (N.D. Cal.).....	2
<i>In re Consumer Privacy Cases</i> (2009) 175 Cal.App.4th 545	23
<i>In re DRAM Antitrust Litigation</i> 2014 U.S. Dist. LEXIS 89622.....	15
<i>In re DRAM Antitrust Litigation</i> MDL No. 1486, Dkt. 2235 (N.D. Cal. June 27, 2014).....	14, 15, 18, 21, 23
<i>In re DRAM Antitrust Litigation</i> No. 14-16342, Dkt.33 (9th Cir. Dec. 3, 2015)	15
<i>In re Holocaust Victim Assets Litig.</i> (2d Cir. 2001) 413 F.3d 183.....	16
<i>In re Microsoft I-V Cases</i> (2006) 135 Cal.App.4th 706	16
<i>In re Vitamin Cases</i> (2003) 107 Cal.App.4th 820	16

TABLE OF AUTHORITIES
(continued)

	<u>Page</u>
<i>Kiler v. Elf Atochem N. Am., Inc.</i> (5th Cir. 2011) 658 F.3d 468.....	16
<i>Kullar v. Footlocker</i> (2008) 168 Cal.App.4th 116	7, 8
<i>Laffitte v. Robert Half Int'l Inc.</i> (2016) 1 Cal.5th 480, 503	23, 25
<i>Lorazepam & Clorazepate Antitrust Litig.</i> (D.D.C. 2002) 205 F.R.D. 369	9
<i>Motorola Mobility LLC v. AU Optronics Corp.</i> (7th Cir. 2015) 775 F.3d 816.....	15
<i>People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.</i> (2004) 116 Cal.App.4th 1253	11
<i>Rodriguez v. West Publishing Corp.</i> (9th Cir. 2009) 563 F.3d 948.....	9, 19
<i>State of California v. Levi Strauss & Co.</i> (1986) 41 Cal.3d 460	16
<i>Sullivan v. D.B. Investments, Inc.</i> (3rd Cir. 2011) 667 F.3d 273	9, 23
<i>Theme Promotions, Inc. v. News Am. Mktg. FSI, Inc.</i> (N.D. Cal. 2010) 731 F.Supp.2d 937	25
<i>U.S. Football League v. Nat'l Football League</i> (2d Cir. 1989) 887 F.2d 408.....	9
<i>U.S.S.E.C. v. Citigroup Global Markets, Inc.</i> (2nd Cir. 2014) 752 F.3d 285.....	13, 15, 16
<i>United States v. Microsoft</i> (D.D.C. 1998) 147 F.3d 935	11
<i>Wanke v. Superior Court</i> (2012) 209 Cal.App.4th 1151	11

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25
26
27
28

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

Business and Professions Code § 16760(c)	2, 13
Code of Civil Procedure § 382.....	5

OTHER AUTHORITIES

http://www.bls.gov/oes/current/oes231011.htm#st	25
https://www.justice.gov/usao-dc/file/796471/download	25

1 **I. INTRODUCTION**

2 The Attorney General moves for final approval of: (1) the settlements with defendants LG,
3 Panasonic, Hitachi, Toshiba, and Samsung (collectively the “Settling Defendants”); (2) the
4 dismissal of the Attorney General’s *parens patriae* claims; (3) the certification of a class of
5 government entities (the “Plaintiff Government Class”); (4) the allocation and distribution of
6 settlement funds to the Plaintiff Government Class; (5) the recipients for the Plaintiff Government
7 Class *cy pres* fund; (6) awards to the 30 government entities named in the Complaint; and (7)
8 award of litigation costs and attorney’s fees.

9 On March 29, 2016, the Court granted preliminary approval of the settlements and
10 conditionally certified a class of government entities for settlement purposes. Pursuant to the
11 Court’s order granting preliminary approval (“Preliminary Approval Order”), the court-approved
12 notice plan has been completed. No member of the Plaintiff Government Class has objected to or
13 opted-out of the settlements.

14 The Preliminary Approval Order also directed the Attorney General’s Office to provide
15 notice of the dismissal of the *parens patriae* claims to California natural persons. That notice
16 plan has been completed, and only 11 persons have elected to be excluded from the dismissal of
17 the *parens patriae* claims.

18 Combined, the five settlements provide \$4.95 million in monetary relief and include
19 significant non-monetary relief that (1) requires compliance training in products beyond Cathode
20 Ray Tubes (“CRTs”) and, for certain defendants, extends to foreign parents and subsidiaries, (2)
21 requires cooperation which the Attorney General benefitted from in this case and/or will benefit
22 from in a separate confidential investigation, and (3) enjoins illegal conduct in products beyond
23 CRTs and, for certain defendants, extends to foreign affiliates and subsidiaries.

24 As the State’s chief law enforcement officer who acted in the public interest in the pursuit
25 of these claims, the Attorney General believes the settlements are fair, reasonable, and adequate,
26 and warrant final approval. The Attorney General believes that the dismissal of her *parens*
27 *patriae* claims is also fair and reasonable and should be finally approved, especially when

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1 considering the Indirect Purchaser Plaintiffs' substantial settlement in the parallel federal MDL
2 action that recently received final approval from the federal district court.

3 **II. PROCEDURAL BACKGROUND**

4 The Attorney General filed her motion for preliminary approval of the five proposed
5 settlements on February 23, 2016. On March 18, 2016, she filed a supplemental memorandum of
6 points and authorities in support of her motion (and sought to dismiss her *parens patriae* claims
7 pursuant to section 16760(c) of the Business and Professions Code).¹ On March 29, 2016, the
8 Court granted preliminary approval of the settlements and the dismissal request.

9 As described in her preliminary approval papers, the Attorney General conducted a
10 significant investigation of the facts and law prior to and during the prosecution of this action
11 which alleges a global price-fixing conspiracy involving CRTs. (See 2/23/16 Varanini Decl., ¶8.)
12 In addition to issuing investigative subpoenas on a number of CRT manufacturers prior to filing
13 this action, the Attorney General's Office engaged in extensive discovery in coordination with
14 parallel federal cases filed on behalf of direct purchaser plaintiffs ("DPPs"), direct action
15 plaintiffs ("DAPs"), and indirect purchaser plaintiffs ("IPPs"), pending in the Northern District of
16 California in *In Re: Cathode Ray Tube (CRT) Antitrust Litigation*, Case No. 07-5944 SC, MDL
17 No. 1917 (N.D. Cal.) (the "MDL"), involving the same conduct and the same defendants alleged
18 here. (2/23/16 Varanini Decl., ¶¶ 13-15.) After coordinated discovery in the MDL ended, the
19 Attorney General's Office also continued to conduct its own independent discovery in state court,
20 and also responded to extensive discovery requests, including answering numerous sets of
21 interrogatories and requests for admissions, producing documents, and defending the depositions
22 of six local government entities. (*Id.*, ¶17.)

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25 ¹ The Attorney General hereby incorporates by reference all previously filed documents in
26 support of her motion for preliminary approval, including the memorandum of points and
27 authorities ("2/23/16 MPA"), the supplemental memorandum of points of authorities ("3/18/16
28 Supp. MPA"), the declaration of Emilio Varanini ("2/23/16 Varanini Decl."), and the
supplemental declaration of Emilio Varanini ("3/18/16 Supp. Varanini Decl."). Some of the
Attorney General's prior arguments, however, are highlighted in this MPA for the benefit of the
Court.

During mid to late-2014, the Attorney General settled with LG and Panasonic. Thereafter, during early to mid-2015, she settled with Hitachi and Toshiba. Finally, in February 2016, after vigorous litigation, she settled with Samsung. All of these settlements were negotiated at arm's length by counsel experienced in antitrust law. (*Id.*, ¶19.) The Honorable Vaughn A. Walker (Ret.) mediated the Panasonic and Samsung settlements and encouraged mediation in the Toshiba settlement. (*Id.*) Copies of the five settlement agreements (and amendments thereto) are attached as Exhibits A through J to the 2/23/16 Varanini Declaration.

III. SETTLEMENT TERMS

A. Summary of Key Settlement Terms

The settlements provide for monetary relief, injunctive relief, compliance training, and cooperation. The table below summarizes the major components of the Attorney General's settlements with each of the five defendants:

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)	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

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Compliance Training (antitrust compliance education)	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
Cooperation	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

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. The release does not cover future conduct.

IV. CERTIFICATION OF THE PLAINTIFF GOVERNMENT CLASS REMAINS APPROPRIATE

The Court's Preliminary Approval Order certifies the following class of government entities for settlement purpose:

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 purchased CRTs and/or CRT products during the Relevant Period

(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.

(Preliminary Approval Order at 3:6-12.)

Class certification remains appropriate and the City and County of San Francisco remains a fair and adequate representative of the Plaintiff Government Class. No changes affecting class certification have occurred since preliminary approval of the settlements. (Declaration of Emilio Varanini in support of Motion for Final Approval (“Varanini Decl.”), ¶ 26.) (Varanini Decl., The arguments made in the motion for preliminary approval remain valid, and for the same reasons stated there, class certification should be granted pursuant to Code of Civil Procedure section 382 for settlement purposes.

V. ADEQUATE NOTICE HAS BEEN PROVIDED

A. The Approved Notice Plan for the Plaintiff Government Class Has Been Successfully Implemented

The Attorney General’s Office has implemented the class notice plan approved in accordance with the Preliminary Approval Order. Beginning on April 1, 2016, the Attorney General’s Office set up a dedicated settlement website https://oag.ca.gov/consumers/crt_notice and issued a press release about the settlements. (Varanini Decl., ¶¶ 6, 7.) The press release generated several news stories by the Associated Press, Legal NewsLine, Law360, and The Register. (*Id.*) The press release also was reposted verbatim by Imperial Valley News, Sierra Sun Times, and Lake County News. (*Id.*)

In addition, the Attorney General’s Office disseminated the class notice by email to all ascertainable local government entities with an email address, which included approximately 61 counties, 307 cities, 1,019 school districts, and 828 special districts. (*Id.*, ¶ 8.) The Attorney General’s Office also disseminated the class notice by U.S. mail to those entities where it received an email bounce back and also to approximately 1,578 special districts for which the Attorney General’s Office did not have an email address and which are not members of the California Association of Special Districts. (*Id.*, ¶¶ 8, 9.) The Attorney General’s Office also

1 disseminated the class notice by email to the local government entities' respective associations
2 who had agreed to distribute the notice to its members. (*Id.*, ¶ 10.) The four associations are the
3 League of California Cities ("LCC"), the County Counsels' Association of California ("CCA"),
4 the California School Board Association ("CSBA"), and the California Association of Special
5 Districts ("CASD"). (*Id.*) With the exception of the CASD and CSBA's distribution of the
6 notice, all approved methods of notification were completed by April 28, 2016, as ordered by the
7 Court. (*Id.*) The CASD and CSBA's respective distributions occurred on May 10, 2016 and May
8 23, 2016. (*Id.*)

9 Adequate notice has therefore been provided to the Plaintiff Government Class. The
10 deadline to object or opt-out of the settlements pursuant to the Preliminary Approval Order was
11 May 30, 2016. No objections or opt-out requests from the Plaintiff Government Class have been
12 received by the Attorney General's Office. (*Id.*, ¶ 11.)

13 **B. The Approved Notice Plan for the *Parens Patriae* Group Has Been**
14 **Successfully Implemented**

15 Notice of the Attorney General's dismissal of her *parens patriae* claims and of the parallel
16 IPPs' class action settlement and extension of the claims deadline for California natural persons
17 also has been provided in accordance with the Court's Preliminary Approval Order. The
18 accompanying Declaration of Daniel Burke ("Burke Decl.") describes the portions of the *parens*
19 *patriae* notice plan that were implemented by the Attorney General's notice expert at
20 Gilardi/KCC. In particular, after the Attorney General's settlement website was launched on
21 April 1, 2016, Gilardi/KCC launched the dedicated toll-free number for this case and thereafter,
22 transmitted the *parens patriae* notice to 46,396 unique email addresses, published the notice in
23 two separate editions of the *USA Today* newspaper, and blasted 21,426,698 internet banners and
24 2,414,799 sponsored links to the target group and directed them to both the Attorney General's
25 settlement website and the IPPs' class settlement website for more information about the claims
26 process in the parallel class settlement. (Burke Decl., ¶¶ 7-14.) Additional publicity was
27 provided via the Attorney General's press release, which generated several news stories about the
28 Attorney General's and the IPPs' efforts in settling these CRTs cases. (Varanini Decl., ¶ 12.)

Adequate notice has therefore been provided to the *parens patriae* group. The deadline to request exclusion from the dismissal was May 30, 2016. To date, the Attorney General's Office has received only eleven requests for exclusion from the dismissal of the Attorney General's *parens patriae* claims. (*Id.*) Notice of the exclusion requests was filed with the Court on September 7, 2016. (*Id.*)

VI. THE SETTLEMENTS WARRANT FINAL APPROVAL

A. The Settlements are Presumed Fair

Under California law, a "presumption of fairness exists if (1) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) Each of these factors is met here.

All of the settlements were negotiated through arms-length bargaining by experienced counsel, including government attorneys experienced in antitrust law, after conducting extensive investigation and discovery, and with a full awareness of the strengths and weaknesses of the case. (2/23/16 Varanini Decl., ¶ 19.) Furthermore, there are no objectors to the settlements. (Varanini Decl., ¶ 11.) Accordingly, the Court may presume these settlements are fair.

B. Evaluation of the Settlements Under *Kullar v. Footlocker*

Because the Attorney General's settlements include settlements of the Plaintiff Government Class claims, the settlements are evaluated under *Kullar v. Footlocker* (2008) 168 Cal.App.4th 116. In *Kullar*, the court identified the following "well recognized factors" to be considered in evaluating the reasonableness of a class settlement: (1) strength of the plaintiff's case; (2) risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining the class action status through trial²; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of proceedings; (6) the experience and views of counsel; (7) the presence of

² The Plaintiff Government Class here seeks class certification for settlement purposes only; therefore, this factor will not be addressed. Had this case proceeded to trial, the only government entities that would have recovered damages would have been the State of California and the 30 local government entities (plus the University of California) named in the Complaint.

1 a government participant; and (8) the reaction of the class members to the proposed settlement.
2 (*Id.*, at p. 128). The settlements satisfy these factors.

3 **1. Strength of Case; Risk, Expense and Length of Further Litigation**

4 As described in the Attorney General's preliminary approval papers, there was
5 overwhelming evidence of Settling Defendants' participation in a global price-fixing conspiracy
6 of CRTs, including evidence provided by co-conspirators Chunghwa Picture Tubes, Ltd.
7 ("Chunghwa") and Philips Electronics North American Corporation ("Philips"), both of which
8 provided cooperation regarding the CRT price-fixing conspiracy to the Attorney General's Office
9 as a condition of settlement in the related case of *The State of California, et al. v. Chunghwa*
10 *Pictures Tubes Ltd.*, No. CGC-11-515786. (See 2/23/16 MPA at p. 3.) Nevertheless, there were
11 a number of significant issues that raised questions that could potentially reduce defendants'
12 liability and plaintiffs' recoverable damages, including the applicability of the FTAIA and the use
13 of extrapolation to prove the government entities' claims for damages. (See 02/23/16 MPA at pp.
14 4-5, 19; 2/23/16 Varanini Decl., ¶18.) While the Attorney General believes she could have
15 successfully prevailed on these issues, they remained unsettled and their resolution would likely
16 involve lengthy appeals. (*Id.*) Given the risks, expenses, and lengthy duration of further
17 litigation, and given the Attorney General's public interest considerations, the monetary relief and
18 non-monetary relief, as described further below, are fair, reasonable, and adequate.

19 **2. The Monetary Relief and Non-Monetary Relief Are Significant**

20 **a. The Monetary Relief is Significant**

21 The monetary relief secured by the Attorney General is reasonable. In applying *Kullar*, this
22 Court should grant a measure of deference to the Attorney General because her choice to allocate
23 settlement proceeds to the Plaintiff Government Class, as well as to bargain for non-monetary
24 versus monetary relief, involves public interest determinations made by her in managing
25 intergovernmental relationships. (See 02/23/16 Varanini Decl., ¶ 38.) Applying such deference,
26 the monetary relief for the Plaintiff Government Class satisfies *Kullar* when viewed in the context
27 of the overall monetary and nonmonetary aspects of her settlements. The State's expert estimated
28 total damages for the State and local government entity plaintiffs named in the complaint at \$5.2

1 million. (*Id.*, ¶ 37.) Because the Plaintiff Government Class includes all political subdivisions
2 and public agencies in the State, plus the University of California and the State Bar of California,
3 it is estimated that the damages for the Plaintiff Government Class is roughly \$8.7 million. (*Id.*)
4 Thus, the allocation of \$1,032,113 plus \$330,000 in incentive payments to the government
5 entities named in the Complaint is reasonable as 15.66% of total single damages. (See, e.g.,
6 *Sullivan v. D.B. Investments, Inc.* (3rd Cir. 2011) 667 F.3d 273, 324 [settlement that is 10.93% of
7 potential recovery is reasonable]; *County of Suffolk v. Long Island Lighting Co.* (2nd Cir. 1990)
8 907 F.2d 1295, 1324 & n. 17 [settlement that is 11.4% of potential recovery is reasonable].)

9 Case law supports evaluating the reasonableness of a class action settlement amount by
10 comparing it to actual damages rather than treble damages. (See, e.g., *Rodriguez v. West*
11 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 964 [“courts generally determine fairness of an
12 antitrust class action settlement based on how it compensates the class for past injuries, without
13 giving much, if any consideration to treble damages”]; see also *County of Suffolk v. Long Island*
14 *Lighting Co.* (2nd Cir. 1990) 907 F.2d 1295 [“the district judge correctly recognized that it is
15 inappropriate to measure the adequacy of a settlement amount by comparing to a trebled base
16 recovery figure”]); *City of Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448, 458-59 [“the
17 vast majority of courts which have approved settlements . . . have given their approval . . . based
18 on an estimate of single damages only”]), overruled on other grounds as recognized by *U.S.*
19 *Football League v. Nat’l Football League* (2d Cir. 1989) 887 F.2d 408, 415-16; *Carnegie v.*
20 *Household Intern., Inc.* (N.D. Ill 2006) 445 F.Supp.2d 1032, 1035 [“numerous courts have held
21 that in determining a settlement value, the potential for treble damages should not be taken into
22 account”]; *Lorazepam & Clorazepate Antitrust Litig.* (D.D.C. 2002) 205 F.R.D. 369, 376 [“the
23 standard for evaluating settlement involves a comparison of the settlement amount with the
24 estimated single damages”].)

25 As the *Grinnell* Court observed, “requiring treble damages to be considered as part of the
26 computation of base liability figure would force defendants automatically to concede guilt at the
27 outset of negotiations,” and “[s]uch a concession would upset the delicate settlement balance by
28 giving too great an advantage to the claimants -- an advantage that is not required by the antitrust

1 laws and one which might well hinder the highly favored practice of settlement.” (*Grinnell*, 495
2 F.2d at p. 259.)

3 **b. The Non-Monetary Relief is Significant**

4 As previously stated in her preliminary approval papers, the Attorney General, in
5 considering the public interest, has valued non-monetary relief, such as compliance training and
6 injunctive relief, in nationwide and international price-fixing cases as a means of deterring future
7 anticompetitive conduct and bringing value back to the California economy, California natural
8 persons, and California government entities. (See 2/23/16 Varanini Decl., ¶ 21, Exh. Q at pp. 19-
9 22.) Plus, the forward-looking injunctive relief and compliance training obtained has
10 considerable value to the settlement class as it helps ensure that they will pay low prices for non-
11 CRT products going forward. (2/23/16 Varanini Decl., ¶ 25.)

12 **(1) Compliance Training**

13 Compliance training is important to restore a culture of competition within the Settling
14 Defendant companies and within the market, which is valuable to the Attorney General. (See
15 02/23/16 Varanini Decl., ¶ 25.) The training applies to employees responsible for pricing and
16 sales of CRTs and other display technologies and will include training on antitrust laws. Annual
17 reports are required on the progress of that training, for a period ranging from three to five years
18 for foreign parents and various subsidiaries.³ Moreover, the compliance training is not merely a
19 reporting requirement. Notably, the compliance training requires the defendants to work with the
20 Attorney General’s Office to set dates for the training, defense counsel must work with the
21 Attorney General’s Office beforehand to ensure that the training program comports with the
22 expectations and agreement of the Attorney General’s Office, and the defendants must then report
23 back to the AGO that the training comports with what was agreed to. (3/18/16 Varanini Supp.
24 Decl., ¶ 6.) There is also a special procedure for Samsung, namely the appointment of a
25

26
27 ³ The annual reporting requirement applies to LG and Panasonic/MTPD only if they
28 reenter the CRT market; however, they are still required to certify that they have an antitrust
compliance training program in place. (2/23/16 Varanini Decl., Exhs. A at 6; C at 6.)

1 Compliance Officer whom the Attorney General's Office can interview regarding Samsung's
2 compliance training efforts. (*Id.*)

3 (2) Early and Continuing Benefits of Cooperation

4 The Attorney General has already benefitted significantly in this case from the cooperation
5 provided by LG and Panasonic pursuant to their early settlements. (02/23/16 Varanini Decl., ¶
6 27.) LG provided a proffer. (*Id.*) Panasonic's cooperation involved obtaining (1) documents
7 generated by a foreign antitrust enforcer and potential access to documents seized by that enforcer
8 and (2) a jurisdictional declaration by a Chinese company. (*Id.*) This cooperation was important
9 to developing evidence on FTAIA issues and on further developing the Asian aspects of the
10 conspiracy. (*Id.*) The cooperation requirements for all Settling Defendants are also designed to
11 facilitate the introduction of evidence at trial, including providing access to employees for
12 deposition and trial, and authenticating documents. Should a defendant terminate its settlement
13 agreement or otherwise backslide on their commitments, these provisions will become an
14 important part of the Attorney General's Office's trial preparation against that defendant and
15 facilitate the introduction and use of documents and data and the presentation of fact witnesses.
16 Finally, the cooperation provisions applicable to Samsung are valuable to the Attorney General
17 because they include cooperation in a separate confidential investigation. (*Id.*, ¶ 28.)

18 (3) Injunctive Relief

19 As the State's chief law enforcement officer, injunctive relief is highly valued by the
20 Attorney General. (02/23/16 Varanini Decl., ¶ 24.) Here, the injunctive relief bans price fixing,
21 market allocation, and bid-rigging, which are *per se* violations of the Cartwright Act. The ban
22 applies not only to CRTs but extends to other display screens and, with one exception, applies to
23 foreign parents and multiple subsidiaries over a time period of three to five years. (*Id.*)
24 Moreover, the significance and value of the injunctive relief obtained by the Attorney General
25 goes beyond a mere promise to obey the law. The ban is clear and understandable on its face and
26 its violation could enable the Attorney General to ask for civil or criminal contempt.⁴

27 ⁴ See, e.g., *Wanke v. Sup. Ct.* (2012) 209 Cal.App.4th 1151, 1165-66; *People ex rel.*
28 *Lockyer v. R.J. Reynolds Tobacco Co.*, (2004) 116 Cal.App.4th 1253, 1283-1288; see also *United*
(continued...)

1 **3. Extent of Discovery Completed and Stage of Proceedings**

2 Extensive discovery was conducted in this case, which was coordinated with the related
3 MDL case for purposes of fact and expert discovery. The Attorney General's Office attended
4 over 95 depositions and examined witnesses in over 45 of those depositions, reviewed hundreds
5 of written discovery responses, and reviewed tens of thousands of documents produced in the
6 MDL as part of the coordinated work-up on depositions as well as with respect to trial
7 preparation. (02/23/16 Varanini Decl., ¶ 15.) The Attorney General's Office also submitted its
8 own expert reports and was in turn subjected to extensive expert discovery, including expert
9 depositions on subjects such as damages for government entities, natural persons, and deadweight
10 loss. (*Id.*, ¶ 16.)

11 After coordinated discovery in the MDL ended, the Attorney General's Office continued to
12 conduct its own independent discovery in state court, and responded to extensive discovery
13 requests, including answering numerous sets of special interrogatories and requests for
14 admissions, producing documents, and defending the depositions of six local government entities.
15 (*Id.*, ¶17.) The parties also engaged in numerous discovery disputes over the relevance and
16 burden of various discovery requests, the applicability of the MDL discovery cutoff date to the
17 state case, the timeliness of supplemental expert reports, and the scope of the government
18 investigation privilege. (*Id.*) At the time of the final settlement, discovery had largely been
19 completed, and the parties were in the midst of filing dispositive motions and/or other motions
20 that could limit the scope of issues for trial. (See 3/18/16 Supp. Varanini Decl., Exh. D.)

21 **4. Experience and Views of Counsel; Presence of Governmental**
22 **Participant**

23 Lead counsel for Plaintiffs has over 20 years of experience, including 16 years experience
24 as a Deputy Attorney General in the Antitrust Law Section, where he has worked on a number of
25 complex antitrust matters, including serving as lead attorney in the DRAM antitrust litigation.

26 _____
27 (...continued)
28 *States v. Microsoft* (D.D.C. 1998) 147 F.3d 935, 940; accord, *FTC v. Kuykendall* (10th Cir. 2004)
371 F.3d 745, 763.

(Varanini Decl., ¶ 2.) In the views of lead counsel and the Attorney General, these settlements are fair, reasonable and adequate, and in the best interest of the Plaintiff Government Class.

5. No Objectors to Settlements

No class members have objected to the settlements (Varanini Decl., ¶ 11), which also supports a finding that the settlements are fair, reasonable and adequate.

VII. DISMISSAL OF THE *PARENS PATRIAE* CLAIMS SHOULD BE APPROVED

Dismissal of the Attorney General's *parens patriae* claim requires court approval. (Bus. & Prof. Code § 16760(c).) Neither the statute nor state case law, however, specifies the standard for governing dismissal of a *parens* damages claim brought on behalf of California natural persons, especially when it is being accomplished in deference to a parallel federal civil action with a certified litigation class covering damage claims of California natural persons. The Attorney General submits that an appropriate standard in this set of circumstances is the "fair and reasonable" standard endorsed in *U.S.S.E.C. v. Citigroup Global Markets, Inc.* (2nd Cir. 2014) 752 F.3d 285, a case involving a government enforcement action consent decree, as explained in detail the Attorney General's preliminary approval papers. (See 3/18/16 Supp. MPA at pp. 8-13.)

The Attorney General's dismissal of her *parens patriae* claim is fair and reasonable, especially in view of the IPPs settlements, which recently received final approval in federal court, and which obtained substantial monetary relief that the Attorney General estimates included \$36 million that could be ascribed to California natural persons. (See 2/23/16 MPA at p. 18.) As a result of the Attorney General's efforts, the federal court extended the deadline for California natural persons to file claims for monetary relief from the IPP settlements to June 30, 2016. (See 2/23/16 Varanini Decl., Exh. V.) The Attorney General, in turn, not only obtained significant non-monetary value for the indirect benefit of California natural persons but, because the IPPs settlement did not include a *cy pres* plan, has requested that \$195,000 of her settlement be distributed indirectly for their benefit.

As this Court is aware, in order to serve the public interest most efficiently, the Attorney General attempted to coordinate her case as closely as possible with the private plaintiffs, including the IPPs, in the parallel federal MDL. (3/18/16 Supp. Varanini Decl., ¶ 12.) Typically,

1 the Attorney General will look to the IPPs to secure, by way of settlement or trial, monetary relief
2 sufficient for California natural persons to have a full and fair opportunity to file claims and
3 recover a pro rata or full share of their damages, while the Attorney General will work for non-
4 monetary relief as well as a residue of the monetary relief to be distributed *cy pres* for the indirect
5 benefit of the class as is permitted and welcomed under state law. (*Id.*) This division of labor
6 economizes resources and leads to optimal results as reflected in this case.

7 **VIII. THE ALLOCATION/DISTRIBUTION PLAN IS REASONABLE FOR THE**
8 **PLAINTIFF GOVERNMENT CLASS**

9 The Attorney General seeks approval of the following allocation plan insofar as it concerns
10 the Plaintiff Government Class:

- 11 1. \$75,000 for the costs of notice and settlement administration;
- 12 2. \$975,000 (20% of the settlement funds) for attorneys' fees and litigation costs;
- 13 3. \$330,000 for payments to the government entities whose claims are represented by
14 the Attorney General in this action and who had to respond to discovery requests;
- 15 4. \$1,214,250 to be distributed *cy pres* for the benefit of the settlement class of
16 government entities and for state agencies, split into \$1,032,113 for the settlement
17 class and \$182,137 for state agencies;
- 18 5. \$195,000 to be distributed *cy pres* for the benefit of natural persons;
- 19 6. \$865,000 for civil penalties; and
- 20 7. \$1,295,750 to cover the deadweight loss and disgorgement claims, split into \$863,833
21 for deadweight loss to be distributed *cy pres* for the indirect benefit of the general
22 economy of the State, and \$431,917 for disgorgement to the Attorney General's
23 Office pursuant to state and analogous federal law.

24 For the reasons set out above, allocation of the proposed amounts for the Plaintiff
25 Government Class is fair and reasonable. Ultimately, allocation plans involve the exercise of
26 equitable discretion, and the Attorney General's allocation plan involves public interest
27 considerations that warrant deference; thus, they are reviewed for reasonableness and with the
28 understanding that no plan of allocation can be perfect. (See, e.g., Report & Recommendation of
Special Master, Part I: Settlement Class Certifications and Plans of Allocation and Distribution of
the Settlement Proceeds to the Settlement Classes, pp. 87-89, 144-47, *In re DRAM Antitrust*)

1 *Litigation*, MDL No. 1486 (N.D. Cal. June 27, 2014), Dkt. 2235 (hereinafter “*DRAM R&R, Part*
2 *I*”),⁵ [collecting and discussing cases], attached as Exh. P to the 2/23/16 Varanini Decl.)

3 Allocating less than the total amount of settlement funds (minus an amount to cover notice,
4 attorneys’ fees, and litigation costs) to state and local government entities recognizes that their
5 damages were a relatively smaller part of a law enforcement case alleging a global price-fixing
6 conspiracy, and in which claims for deadweight loss, civil penalties, and disgorgement of profits
7 were important and quite sizeable. (2/23/16 Varanini Dec., ¶ 34.) And all of these law
8 enforcement claims involve claims of the State itself in which the State is politically accountable
9 for how it allocates settlement proceeds amongst those claims. (See *Citigroup, supra*, 752 F.3d at
10 p. 294.)

11 Moreover, although every claim had its strengths and weaknesses, those law enforcement
12 claims involving monetary equitable relief (e.g., deadweight loss, disgorgement, and civil
13 penalties) had a greater chance of surviving dismissal on the FTAIA grounds. (See, e.g.,
14 *Motorola Mobility LLC v. AU Optronics Corp.* (7th Cir. 2015) 775 F.3d 816, 826 [noting that
15 there was a difference between a government suit seeking to impose penalties or injunctive relief
16 and a private action seeking damages for purposes of applying the FTAIA].)

17 There were also special risks and uncertainties in proving damages for the government
18 entity claims as it would involve questions as to what extent extrapolation can be used to prove up
19 these individual claims. (See, e.g., *Duran v. U.S. Bank Nat’l Assn.* (2014) 59 Cal.4th 1, 38-40, 49
20 [noting that extrapolation to prove classwide liability and damages involve issues that are far
21 from settled and must account for case-specific deviations in the evidence even if there is more
22 tolerance of uncertainty as to damages than as to liability].)

23 Further, the Attorney General has only allocated a limited amount to be distributed *cy pres*
24 for the indirect benefit of California natural persons. The IPP settlements in the first instance

25 ⁵ *DRAM R&R, Part I* was fully adopted by the federal district court. (See *In re DRAM*
26 *Antitrust Litigation*, 2014 U.S. Dist. LEXIS 89622; see also Order Granting Preliminary
27 Approval, *In re DRAM Antitrust Litigation*, MDL No. 1486, Dkt. 2235 (N.D. Cal. Filed Jan. 17,
28 2014), Order Granting Final 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).)

1 have no provision for any *cy pres* plan, even of a residue, for the indirect benefit of California
2 natural persons. Because the Attorney General has had a policy of trying to secure some *cy pres*
3 relief, if only a residue, for the benefit of those California natural persons who do not make
4 claims, it is reasonable for her to carry out this policy by allocating a small amount, equivalent to
5 a residue, for that purpose.

6 Recognition of such equitable considerations is appropriate in devising an allocation plan
7 where the settlement funds are inadequate to fully satisfy all claims. (See, e.g., *Curtiss-Wright*
8 *Corp. v. Helfand* (7th Cir. 1982) 687 F.2d 171, 174-75; accord, e.g., *In re Holocaust Victim*
9 *Assets Litig.* (2d Cir. 2001) 413 F.3d 183, 186; *7-Eleven Owners, supra*, 85 Cal.App.4th at 1162-
10 63 [citing *Curtiss-Wright* and noting that such differences need only be rational].) It is especially
11 appropriate here where the Court may defer to the Attorney General's calculus of the public
12 interest in allocating rationally among competing claims. (Cf. *Citigroup*, 752 F.3d at p. 296
13 noting substantial deference is owed to public interest determinations by a government
14 enforcement entity insofar as a consent decree is concerned].)

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

21 **IX. THE *CYPRES* PLAN FOR DISTRIBUTION OF THE SETTLEMENT FUNDS** 22 **IS REASONABLE**

23 California courts have approved settlements of antitrust claims, including lawsuits brought
24 by the Attorney General, using *cy pres* distribution of the whole or a substantial part of the
25 settlement fund, especially when direct distribution of settlement proceeds to individuals or
26 entities was not feasible. (See, e.g., *State of California v. Levi Strauss & Co.* (1986) 41 Cal.3d
27 460; *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706; *In re Vitamin Cases* (2003) 107
28 Cal.App.4th 820). In her preliminary approval papers, the Attorney General explained why it was

1 appropriate to proceed via a *cy pres* process in this case, and she identified the criteria she would
2 follow, as set in the case law and internal policy, to distribute *cy pres* grants. (See 2/23/16 MPA
3 at pp. 20-21; 3/18/16 Supp. MPA at pp. 17-19; 3/18/16 Supp. Varanini Decl., ¶¶ 21-41.) The
4 Court granted preliminary approval, and requested that the Attorney General designate *cy pres*
5 recipients for the Court's consideration at the final approval hearing in the absence of any
6 objectors. (See Varanini Decl., Exh. A [Transcript of Preliminary Approval Hearing].)

7 The Attorney General followed the *cy pres* procedures proposed in her preliminary
8 approval papers in identifying the proposed groups and projects she is now submitting to the
9 Court as part of the Court's final approval of the *cy pres* distribution plan.⁶ (Varanini Decl., ¶ 13.)
10 Specifically, the Attorney General, through the use of an independent *cy pres* grants
11 administrator, identified a nexus between the proposed grantees and the basis for the litigation;
12 publicly disclosed the method of selecting proposed *cy pres* recipients; and proposed non-profit,
13 government or court supervised organizations that all were able to demonstrate how the funds
14 will be spent and can assure that the funds are being spent for the proper, designated purpose.
15 (*Id.*)

16 She retained Harry Snyder, an expert in the *cy pres* grant selection and administration
17 process, to devise a transparent grant making process that will: (1) vet and recommend grant
18 recipients, (2) prepare and obtain grant agreements and distribute grant funds, (3) monitor the
19 compliance of the implementation of grant terms and use of funds by *cy pres* fund recipients and,
20 (4) provide periodic reports to counsel (and court, if ordered) on the use and distribution of grant
21 funds. (Declaration of Harry Snyder ("Snyder Decl."), ¶ 4.)

22 Mr. Snyder began the *cy pres* process by issuing a request for applications for the available
23 funds, conducting statewide outreach to government class members and targeted non-profit

24
25 ⁶ As explained in the Attorney General's preliminary approval papers, the Court need only
26 approve the recipients of the *cy pres* Government Class fund. (3/18/16 Supp. MPA at 17.)
27 Nevertheless, because Court approval is required for the dismissal of her *parens patriae* claims,
28 and because the Attorney General has allocated \$195,000 of the settlements to be distributed *cy pres*
for the indirect benefit of California natural persons, the Attorney General discusses the *cy pres*
distribution for the *parens patriae* claims and identifies the recipients of the *parens patriae*
cy pres fund as support for her dismissal of those claims.

1 organizations, conducting a due diligence review of the proposed project which included financial
2 reviews, site visits and interviews with key personnel, and preparing an administrator's report
3 recommending projects for funding. (Snyder Decl., ¶11.) The Attorney General recommends
4 funding each of the projects as recommended by Mr. Snyder following this rigorous process (see
5 *id.*, ¶ 15), and as reviewed and approved by the Attorney General (Varanini Decl., ¶ 15).
6 Approval of these recipients would comport with case law. (See, e.g., *DRAM R&R, Part I*, at
7 pp.158-165, which is attached as Exhibit C to the Varanini Declaration.)

8 The proposed grantees of both the Government Class Fund and the *Parens Patriae* Fund
9 also comport with other requirements set out in the Attorney General's preliminary papers. The
10 proposed recipients of both are geographically diverse. (Varanini Decl., ¶ 15.) The Attorney
11 General has no relationship to the proposed recipients. (*Id.*) A detailed description of Mr. Snyder,
12 the process for selecting the *cy pres* recipients, and the projects recommended for funding are
13 contained in Mr. Snyder's Declaration.

14 **A. Proposed Recipients of Government Class *Cy Pres* Fund**

15 Based on Mr. Snyder's recommendation, the Attorney General presents the following 23
16 candidates for this Court's approval to award them *cy pres* grants from the Government Class
17 Fund: Altadena Library District, City of Duarte, City of Fresno PARCS, City of Lancaster, City
18 of Moorpark, City of Oakland, City of Redding Police Department, City of Reedley Police
19 Department, City of Sanger Police Department, City of Santa Cruz, City of Santee, City of South
20 Pasadena, City of Sunnyvale – NOVA Workforce Services, City of West Covina, City of Yuba
21 City, County of Del Norte, Fresno Westside Mosquito Abatement District, Imperial County
22 Workforce Development Office, Marin County Public Defender, Merced County Department of
23 Workforce Investment, Riverside County Department of Environmental Health, San Luis Obispo
24 County Health Agency Environmental Health Services Division, and Stanislaus County. (Snyder
25 Decl., ¶ 15.)

26 As explained in her preliminary approval papers, the nexus between the Plaintiff
27 Government Class and the *cy pres* funds is that awards may be granted to projects that "involve
28 the purchase of technological items representing the next generation after CRTs". (See 3/18/16

1 Supp. MPA, at p.17.) Each of the groups listed above demonstrate this nexus. By way of
2 example, the City of Fresno's project proposes "to purchase six new computers at a Community
3 Center and park serving West Fresno, improve existing connectivity, and install free WiFi service
4 at the park. Their project is proposed because their project directly bridges the "digital divide" by
5 increasing computer access and improving Internet connectivity in one of the state's poorest
6 neighborhoods." (Snyder Decl., ¶ 15.) Similarly, the City of Oakland's project proposes "to
7 equip the existing Civic Design Lab with cutting edge technology that can support innovative
8 thinking and entrepreneurial solutions to city planning and policymaking. The proposed project
9 will allow a growing city to leverage the newest technology to continue innovative data
10 management, planning and policymaking." (*Id.*) Mr. Snyder's declaration describes the nexus
11 for each of the proposed Government Class grant candidates. (*Id.*)

12 The Attorney General's Office estimates that by the time the *cy pres* grants are completed,
13 there will be a residue of approximately \$143,468 in the Government Class Fund. (Varanini
14 Decl., ¶ 16.) The Attorney General's Office proposes to distribute such residue in a new grant-
15 making round, possibly in conjunction with funds from other settlements to save administrative
16 costs.⁷ The Court can and should grant final approval because the distribution of any such residue
17 can be handled separately from final approval as a legal matter and also because, as a practical
18 matter, the Attorney General's Office cannot be certain of the amount that will be available as a
19 residue until the existing proposed distribution to *cy pres* grant recipients is completed. (See
20 *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 966 [finding that objection to
21 *cy pres* provision was not ripe for review where residue existence or amount was not yet known].)

22 ///

23 ///

24 ⁷ For example, there are two settlements in the related *Chunghwa* case involving the same
25 price-fixing conspiracy alleged in the present case. Although an objector has appealed one of the
26 settlements (the "Philips settlement"), the objector has clarified in initial appellate statements that
27 he is not challenging the other settlement (the "Chunghwa settlement"). (Varanini Decl., ¶ 18.)
28 The Chunghwa settlement provides approximately \$300,0000, minus costs and expenses, for *cy pres*
distribution, and the Court in that case has authorized the combination of the settlement
funds with other settlement funds for the purpose of a *cy pres* grant-making process. (See 2/23/16
Varanini Decl., Exh. K.)

1 **B. Proposed Recipients of *Parens Patriae* Cy Pres Fund**

2 In her preliminary approval papers, the Attorney General asserted that the nexus between
3 the *parens patriae* recipients and the *cy pres* funds is that awards may be granted to not-for-
4 profits and charitable institutions for the indirect benefit of California natural persons to
5 organizations that offer either computer-related or technology related services. (See 3/18/16
6 Supp. MPA at p. 18.) The selection of the following grantees comports with that requirement:
7 Bay Area Video Coalition, Downtown Women’s Center, and Teachers for Healthy Kids.

8 The Bay Area Video Coalition proposes to upgrade two digital media technology workforce
9 training labs and purchase a new camera for the classrooms. The proposed project will ensure
10 that low-income, unemployed and underemployed adults and transitional age youth can learn new
11 digital media and technical skills and increase their chances to compete in a highly competitive
12 technology-based labor market. (Snyder Decl., ¶ 15.) The Downtown Women’s Center proposes
13 to purchase 18 new computers including monitors, keyboards, mice, and a projector for their
14 Learning Center computer lab open for homeless women; and to support classes in computer
15 skills, literacy, math, and vocational education. The proposed project will allow a well-
16 established Skid Row service organization to expand and modernize a heavily-used computer
17 center to assist women in gaining basic tech job skills critically needed by today’s workforce.
18 (*Id.*) And the Teachers for Healthy Kids proposes to purchase equipment and to support their
19 efforts to move to a technology-based system of retention and enrollment in Medi-Cal,
20 incorporating a specialized data matching program (“CHIPER”) for outreach, retention, and
21 enrollment. The proposed project will use a sophisticated data-matching program to streamline
22 the identification of many thousands of hard-to-reach California public school students and then
23 help them enroll in and retain health-care coverage. (*Id.*)

24 ///

25 ///

26 ///

27 ///

1 **X. THE REQUESTED AWARDS FOR THE NAMED GOVERNMENT ENTITIES**
2 **ARE APPROPRIATE AND SHOULD BE APPROVED**

3 The Attorney General's allocation plan includes \$330,000 for payments to the individually
4 named local government entities (plus the University of California) whose claims were
5 represented by the Attorney General in this action and who had to respond to discovery requests.
6 There are 30 named government entities, and the Attorney General proposes that each be awarded
7 \$11,000.⁸ This amount is reasonable and appropriate in light of the entities' damages as well as
8 the entities' valuable services and assistance in this action.

9 At the outset, while the Attorney General's preliminary approval papers characterized the
10 requested awards for the entities as "incentive awards," these awards also can and should be
11 viewed independently as a direct distribution for damages. Had this case proceeded to trial and
12 had the Attorney General prevailed on her damages claims, the 30 entities would have been
13 awarded damages of at least \$11,000, based on the State's expert's calculated damages of \$5.2
14 million for the State and the named government entities and based on the entities' number of Full
15 Time Employees ("FTE"). (See Varanini Decl., ¶ 19; see also *DRAM R&R, Part I*, at pp. 167-
16 172 [approving the use of FTEs as a method to calculate damages for government entities],
17 attached as Exh.C to the Varanini Declaration.) As noted above, allocation or distribution plans
18 involve the exercise of equitable discretion, and the Attorney General's allocation of \$11,000 to
19 each of the named government entities here involves public interest considerations and managing
20 intergovernmental relations that warrant deference. Allocating an award of \$11,000 to each entity
21 is reasonable based on their damages alone.

22 In addition, an award to the 30 entities is reasonable and appropriate as each provided
23 meaningful and valuable assistance to the Attorney General's Office. While only the City and
24 County of San Francisco is a class representative, individual claims were brought on behalf of all

25
26 ⁸ The Attorney General's Office's preliminary approval papers mistakenly stated that
27 there were 33 named government entities whose claims were directly represented by the Attorney
28 General's Office and proposed awarding each \$10,000. The correct number of named government
entities is 30, as two of the entities opted-out of the case after the Complaint was filed and the
Attorney General's Office miscounted a third entity. (Varanini Decl., ¶ 18.)

1 30 entities who were named as plaintiffs in the Complaint. (02/23/16 Varanini Decl., ¶ 48.)
2 Based on the Attorney General's Office numerous communications with each of the entities,
3 including communications by email, telephone, and in-person meetings, the Attorney General's
4 Office has knowledge that the entities expended enormous time and resources prior to and during
5 the prosecution of this case, including contacting and working with multiple departments and
6 employees within their entities to search for, review, and produce documents and information
7 relating to their purchases of CRT products, as described further below.

8 The Attorney General's Office contacted all 30 entities during its investigation into this
9 case, seeking information and documents relating to their purchases of CRT products. (Varanini
10 Decl., ¶ 20.) In response, each of the entities contacted one or more departments to search for and
11 produce documents supporting their purchases of CRT products, and each of the entities produced
12 documents relating to their purchases. (*Id.*) Some of the entities produced voluminous excel
13 spreadsheets and/or other reports documenting their purchases; other entities produced hundreds
14 of pages of invoices, receipts, and other purchase related documents; and some entities produced
15 both. (*Id.*) After the Attorney General filed her complaint in this action, defendants served
16 discovery requests seeking additional information and documents from the entities. (*Id.*, ¶ 21.)
17 As a result, the Attorney General's Office contacted all of the entities again, asking them for the
18 additional information and documents sought in the discovery requests, which required the
19 entities to again contact and seek information from multiple departments and employees within
20 the entities. (*Id.*) In response to the discovery requests, many of the entities provided detailed
21 written information and produced additional documents. (*Id.*, ¶¶ 21, 23.) For example, the
22 University of California provided questionnaire responses and/or documents from 14 campuses
23 and medical centers. (*Id.*) Other entities responded that there was no additional information or
24 documents to be produced. (*Id.*) Other entities, such as Alameda County, after making efforts to
25 locate responsive information and documents, responded that it would be unduly burdensome to
26 identify and produce additional documents beyond what had already been produced and agreed to
27 provide declarations to that effect. (*Id.*) No entity responded that they would not comply with the
28 discovery requests. (*Id.*, ¶ 21.)

1 Finally, in addition to producing documents and providing information in response to
2 discovery requests, Contra Costa County, Garden Grove Unified School District, Kern County,
3 the City of Long Beach, Los Angeles County, and San Francisco Unified School District were
4 deposed by defendant SDI. (*Id.*, ¶¶ 22, 23.) Following these depositions, SDI sought additional
5 information and documents from four of the deponents, who made further inquiries within their
6 entities and submitted follow-up declarations with additional information and/or produced
7 additional documents. (*Id.*)

8 In view of the efforts and services provided by the 30 entities, the requested incentive
9 awards to the entities are reasonable and appropriate. (See, e.g., *Sullivan, supra*, 667 F.3d at p.
10 333; see also *DRAM R&R, Part I*, pp. 187-194, attached as Exh. P to the 2/23/16 Varanini Decl.)

11 **XI. THE REQUESTED AMOUNT FOR LITIGATION COSTS AND** 12 **ATTORNEY'S FEES IS REASONABLE**

13 The reasonableness of a claim for attorneys' fees and costs requires an independent
14 assessment from the reasonableness of the settlement itself. (See, e.g., *In re Consumer Privacy*
15 *Cases* (2009) 175 Cal.App.4th 545, 555.) The California Supreme Court has explicitly
16 recognized that a "court may determine the amount of a reasonable fee by choosing an
17 appropriate percentage of the fund created. The recognized advantages of the percentage
18 method—including relative ease of calculation, alignment of incentives between counsel and the
19 class, a better approximation of market conditions in a contingency case, and the encouragement
20 it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation
21 convince us the percentage method is a valuable tool that should not be denied our trial courts."
22 (*Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 503 [internal citations omitted].)

23 Here, the Attorney General requests that the Court award 20% of the settlement fund --
24 \$975,000 -- for fees and costs. The requested 20% is lower than the Ninth Circuit's 25%
25 benchmark. (*Laffitte*, at p. 495 (citing *Vizcaino v. Microsoft Corp.* (9th Cir.2002) 290 F.3d 1043,
26 1047 [approving 28 percent fee as justified by a benchmark of 25 percent adjusted according to
27 specified case circumstances]).) It is also lower than "the low end of the typical contingency
28 contractual arrangement (21.8 percent)." (*Laffitte*, at p. 502 (quoting *Chavez v. Netflix, Inc.*

(2008) 162 Cal.App.4th 43, 63).) Moreover, the amount requested is far below the amount of attorneys' fees and costs actually incurred by the Attorney General. Indeed, the litigation costs incurred by the Attorney General alone exceed \$1.47 million.

A. The Litigation Costs Incurred were Reasonable and Necessary

Due to the number of international defendants who participated in the global CRTs price-fixing conspiracy, the Attorney General's Office incurred the reasonable and necessary costs required for foreign service of process and the use of translators in the prosecution of this action. (Varanini Decl., ¶ 24.) Further, throughout the course of litigation, the Attorney General's Office engaged in motion practice and significant fact and expert discovery, both in coordination with discovery in the MDL and independently in state court after discovery coordination in the MDL ended. (*Id.*) As part of the process, the Attorney General's Office incurred the reasonable and necessary costs of hiring court reporters for hearings in state court, ordering hearing transcripts and deposition transcripts, hiring an expert witness who prepared multiple expert reports, sharing in payment of the special master's fees as part of coordinated discovery in the MDL, and sharing in payment of mediation fees. (*Id.*) The following table summarizes the direct costs of suit paid by the Attorney General to date.

Filing Fees & Process Service Fees	\$7,552.89
Foreign Service of Process Fees	\$116,346.89
Translation Fees	\$233,840.04
Court Reporter/Transcript Fees	\$180,977.20
Special Master Fees (JAMS, Inc.)	\$3,777.22
Special Master and Mediation Fees (Federal Arbitration Inc.)	\$30,063.33
Expert Witness Fees	\$904,301.17
CourtCall Fees	\$86.00
Total	\$1,476,944.74

(*Id.*)

All of the foregoing litigation costs were reasonable and necessary to prosecute this action.

1 **B. The Attorney General's Office Incurred Significant Amounts of Attorney**
2 **Time**

3 Because the direct costs of suit already exceed the requested award of \$975,000, it is not
4 necessary for the Court to evaluate the Attorney General's Office's attorney hours, let alone
5 conduct a lodestar review or cross-check of the Attorney General's Office's attorneys' fees.
6 (*Laffitte, supra*, 1 Cal.5th at pp. 503-505.)

7 Nevertheless, should the Court determine that some of the litigation costs incurred are
8 unreasonable, the requested amount of \$975,000 is still reasonable in light of the attorney's fees
9 incurred in this case. Indeed, at least seven attorneys from the Attorney General's Office have
10 worked on this case since the filing of the Complaint in 2011, and the attorney hours expended by
11 lead counsel Emilio Varanini alone are 5,429 hours. (Varanini Decl., ¶ 25.) Even reducing Mr.
12 Varanini's hours by 25% to ensure they include only recoverable hours, based on his 23 years of
13 experience as an attorney and his hourly rate of \$567,⁹ the attorney's fees attributable to Mr.
14 Varanini would be approximately \$2,308,257. Thus, the \$975,000 requested for costs and
15 attorney's fees is eminently reasonable.

16
17 **XII. CONCLUSION**

18 For the foregoing reasons, the Attorney General respectfully requests that the Court grant
19 final approval of the following: (1) the settlements with Defendants LG, Panasonic, Hitachi,
20 Toshiba, and Samsung; (2) the dismissal of the Attorney General's *parens patriae* claims; (3) the
21 certification of the Plaintiff Government Class; (4) the allocation and *cy pres* distribution of

22 ///

23 ///

24 ⁹ The hourly rate is based on the USAO Attorney's Fees Matrix for 2015-16, which
25 replaces the Laffey matrix previously used by the USAO (see <https://www.justice.gov/usao-dc/file/796471/download>), plus a locality percentage differential of 6.92% for San Francisco.
26 The locality differential was calculated by comparing the hourly mean wage of lawyers from
27 Washington, DC and San Francisco, CA, published by the Bureau of Labor Statistics. (See
28 <http://www.bls.gov/oes/current/oes231011.htm#st>). (See *Theme Promotions, Inc. v. News Am. Mktg. FSI, Inc.*, (N.D. Cal. 2010) 731 F.Supp.2d 937, 948 [using Laffey matrix and adjusting locality pay differential for San Francisco].)

1 settlement funds to the Plaintiff Government Class; (5) the recipients for the Plaintiff Government
2 Class *cy pres* fund; (6) awards to the 30 government entities named in the Complaint; and (7)
3 award for litigation costs and attorney's fees.

4 Dated: September 16, 2016

Respectfully Submitted,

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7 MARK BRECKLER
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11 /s/ Emilio Varanini
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